

(2015) 06 SIK CK 0019
In the Sikkim High Court
Case No : Writ Petition (C) No. 04 of 2013

Sikkim Manipal University

APPELLANT

Vs

Indira Gandhi National Open University, Distance Education
Council and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 245, 245(1), 254
Indira Gandhi National Open University Act, 1985 — Section 16, 2, 5, 6
University Grants Commission Act, 1956 — Section 12, 12(b), 12A, 12-A, 2(f)

Citation : (2015) 06 SIK CK 0019

Hon'ble Judges : Sunil Kumar Sinha, C.J; Sonam Phintso Wangdi, J

Bench : Division Bench

Advocate : Gopal Subramaniam, Bhaskar Raj Pradhan, Senior Advocates, T.R. Barfungpa, A. Ahluwalia, Nikhil Nayar, Reena Rai, Mingma Lhamu, Dorjee Uden Nadik and Pema Rinzing, for the Appellant

Final Decision : Disposed off

Judgement

Sonam Phintso Wangdi, J.

1(i). This Writ Petition has been preferred by the Sikkim Manipal University (for short "Petitioner-University"), earlier known as Sikkim Manipal-University of Health, Medical and Technological Sciences, established under the Sikkim-Manipal University of Health, Medical and Technological Sciences Act, 1995 (Act No. 9 of 1995) (for short "Sikkim-Manipal Act, 1995") passed by the Sikkim Legislative Assembly which came into force with effect from 15-11-1995 as a collaborative effort between the Government of Sikkim and the Manipal Education and Medical Group, Manipal (the said Group or its successor known as "Manipal Pie Foundation"), a Registered Trust, with the Governor of Sikkim as its Chancellor having two nominees of the Government of Sikkim, amongst others, as Members of its Governing Council.

(ii) As a part of its academic activities, the Petitioner-University offered Distance

Education Programmes (for short "DEP") with effect from the year 2001, on the strength of a letter dated 28-08-2001, Annexure P5, issued by the then Chairman of the University Grants Commission (for short "UGC"), Respondent No. 3, conveying that all Universities including the Petitioner were "permitted to award the degrees through Distance Education at their own centres in different parts of the country".

2(i). The Respondent No. 1 is the Indira Gandhi National Open University (for short "IGNOU"). The Distance Education Council (for short "DEC") is an Authority created under Statute 28 of the IGNOU Act, 1985 and grants approval/recognition to the DEP of the country both of which are referred to as "Respondent No. 1" for convenience.

(ii) The Respondent No. 2 is the Ministry of Human Resource Development, Government of India and is the Nodal Ministry for Education including Higher Education of the Government of India.

(iii) The Respondent No. 3 is the University Grants Commission created under the University Grants Commission Act, 1956 (for short "UGC Act, 1956").

3. In the Writ Petition, the Petitioner-University seeks, inter alia, for a direction upon the Respondent No. 1-IGNOU-DEC, to dispose of the application of the Petitioner-University dated 10-07-2012, Annexure P23, for continuation of the recognition granted to the DEP offered by the Petitioner-University.

4. The facts and circumstances giving rise to the present Writ Petition as set out therein, are briefly stated, as follows:-

(i) Parliament enacted the IGNOU Act, 1985 (No. 50 of 1985), for the introduction and promotion of Open University and Distance Education Systems in the country and, for coordination and development of standards in such systems. Prior to enactment of the IGNOU Act, Distance Education was being regulated by the UGC. Since IGNOU initially operated only as a University and did not assume its regulatory role, UGC effectively continued to be the sole regulator of the Distance Education in the country even after 1985. In 1985, UGC framed Regulations for grant of first degree through non-formal/Distance Education System. These Regulations prescribed eligibility conditions, duration of courses, content of study programmes, qualification of teachers, etc. This was followed by creation of the DEC under Statute 28 of IGNOU Act, 1985 but, for some time even after creation of DEC, Distance Education Systems continued to be regulated by the UGC.

(ii) By a Notification dated 01-03-1995, Annexure P3, issued by the Respondent No. 2, Ministry of Human Resource Development (Department of Education), Government of India, it was announced that on the recommendations of the Board of Assessment for Educational Qualifications, the Government of India had decided, inter alia, that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, etc.,

stood automatically recognised for the purpose of employment to posts and services under the Central Government, provided it had been approved by the DEC and wherever necessary by All India Council for Technical Education (for short "AICTE"). It is, however, alleged that no steps were taken by the Respondent No. 1 for putting in place a policy of recognition/approval.

(iii) As noted earlier, it is averred that the Sikkim-Manipal Act, 1995, establishing the Petitioner-University in the State of Sikkim is said to be as a result of a unique collaboration between the Government of Sikkim and the Manipal Pie Foundation, a Registered Trust. The collaboration was aimed at improving the educational infrastructure in the NorthEastern Region and improving the overall Gross Enrolment Ratio in the country by providing the youth with quality Open Distributed Learning (ODL) Programmes and, in that direction the Petitioner-University has invested considerably. It is averred that through its DEP the Petitioner-University has contributed much to the growth of Higher Education by producing 2,59,000 Graduates in the country including over 30,000 from the North-Eastern Region and that the Petitioner-University has been widely acclaimed as a leading University for its DEP.

(iv) On the strength of a clearance/no objection dated 03-10-2000, Annexure P4, granted by the Government of Sikkim and as per the permission of the then Chairman of the UGC by his letter dated 28-08-2001, Annexure P5, referred to earlier, the Petitioner-University commenced offering DEP in the year 2001 at a time when the Respondent No. 1 did not have in place any scheme or policy for recognition/approval and, permission of the UGC was sufficient for the purpose.

(v) It is averred that the DEP run by the Petitioner-University are based on internationally accepted best practices and markedly superior to other DEP offerings in the country over which it exercises direct control. It is further averred that the programmes run by the Petitioner-University is focused predominantly on Post-Graduate courses, such as, MBA, MCA, MSc.(IT), in which persons interested are primarily working professionals requiring skills upgradation or diversification but, who cannot afford to leave their employment thereby providing a very important avenue for working professionals to obtain additional degrees while continuing to remain in employment.

(vi) In 2003, the Respondent No. 3 issued the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 (for short "Regulations 2003"), which provides, inter alia, that Study Centres in respect of Distance Education would require prior approval of the UGC. However, the Regulations were never put into effect so far as the Study Centres were concerned. In fact, by Government of India Gazette Notification No. 44 of 1995, it was the approval of the DEC that was made essential for qualifications awarded through Distance Education by Universities of various categories to be recognised automatically for the purpose of employment in Government jobs.

(vii) To an advertisement issued by the Respondent No. 1 in February, 2004,

pursuant to Government of India Gazette Notification No. 44 of 1995, as the very first step taken by it towards grant of approval, requiring Universities to apply for its recognition for courses that were being offered through Distance Mode including the existing ones for post-facto recognition, the Petitioner-University submitted its application for approval of 51 (fifty one) courses being conducted by it. During the pendency of the Petitioner-University's application with the Respondent No. 1-IGNOU, the Respondent No. 3-UGC by its letter dated 16-05-2005, Annexure P8, informed the Petitioner-University of the necessity of obtaining approval of the Respondent No. 1 for offering any DEP. The Act establishing the Petitioner-University was amended on 17-04-2006 to incorporate provisions therein to enable the Petitioner-University to set up Study Centres/ Learning Centres within the State, throughout the country and abroad.

(viii) On 10-05-2007, when the Petitioner-University's application was still pending, a Memorandum of Understanding (for short "MoU"), Annexure P10, was entered into between the Respondent No. 3-UGC, AICTE and Respondent No. 1-DEC, for streamlining the process of recognition for Institutions offering Technical and General Education via Distance Mode. Under the MoU, a Joint Committee having representatives from each Body, was to be established to review and approve the findings of the Expert Committee. The terms of the Joint Committee which was for a period of 3 (three) years expired on 09-05-2010.

(ix) By a letter dated 29-08-2007, Annexure P11, the Respondent No. 1 while granting ex-post-facto recognition to programmes being offered through Distance Education Mode by the Petitioner-University, also granted provisional recognition for one year, i.e., 2007-08 but, called for a fresh application for the period from June-July, 2008 onwards. In compliance, a fresh application dated 08-05-2008, Annexure P12, was submitted but, as inspection by the Expert Committee was expected to take place only sometime in September, 2008, the Petitioner-University by application dated 19-08-2008, Annexure P13, requested the Respondent No. 1 for extension of the provisional recognition granted earlier in 2007 in order to facilitate continuity in offering of programmes.

(x) In response to this, the Respondent No. 1 consistent with its past practice, by its letter dated 26-11-2008, Annexure P14, extended the earlier provisional recognition till such time as the Committee would visit the University and submit its recommendations and decision taken by the Joint Committee. However, contrary to its past practice, the Respondent No. 1 not only failed to consider the Petitioner-University's application but, also did not take any steps for inspection. It is averred that the Petitioner-University meets all the criteria for recognition/ renewal prescribed in the guidelines of the Respondent No. 1 on Recognition of Open and Distance Learning (ODL) Institutions, Annexure P15. It is thus stated that there was no basis whatsoever on which renewal could be denied to the Petitioner-University.

(xi) By a letter dated 09-09-2009, Annexure P16, of the Respondent No. 1, the Petitioner-University was asked to comply with certain recommendations of the

Expert Committee which was followed by another letter dated 17-09-2009, Annexure P16A, extending the recognition accorded earlier by another year and, eventually by letter dated 15-10-2009, Annexure P17, the Respondent No. 1 through its Chairman granted regular recognition for a period of 3 (three) academic years from 2009-10 to 2011-12. The observations of the Expert Committee in its letter dated 09-09-2009, Annexure P16, that further Centres and initiatives should be planned for the North-Eastern Region and Sikkim, is a clear acknowledgement by the Respondent No. 1 that Distance Education cannot be limited by constraints of territoriality.

(xii) In the 35th Meeting of the Respondent No. 1 held on 10-03-2010, Annexure P19, it was resolved that firstly, the territorial jurisdiction of the State Universities would be as per parent Acts and Statutes, i.e., Study Centres, could be outside the geographical limits of the State, if the parent Statute permitted it and, secondly, the decision of the Chairman, DEC, to grant regular recognition to the Petitioner-University stood ratified. These decisions were communicated to the Petitioner-University on 29-03-2010, Annexure P20, acknowledging therein that Distance Education and Online Education cannot have any territorial jurisdiction which was to be determined by the provisions of the parent Statutes of the University.

(xiii) The Respondent No. 1 by its letter dated 24-05-2010, Annexure P21, also informed the Petitioner-University of the Council having ratified at its 35th Meeting the Chairman's decision to accept the compliance report submitted by the Petitioner-University. Thus, as per the Petitioner-University, such ratification by the Full Council gave it to understand that the regular recognition granted to it stood approved by the highest authority of the Respondent No. 1.

(xiv) Later the Petitioner-University came to learn that the Central Bureau of Investigation (for short "CBI") was conducting a preliminary enquiry in relation to certain decisions taken by the former Chairman of the DEC including his decision to grant regular recognition to the Petitioner-University on 15-10-2009. It is stated that the Petitioner-University could not be faulted if there had been any internal technical procedural lapses on the part of the then Chairman after it had complied with all the processes and procedures of the Respondent No. 1.

(xv) In its 40th Meeting held on 08-06-2012, Annexure P22, the Respondent No. 1 in complete reversal to its earlier position, unilaterally and arbitrarily resolved that regardless of the parent Statute, a State University could not have Study Centres outside the geographical limits of the State. This was violative of the Petitioner-University's right to admit students on an All India basis as mandated by the State Act, the vires of which was not under challenge and that the doctrine of territorial nexus permits incidental extra-territorial effects.

(xvi) On 10-07-2012, Annexure P23, the Petitioner-University through its Directorate of Distance Education applied to the Respondent No. 1 for renewal of the approval of its DEP and for an early visit of the Expert Committee. Soon after

the submission of this application, in that very month the CBI registered a case against the former Vice Chancellor of IGNOU and others including two other Universities based at Jalandhar and Gangtok under various provisions of the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988, in which the Petitioner-University gave its full cooperation to the Investigating Agency and continued to do so to demonstrate its ethical standards and probity of the Manipal Group.

(xvii) It is pleaded that the Petitioner-University having obtained the recognition after following all the procedures, the Respondent No. 1 cannot hold the investigation as the reason for delay in according its recognition as sought for in its application dated 10-07-2012, Annexure P23. When the reminders dated 06-08-2012 and 06-09-2012 (Annexure P24 collectively) were not responded to and the earlier recognition was due to expire on 14-10-2012, the Petitioner-University sought the intervention of the Ministry of Human Resource Development, Respondent No. 2, by its letter dated 05-10-2012, Annexure P25, expressing its apprehension that the ongoing investigation by the CBI may be the cause for the delay in disposal of its application.

(xviii) By a letter dated 10-10-2012, Annexure P26, the Respondent No. 1 informed the Petitioner-University that its application was under process at DEC and, far from extending the approval by a provisional recognition in keeping with the past practice, it was directed to cease fresh admissions pending decision on the application. The Petitioner-University, in the hope of a timely inspection by the Expert Committee and an early decision on its application, directed a freeze on fresh admissions requesting the Respondent No. 1 by its letter dated 25-10-2012, Annexure P27, to expedite the process of inspection.

(xix) In its 115th (Emergent) Meeting held on 19-09-2012, Annexure P28, the Board of Management of the Respondent No. 1-IGNOU took a decision to dissolve the DEC which was followed by the Ministry of Human Development, Respondent No. 2, directing the Respondent No. 3-UGC and the AICTE to take over the functions of the DEC even before the repeal of Statute 28. The Notification of such repeal, Annexure P30, was issued only on 01-05-2013, thereby formally dissolving the DEC.

(xx) In fact, the Petitioner-University was directed by the UGC vide letter dated 16-05-2005, Annexure P8, to comply with the UGC Guidelines, 1985 emphasising the necessity of prior approval of the DEC acknowledging thereby that the DEC was still the competent body to approve DEP. Even after the functions of the DEC was taken over by UGC, the earlier DEC Guidelines which the Petitioner-University had always followed, was continued to be applied having been adopted by UGC as an interim measure as the process of framing its own Regulations on ODL courses was likely to take time.

(xxi) Just after a week of the adoption of Guidelines of the DEC, a Public Notice dated 24-06-2013, Annexure P32, was issued by the Respondent No. 3,

announcing the impermissibility of a University established under a State Act to operate DEP outside the territorial jurisdiction of its State even if it was so permitted by the State Statute and, that Private Universities may be permitted to open Off-Campus Centres, Off-Shore Campuses and Study Centres only after 5 (five) years of its coming into existence subject to fulfillment of the conditions laid down under Regulations 2003. The Public Notice, as per the Petitioner-University, was not consistent with the fact that firstly, under the Guidelines of the DEC, which the UGC had admittedly adopted, Universities such as the Petitioner-University were permitted to conduct DEP in accordance with their respective State Statutes. Secondly, Guidelines were adopted by the Respondent No. 3 just a week earlier and, thirdly, it was the very Respondent No. 3 which had written to the Petitioner-University on 16-05-2005 informing the necessity of prior approval of the DEC for any DEP. The letter issued in 2005 having not made any reference to Regulations 2003 amounted to the UGC having abandoned Regulations 2003.

(xxii) The aforesaid Public Notice was followed three days later by another one dated 27-06-2013, Annexure P33, highlighting the necessity of UGC approval even in the case of Central and State Government Universities. Thus, the Respondent No. 3 arbitrarily and whimsically sought to apply Regulations 2003 in an altogether different sphere and, in a discriminatory manner, created distinction between DEP run by the Government and Private Universities which is not envisaged under Section 2(f) of the UGC Act, 1956. That the Respondent No. 3 acted in haste in not waiting for its own Regulations to finalise resulting in uncertainty and lack of clarity amongst the Universities as well as the State.

(xxiii) That the subsequent letter of the Respondent No. 3 dated 28-06-2013, Annexure P34, conveying the necessity of approval of the UGC under Regulations 2003, which the Petitioner-University had not obtained, and the expiry of the recognition granted by the DEC not only added to the uncertainty but, was also in violation of the interim order passed by this Court on 22-02-2013 which the Petitioner-University clarified by its letter dated 08-07-2013, Annexure P35. It is alleged that the communications issued by the Respondent No. 3 is an attempt to retrospectively foist a regulatory regime which never existed or was operational at the time when the Petitioner-University had commenced with its programmes as per the Guidelines of the DEC and as directed by the Respondent No. 3. The Respondent No. 1 having failed to conduct the required inspection and, therefore, not finding any forceable possibility of a decision being taken by it within a reasonable time on its application, the Petitioner-University has preferred this Writ Petition.

(xxiv) It is submitted that the communication dated 10-10-2012, Annexure P26, directing the Petitioner-University to cease admissions is bereft of any reason and that an application for renewal of recognition stands on a different footing from an application for initial recognition and, further that it is incumbent upon the Respondent No. 1 to process such application within a reasonable time so

that disruption or break in continuity of the DEP is avoided particularly, when the Petitioner meets all the criteria for its recognition.

(xxv) That the pendency of an investigation in relation to the conduct of the former Chairman of the Respondent No. 1-IGNOU cannot be the basis of the IGNOU to withdraw consideration of the Petitioner-University's application. In any case the Petitioner-University is giving full cooperation with the CBI.

(xxvi) That continuation of recognition of DEP offered by the Petitioner-University would be in the interest of not only the students who have graduated but, also others who have seeking admissions and that, it would be in the larger objective of promoting Distance Education in the country.

(xxvii) That the decision of the Respondent No. 1 taken at its 40th Meeting confining the geographical limits of such Study Centres within the State is arbitrary, unjust and unconstitutional.

(xxviii) That the concept of territoriality is contrary to the concept of Distance Education and it is, therefore, illogical and arbitrary in limiting the programmes within the geographical limits of the State.

(xxix) Once an Institution was previously granted provisional recognition, it ought as a matter of course and as of right be entitled to a provisional recognition until such time a decision is taken on its renewal application.

(xxx) The Notification/Public Notice/communication dated 17-06-2013, 24-06-2013, 27-06-2013 and 28-06-2013, Annexure P31, Annexure P32, Annexure P33 and Annexure P34 respectively, are arbitrary and without basis.

(xxxi) The distinction sought to be made between the State Government Universities and State Private Universities having no nexus to standards, is wholly arbitrary and discriminatory.

(xxxii) The Respondent No. 3 has overlooked the fact that the Petitioner-University's governance structure which has heavy presence of the State Government representatives, ought not be treated differently from a State Government University.

(xxxiii) It was unjust and illegal to apply the Regulations 2003 retrospectively when it had itself stated earlier by referring to the earlier Regulations of 1985, that it was the DEC which was to be approached for recognition. The Regulations 2003 must be viewed as having been waived and/or abandoned and/or impliedly repealed once the DEC assumed the statutory function of coordinating and regulating Distance Education.

(xxxiv) The Regulations 2003 ought to be applied prospectively by giving existing Institutions for opportunity to seek approval for existing Study Centres. It would amount to duplicity in Regulation if the UGC was also to regulate Distance Education Institutions parallel with DEC.

(xxxv) The Regulations 2003 insofar as it seeks to regulate Distance Education is ultra vires the UGC Act. When at time, matters are under review by the UGC and the regulatory regime is in a process of transition, directing the Petitioner-University to close down the Study Centres and to stop Distance Education Courses is patently unjust. The decision conveyed vide letter dated 28-06-2013, Annexure P34, is also in violation of the principles of natural justice inasmuch as no opportunity was afforded to the Petitioner-University to explain its position and apprise the Respondent No. 3 of the interim order passed by this Court in this case.

(xxxvi) It is relevant to note that by filing additional affidavit, the Petitioner-University has also urged that the decision of the Respondent No. 3 in confining the territoriality within the State, was contrary to National Policy as amended in 1992 which encouraged Distance Education to take education to the door-step of learners living in remote and backward areas at affordable cost. It is also contrary to the recognition by the UGC of the significance of the Distance Education and that the degrees conferred on-campus and those in the distance mode are the same.

(xxxvii) By referring to the various Committees constituted by the Central Government, particularly, the one under the Chairmanship of Prof. N.R. Madhava Menon, it is stated that--(a) the importance of expanding and strengthening Distance Education in the country is well-recognised; (b) the Central Government is alive to the challenges and opportunities that arise in Distance Education by reason of technological development and other factors; (c) there has been, over a period of time, lack of clarity and coherence in the policy on out of State Study Centres; (d) the DEC took different positions at different points of time; (e) the UGC has taken one position in these proceedings but, a different position in its own notified draft Regulations; and (f) the Central Government has also constituted an Expert Committee to draft rules for the proposed DEC of India Act to establish an independent regulatory authority for ODL Sector.

(xxxviii) For the aforesaid reasons, it is urged that when the regulatory regime itself is in a state of flux, the question of out of State Study Centre and issues of territoriality must be kept in abeyance to await the regulatory framework being proposed to be put in place.

(xxxix) The Petitioner-University thus prays amongst the others for the following:-

(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;

(b) issue an appropriate writ, order or direction quashing the decision taken by the Respondent No. 1 at its 40th meeting on 08-06-2002 by which it was decided that a State University could not have Study Centres outside the geographical limits of the State, even if the State Legislation permitted it to do so;

(bb) issue an appropriate writ, order or direction quashing the communication dated 28-06-2013 issued by the Respondent No. 3; and

(bbb) issue an appropriate writ, order or direction quashing the Public Notice dated 27-06-2013 (sic) insofar as it prejudicially affects the Petitioner from continuing to conduct its DEP through the existing Study Centres.

5(i). In its counter-affidavit, the Respondent No. 3 - UGC has stated that the UGC has been constituted under the University Grants Commission Act, 1956 and was enacted to make provisions for the coordination and determination of standards in the Universities with the mandate to take such steps as it may think fit for the promotion and coordination of University Education and for the determination and maintenance of standards of teaching, examination and research in Universities. That the UGC has been vested with the power to recommend any University the measures necessary for improvement of University Education and advise the University upon action to be taken for the purpose of implementation of the said recommendations. Apart from this, the UGC is also authorised to perform such other functions as may be prescribed or as may be deemed necessary by the UGC for advancing the cause of Higher Education in India or as may be incidental or conducive to the discharge of its functions.

(ii) Reference has been made to Section 2(f) of the UGC Act, 1956, which defines "University" to mean a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such Institution as may, in consultation with the University concerned, be recognised by the UGC in accordance with the regulations made in this behalf under the Act.

(iii) Section 3 of the UGC Act has also been referred which deals with the Deemed Universities and Section 12 which provides that it shall be the general duty of the UGC to take, in consultation with the Universities or other Bodies concerned, all such steps as it may think fit for the promotion and coordination of University Education and for the determination and maintenance of the standards of teaching, examination and research in Universities.

(iv) Sub-Sections (1), (2) and (3) of Section 22 of the UGC Act has been referred to highlight that the UGC has been vested with the power over the entire gamut of granting degrees, by University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an Institution specially empowered by an Act of Parliament to confer or grant degrees.

(v) Sections 23 and 24 of the UGC Act has been pointed out to indicate prohibition of the use of the word "University" in certain cases and liability of "Penalties" in the event of the contravention of provisions thereof.

(vi) It is stated that under Section 26 of the Act, the UGC has been vested with power to make Regulations by Notification in the Official Gazette consistent with the Act and the Rules made thereunder, amongst others, defining the minimum

standards of instruction or grant of any degree by any University as also regulating the maintenance of standards and the coordination of work for facilities in Universities.

(vii) It is averred that in exercise of its power conferred under Clauses (f) and (g) of Sub-Section (1) of Section 26 of the Act, UGC framed the Regulations 2003, notified in the Gazette Notification dated 27-12-2003, Annexure R1, with the main objective to provide an effective regulatory mechanism for maintaining standard of teaching, research, examination and extension services in Private Universities.

(viii) Specific reference has been made to Regulation 3 of Regulations 2003 which deals with establishment and recognition of Private Universities under the various Clauses thereunder which, inter alia, provides for the establishment and recognition of Private Universities. The operation of a Private University established under a State Act is restricted ordinarily within the boundary of the State concerned and, in order to set up Off-Campus Centre(s) and/or Study Centre(s), prior approval of the UGC and that of the State Government(s) where the Centre(s) is/are proposed to be opened, was made a necessity with the overall performance of the Off-Campus Centre(s) and/or the Study Centre(s) being monitored annually by the UGC or its designated agency making the directions of the UGC for management, academic development and improvement binding. It also authorises the UGC to close down Centre(s) if the functioning of the said Centre(s) remains unsatisfactory and made it mandatory to obtain permission from the Government of India and that of the Government of the host country even to open Off-Shore Campus(s) in foreign countries.

(ix) It is further stated that all the Private Universities are regulated by Regulations 2003, the rationale of which is to prevent the mushrooming growth of the Private Universities and commercialisation of Higher Education and also to coordinate the standards. Unless a Private University is granted permission by UGC which can be obtained only after 5 (five) years of its coming into existence, the Private Universities cannot open any Off-Campus Centres, Off-Shore Campuses and Study Centres. Regulation 3.3 of Regulations 2003 is aimed at ensuring not only the proper territorial jurisdiction of each Private University but, also for attainment of minimum standards in terms of physical and academic infrastructure before it proceeds to expand further within its permissible territorial limits.

(x) The material facts pleaded in the Writ Petition as regards the role of DEC, its coming into existence and the mandatory requirement to get its approval for award of qualifications/degrees by Universities through Distance Education Mode published vide Gazette Notification dated 08-04-1995, Annexure R2, have not been denied but, rather reiterated in the counter-affidavit.

(xi) The fact that the UGC, AICTE and DEC had entered into a MoU, their forming a Joint Committee on 10-05-2007, Annexure P10, their role under the MoU and

its term have similarly been accepted. It has only been elaborated that the MoU was signed between the three Statutory Bodies with the object to ensure quality of Technical and General Education offered through Distance and Mixed Mode and to avoid duplication of efforts in streamlining of activities. It has also been highlighted that in the said MoU, UGC and AICTE agreed to utilise the expertise and involvement of DEC.

(xii) It has been stated that the UGC vide its letter dated 14-11-2007, Annexure R4 (collectively), requested the Director, DEC, IGNOU, to ensure that the approval letters are issued as envisaged under Clause 9 of the MoU pointing out the necessity of the Joint Committee to have prior approval of Statutory Bodies for professional courses before issuance of approval letters. This was re-emphasised in its subsequent letter dated 14-12-2007, Annexure R4 (collectively) issued to the Director, DEC.

(xiii) Thereafter, the Secretary, Department of Higher Education, Respondent No. 2, convened a meeting on 19-02-2008 in which it was decided, inter alia, that the minutes of the meeting of the Joint Committee must be circulated to the Chairman-UGC and Chairman-AICTE which should be deemed to have been approved, if no comments have been received within a period of ten working days. The minutes once approved should be placed before the UGC and AICTE and DEC for information that the approvals should be granted to the course and not to the Institutes.

(xiv) This was followed by a meeting of the UGC, AICTE and DEC on 11-05-2009, chaired by the Chairman-UGC in which certain procedural issues were decided, the most important amongst those was that the jurisdiction prescribed in the Act of the University or MOA of Deemed University should be strictly adhered to subject to the decision of Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, AIR 2005 SC 2026 : (2005) 2 ESC 129 : (2005) 2 JT 165 : (2005) 5 SCC 420 : (2005) 3 SCR 23 : (2005) AIRSCW 1168 : (2005) 2 Supreme 322 , which lays down that the State Universities cannot operate outside the jurisdiction of the respective State(s).

(xv) On the present status of Regulations on Distance Education, it has been averred that the Ministry of Human Resource Development, Respondent No. 2, in exercise of its power conferred under Section 20 of the UGC Act, 1956, issued an Order dated 29-12-2012 (Annexure P29 in the Writ Petition and Annexure R5 in the counter-affidavit), directing the UGC, inter alia, that--(a) the UGC and AICTE, as already empowered under the respective Acts, would also act as a regulator for Higher Education (excluding Technical Education) and Technical Education through Open and Distance Learning (ODL) Mode respectively; (b) for offering any programme/course in ODL Mode would require recognition from the UGC, AICTE, NCTE and other such regulators of the conventional mode of education in those areas of study; (c) the UGC and AICTE will develop appropriate Regulations for maintaining standards in ODL programme/course (resulting in degree or diploma or certificate) strictly as per the recommendations of the Madhava

Menon Committee Report; (d) the UGC and AICTE will prepare an Action Plan within 3 (three) months for the growth and development of Distance Education System in the country in the light of the recommendations of the Madhava Menon Committee; and (e) the UGC and AICTE will take steps to ensure that as soon as Notification regarding dissolution of the DEC is issued by the IGNOU, the UGC and AICTE should be in a state of readiness to take over the responsibility without any confusion or delay.

(xvi) It is submitted that thereafter Statute 28 of IGNOU Act was repealed on 24-01-2013 and a Notification to that effect was issued by the IGNOU on 01-05-2013, Annexure P30, dissolving the DEC. The UGC then issued Notification dated 17-06-2013, Annexure R6, announcing adoption of the "Guidelines of DEC on Minimum Requirements for Recognition of ODL Institutions" of the earlier DEC in exercise of its powers conferred under Section 12 of the UGC Act, 1956.

(xvii) Dealing elaborately with "State Private University", it is stated that State Private University established by an Act of State Legislature is empowered to award degrees as specified by the UGC under Section 22 of the UGC Act, 1956, at its main Campus in a regular Mode with the approval of the Statutory Bodies/Councils wherever it is required but, was not competent to extend its jurisdiction and operations beyond the State concerned in which it has been established. It was also not authorised to open Study Centres/Off-Campus Centres beyond the territorial jurisdiction of the State as per Prof. Yashpal case (supra). Reference has also been made to Rai University Vs. State of Chhattisgarh and Others, AIR 2005 SC 3859 : (2005) 8 JT 163 : (2005) 7 SCC 330 and a few decisions of different High Courts including Allahabad, Madras, Madhya Pradesh, to emphasise this point.

(xviii) Adverting to the policy of the UGC on jurisdiction of State Private University, it has been stated that the State Governments, the Vice Chancellors of all Private Universities and the Vice Chancellors of all the State Universities were informed vide letters dated 16-04-2009, 28-04-2009 and 15-06-2009, Annexures R7, R8 and R9 respectively, of the anomalous situation arising due to proliferation of Private Universities established by the State Governments and of those having opened Off-Campuses, Study Centres and creating franchises in the name of DEP outside the State and, as this was not permissible as per the observations made in Prof. Yashpal case (supra), immediate action was requested to amend the existing Acts to bring it in conformity with the observations. Request was also made to stop all the State/State Private Universities in the State from operating beyond the territorial jurisdiction of the State and to immediately close down Centres started by the Universities through franchises outside the State and no DEP should be started without the prior approval of the Joint Committee of UGC-AICTE-DEC for which DEC was the coordinator. To the same effect Public notice was also issued on 27-06-2013, Annexure R10.

(xix) So far as the Petitioner-University is concerned, it has been pleaded

categorically that it is a State Private University established by an Act of State Legislature and is not authorised/competent to open Study Centres/Off-Campus Centres beyond the territorial jurisdiction of the State of Sikkim as per the decision of Prof. Yashpal (supra). No approval has been granted by the UGC as specified under Section 22 of the UGC Act, 1956, to the Petitioner-University to open Study Centres/Off-Campus Centres beyond the territorial jurisdiction of the State of Sikkim.

(xx) The events narrated in the Writ Petition following the submission of application dated 14-05-2004, Annexure P7, by the Petitioner-University for recognition of programmes through Distance Education in 51 (fifty one) courses culminating in its letter dated 25-10-2012, Annexure R14 (collectively), conveying that they had put a freeze on new admissions, have not been denied.

(xxi) It is then stated that in the process of taking further steps on the proposal of the Petitioner-University, an Expert Committee was constituted to inspect the Petitioner-University for submission of its recommendations. The Committee although was to visit on 10-10-2012 to which the Petitioner-University had given its consent by its letter dated 26-10-2012 received by the DEC on 30-10-2012 but, subsequent thereto the process of dissolution of DEC had started.

(xxii) Denying that the Petitioner-University was following all norms of Apex Bodies and DEC, it is stated that the prospectus submitted by the Petitioner-University for different years showed that it was offering various programmes which were not approved by the DEC for which no satisfactory explanation was forthcoming from the Petitioner-University which led the DEC in issuing letter dated 10-10-2012, Annexure P26, directing it to stop offering any programme in Distance Mode till a decision was taken by it. It is then averred that in the 40th Meeting of the DEC held on 08-06-2012, Annexure P22, it was for the first time that a decision was taken not to allow State Universities to operate beyond their territorial limits.

(xxiii) In paragraph 6 of the very letter dated 15-10-2009, Annexure P17, granting recognition by the Chairman, DEC for the 3 (three) academic years, i.e., 2009-10, 2010-11, 2011-12, it has been clearly mentioned that as per the UGC Notification, State Universities (both Private as well as Government funded) were permitted to offer programmes only within the State. It is pleaded that while granting post-facto provisional recognitions, the DEC did not accord recognition to any specific programme offered by the Petitioner-University but, only such programmes approved by its Statutory Authorities and as per the norms and guidelines of the Apex Regulatory Bodies. Although no franchising are allowed by the DEC as reiterated through its several communications/recommendations, thousands of Study Centres have been opened by the Petitioner-University in the country and even abroad. Contrary to and in excess of the object of the Legislation that created it, the Petitioner-University was offering different kinds of programme beyond the provisions of the Act and only a fraction of the students enrolled by the University belonged to the State of Sikkim.

(xxiv) It is further averred that in its 28th Council Meeting held on 23-03-2007, the DEC did not insist on territorial jurisdiction to be followed by the Institutions in offering programmes through Distance Mode but left it to be governed by their own Acts and Statutes. The Joint Committee, however, in its 9th Meeting held on 17-08-2009 decided that the territorial jurisdiction of the State Universities (both Private and Government funded) should be confined within the State and, this fact had been conveyed to the Petitioner-University vide DEC letter dated 15-10-2009, Annexure P17.

(xxv) It is then stated that the request of the Petitioner-University was considered by the UGC after taking over the regulatory role performed earlier by the DEC before it was which dissolved. The report of the Expert Committee in respect of Petitioner-University was submitted to the UGC which in turn placed it before the Distance Education Committee in its 4th Meeting held on 11-07-2014, Annexure R19, and in consideration of the observations contained in the report relating to territorial jurisdiction, Study Centres, etc., it was directed that the observations of the visiting Committee be communicated to the Petitioner-University for compliance and to submit an affidavit to that effect. The Committee also decided that the Petitioner-University being a State University cannot open Study Centres beyond the State of Sikkim as per the UGC Policy and that it should submit a list of Study Centres operated in the State and to close down all the rest. It has been stated that the decision on granting recognition to the Petitioner-University will be based on the compliance and affidavit submitted by it which is under active consideration and that a communication on the decision is being issued to the Petitioner-University.

(xxvi) In reply to the additional affidavit filed on behalf of the Petitioner-University, the UGC while reiterating its contentions made in its counter-affidavit did not dispute as regards the Education Policy of the Government of India but denied that the State University can transact beyond the boundaries of the State reiterating that the Petitioner-University is a State Private University with its jurisdiction limited to Sikkim.

(xxvii) Denying the contentions of the Petitioner-University on the draft Regulations prepared by the Madhava Menon Committee posted by the UGC on its website vide Public Notice dated 19-12-2013, it is stated that after the judgment of the Hon"ble Supreme Court in Prof. Yashpal (supra) and redrafting of the Regulations on ODL by UGC, it has lost its relevance and no rights or equities can be claimed on its basis.

(xxviii) The ambiguity alleged by the Petitioner-University in the regulatory role of UGC in the Distance Education and there being a flux in the current regulatory regime have been denied in stating that the UGC is performing its duties in consonance with the direction of the Ministry of Human Resource Development, Respondent No. 2, issued by it in exercise of its powers conferred under Section 20 of the UGC Act, 1956, as regulator for Open and Distance Education (ODL) System.

(xxix) It is averred that for all the aforesaid reasons as well as the Guidelines of UGC, the decision of DEC in its 40th Meeting, the decision of the Hon"ble Supreme Court in Prof. Yashpal case (supra) and the judgments of various High Courts limiting the territorial jurisdiction of a State University within the State of its establishment, the request of the Petitioner-University to open Study Centres outside the State could not be entertained.

6. We have noted the rejoinder filed by the Petitioner-University against the counter-affidavit filed by the Respondent No. 3-UGC as well as the one against the reply to the additional affidavit of the Petitioner-University and we find that while denying the contentions of the Respondent No. 3, the Petitioner-University has mostly reiterated what have been stated in the Writ Petition and have sought to expand it by filing a number of other documents.

7. Mr. Gopal Subramaniam, Learned Senior Counsel, appearing on behalf of the Petitioner-University, in his opening address, drew our attention to the Sikkim-Manipal Act, 1995 and submitted that the Petitioner-University was established under a State Legislation in the State of Sikkim as a unique collaboration between the Government of Sikkim and the Manipal Pai Foundation, a Registered Trust, as would be revealed from the Preamble of the Act. He would submit that the Chancellor of the Petitioner-University is the "Governor" of the State of Sikkim with the Governing Council, which is the supreme authority of the University, consisting of nominees of the Government of Sikkim. This would, as per him, indicate that the Petitioner-University could not be treated "at par" with the other Private Universities in the country.

(i) He would further submit that the object of the Petitioner-University contained in Section 4 of the Sikkim-Manipal Act, 1995 is in consonance with the National Policy on Education, 1986, to provide opportunities of higher learning to the less privileged of the society. It was submitted that the report noted the importance of Distance Education System emerging as an important means to cater to the increasing demand for Higher Education and provides avenues to those students who are not able to leave their jobs or are not able to attend regular classes and that, apart from the IGNOU, there were 14 (fourteen) State Open Universities and many Central/State Universities offering courses through Distance Mode.

(ii) It is submitted that the fact that the UGC was conscious of the importance of the Distance Education would be apparent from Section 2(f), Sub-Section (ccc) of Section 12 and Section 12A of the UGC Act, 1956.

(iii) It was urged that the UGC Act, 1956, a Parliamentary Legislation under Entry 66 List I of the Seventh Schedule to the Constitution of India, vested the UGC with the powers to make Regulations under Section 26 for the purpose of, inter alia, defining minimum standards of instruction for the grant of any degree by any University and regulating the maintenance of standards and the coordination of work facilities in Universities as provided under Clauses (d), (f) and (g) of Sub-Section (1) of Section 26 thereto.

(iv) As per Mr. Gopal Subramaniam, after the IGNOU Act was passed by Parliament and enforced with effect from 19-09-1985, the power to regulate and determine standards in Distance Education was vested on the IGNOU under Sub-Section (2) of Section 5 of the IGNOU Act, 1985. Under the said Act, IGNOU was to perform a dual role as a provider of Distance Education and as a regulator of Distance Education. It is emphasised that the IGNOU Act under Clause (f) of Section 2 does not qualify Distance Education and, subject to Sub-Section (2) of Section 5, Section 6 confers on the IGNOU jurisdiction over the whole of India and to the Study Centres outside India in exercising its powers.

(v) By introduction of Statute 28 to the IGNOU Act, the DEC was established in 1991 under Sub-section (7) of Section 16 read with Sub-Section (2) of Section 5 of the IGNOU Act, 1985 and was thus a constituent unit of the IGNOU and stands statutorily engrafted as an Authority of the University in terms of Sub-Section (7) of Section 16 of the IGNOU Act, 1985. With its establishment, the DEC under Clause (2)(a) of Statute 28, was charged with responsibility of the promotion and coordination of the Open and Distance Learning (ODL) System as the Apex Agency in the country in furtherance of which various steps were taken by it for maintenance of standards of Distance Education in the country and, was responsible for recognising Open and Distance Learning (ODL) Institutions in India making its prior approval mandatory for all existing and new programmes offered through Distance Mode.

(vi) In placing these facts, Mr. Subramaniam's effort was to impress upon us that it was the IGNOU and DEC which were the Regulatory Authorities in respect of Distance Education and the role of the UGC was restricted only to the extent stated earlier. He would emphasise that Clauses (1), (2) and (3) of Regulation 1 of the UGC Regulation, 1985, which as per him, would reveal that the UGC was aware of DEP.

(vii) He would further submit that the repeal of Statute 28 by the UGC was an action that reflected intransigence on its part and amounted to a breach of law having regard to the fact that Statute 28 emanates from the IGNOU Act which is also an Act of Parliament. The DEC which came into existence by virtue of the said Regulations assumes a statutory character under the Central Legislation and would not be subservient to the UGC which also is a creation under a Parliamentary Legislation. The DEC was created as an Authority under Sub-Section (7) of Section 16 of the IGNOU Act and vested with the powers and functions under Section 26 in pursuance of Section 23 of the Act. Mr. Subramaniam would emphasise that the DEC is thus an independent body created specifically for the Distance Education System as a regulator which would be evident from Section 26 that provides for the entire gamut of activities like admission of students, the courses of study and the fees therefor, conduct of examinations, management of Colleges and any other matter subject to the provisions of the Act and the Statutes. The object of the Sikkim-Manipal Act, 1995 is, inter alia, to create a Centre of excellence as provided under Section 4

and the Clauses thereunder and, therefore, fall within the purview of the DEC.

(viii) When by Notification dated 01-03-1995, Annexure P3, of the Ministry of Human Resource Development, Respondent No. 2, declared the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature would be automatically recognised subject to its approval by DEC, the Petitioner-University applied to the State of Sikkim for permission to start DEP and, was accordingly granted so vide letter dated 03-10-2000, Annexure P4, issued by the Commissioner-cum-Secretary, Department of Education, Government of Sikkim.

(ix) On the basis of letter of Dr. Hari Gautam, Chairman UGC, dated 28-08-2001, Annexure P5, informing that the Universities were permitted to award degrees through Distance Education at their own Centres in different parts of the country, the Petitioner-University commenced with its DEP and, when mandatory requirement of obtaining prior approval of DEC was announced, the Petitioner-University duly applied for its various programmes vide application dated 14-05-2004, Annexure P7. The UGC then, by letter dated 16-05-2005, Annexure P8, directed submission of the amended Act of the Petitioner-University indicating the jurisdiction of the University, at the same time, reminding that courses were required to be conducted strictly following the UGC Regulations, 1985 and, only after obtaining prior approval of the DEC.

(x) The Act duly amended being the Sikkim Manipal University of Health, Medical and Technological Sciences (Amendment) Act, 2006 (Act No. 6 of 2006), vesting the Petitioner-University with jurisdiction to run DEP outside the territory of the State and abroad, was submitted to the Respondent No. 1.

(xi) It is submitted that after a Joint Committee was constituted by a MoU between the UGC, AICTE and DEC on 10-05-2007, Annexure P10, the Petitioner-University was granted provisional recognition for offering programmes through Distance Education Mode up to the academic year 2007-08. On the request for recognition for the academic years thereafter, the Petitioner-University was informed by the Respondent No. 1 by its letter dated 26-11-2008, Annexure P14, that it had been granted extension of the provisional recognition till such time the Committee visited the University and its recommendations submitted for a decision by the Joint Committee constituted under the MoU.

(xii) It is submitted that letter dated 09-09-2009, Annexure P16, issued by the Respondent No. 1, in response to the Petitioner-University's application seeking recognition of its DEP, pointed out that the Joint Committee required compliance of the recommendations of the Expert Committee on several issues identified on the basis of its visit to the University, one of which was the deficiency in having Study Centres not only in Sikkim but, also in the NorthEastern Region, thereby clearly accepting the extraterritorial jurisdiction of the Petitioner-University to set up Study Centres outside the State of Sikkim. This, as per the Petitioner-University, was reiterated by the IGNOU letter dated 17-09-2009, Annexure

P16A, conveying further that the recognition accorded vide letter dated 26-11-2008, Annexure P14, was extended for one more year subject to the Petitioner-University submitting an undertaking that it will strictly implement the recommendations within 3 (three) months.

(xiii) It is pointed out that letters, Annexures P16 and P16A, were followed by one dated 15-10-2009, Annexure P17, of the Respondent No. 1-IGNOU, conveying recognition of DEP of the Petitioner-University by the Chairman, DEC, for a period of three academic years with effect from 2009-10 to 2011-12. In paragraph 6 of the letter, however, it was conveyed that the territorial jurisdiction for offering programmes through Distance Mode, will be governed by the latest UGC Notifications which will prevail over all previous Notifications, Circulars and, that as per the UGC Notification, the State Universities (both Private and Government funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in any case not outside the State and so was the case in respect of the Institutions (both Private and Government funded).

(xiv) This was followed by letter dated 06-11-2009, Annexure P18, conveying the approval of the Chairman, DEC in respect of the programmes listed therein subject to fulfillment of the terms and conditions contained in the letter dated 15-10-2009, Annexure P17. It was urged that paragraph 6 of the letter was based upon Regulations 2003 which had not been resorted to thus far.

(xv) It is submitted that imposition of the latest UGC Notifications over all Notifications and Circulars of DEC was deprecated in the 35th Meeting of the DEC held on 10-03-2010, Annexure P19, as would appear from item number 35.3 of the minutes dealing with territorial jurisdiction in respect of the programmes through Distance Mode. The DEC decided that the Joint Committee was incompetent to supersede the Statutory Authority of the DEC and that the Distance Education and Online Education cannot have territorial jurisdiction which in the case of Central and State Universities will be as per their Acts and Statutes. This decision was duly notified in Notification dated 29-03-2010, Annexure P20, issued by DEC and reiterated in letter dated 24-05-2010, Annexure P21, while conveying the Council having ratified of the decision of the Chairman in accepting the compliance report and recognition having been accorded by it for the academic years 2009-10 to 2011-12.

(xvi) Thus as the DEC, the competent Authority in respect of DEP, had decided that the territorial jurisdiction would be governed by the Acts and Statutes, and that the Act of the Petitioner-University provided for setting up Study Centres within the State, outside and abroad, the programmes being run by the Petitioner-University were in conformity with the policy of the DEC. Confirmation of this position, as per the Learned Senior Counsel, is also borne out by the facts set out in the foregoing paragraphs. It is submitted that contrary to the stand of the Respondent No. 3-UGC, the IGNOU Notification dated 29-03-2010, Annexure P20, did not restrict the territorial jurisdiction of the Petitioner-University within the State.

(xvii) It was thus urged that the decision taken by the DEC in its 40th Meeting held on 08-06-2012, Annexure P22, on the territorial jurisdiction pertaining to Open and Distance Learning (ODL) Institutions was clearly in conflict with its earlier position. It is submitted that the very same decision of the 40th Meeting of the DEC, which is under challenge in the present Writ Petition, was quashed by a Single Bench decision of the Hon''ble Madras High Court dated 12-03-2013 in Annamalai University vs. The Union of India and Others and submitted that the reasoning in the said decision may be adopted and applied by this Court.

(xviii) The Notifications of the DEC reiterating the decision taken in the 40th Meeting, were grossly illogical and in complete variance with its earlier policy. Direction issued by DEC to the Petitioner-University that the earlier recognition of the programmes up to 2011-12 having expired, it should not offer programmes until a decision was taken, as per the Learned Senior Counsel, was in complete digression to its earlier practice of granting provisional recognition pending decision by the DEC. However, in anticipation of a positive response, the Petitioner-University conveyed to the DEC that it had directed a freeze on new admissions and that those students admitted under prior permissions from DEC were expected to complete their courses.

(xix) In its 115th (Emergent) Meeting of the Board of Management of the Respondent No. 1-IGNOU decision to repeal Statute 28 was taken thereby obliterating the existence of the DEC which was notified by the Respondent No. 1-IGNOU vide Notification dated 01-05-2013, Annexure P30. Mr. Gopal Subramaniam seriously assails this action since, as per him, a Statutory Body created under an Act of Parliament cannot be repealed by an executive decision.

(xx) Order dated 29-12-2012, Annexure P29, issued by the Respondent No. 2, in exercise of its powers under Sub-Section (1) of Section 20 of the UGC Act, 1956, suffers from the same vice as being an Executive Order which cannot override the statutory provisions. Actionable point number 9 set out on the recommendations of the Madhava Menon Committee Report limiting the territorial jurisdiction within the territories of the State, the Legislature of which passed the Act under which the University is created, is in conflict with and impermissible under the statutory provisions alluded to earlier.

(xxi) It was submitted that the Sikkim-Manipal Act, 1995, being a law passed by the State Legislature in exercise of its plenary powers under the Constitution of India as provided under Entry 25 List III of the Seventh Schedule thereto, it also cannot be superseded by Order dated 29-12-2012, Annexure P29, being an Executive Order issued by the Respondent No. 2. The State Act expressly permits the Petitioner-University to have Learning Centres/Study Centres in the State and throughout the country as well as abroad and, the Act is not under challenge and, in any event, does not suffer from the vice of extra-territoriality. The very concept of territoriality is at odds with and antithetical to the idea of Distance Education. Imposing such territorial restrictions on State Universities puts them at a fundamentally disadvantaged position vis-?-vis Central Universities and

amounts to invidious discrimination.

(xxii) It is further submitted that the Regulations 2003 have not been pressed into service by the Respondent No. 3 and even the stand of Respondent No. 3 in these proceedings is not based on the said Regulations. Instead, the UGC purports to be acting under a policy directive of the Central Government issued under Sub-Section (1) of Section 20 of the UGC Act when in fact the same is in substance neither related to a policy nor a directive.

(xxiii) It is submitted that the Study Centres/Learning Centres outside the State have been set up with full disclosure to the DEC/UGC and the Respondent No. 3 was a party to the approval granted to the Petitioner-University in 2009. The Study Centres/Learning Centres cannot be considered to be franchises, as all key elements relating to admissions, curriculum and content, examinations/evaluations and award of degrees are controlled by the Petitioner-University. The Study Centres are mere logistical facilitating points to assist student and were actually required/mandated to be set up both by UGC Regulations, 1985 and by the DEC Guidelines.

(xxiv) The Respondent No. 3 is effectively seeking to annul express provision in the State Legislation vesting it with extra-territorial jurisdiction to have Learning/Study Centres, by acting under an executive decision of the Central Government. Sikkim-Manipal Act, 1995, being an enactment under Entry 25 List III, the Central Government cannot override such law in its executive capacity. The provisions of Article 254 of the Constitution of India would be attracted only if the said State Legislation was in conflict with a law enacted by Parliament, which is not the case here.

(xxv) Even if it is accepted that the Order dated 29-12-2012, Annexure 29, was issued by the Ministry of Human Resource Development, Respondent No. 2, in exercise of its powers under Sub-Section (1) of Section 20 of the UGC Act, it also cannot override the provisions of the IGNOU Act being a law made by Parliament under Entry 25 List III of the Seventh Schedule to the Constitution of India. This was seriously deprecated even by the Parliamentary Committee on Subordinate Legislation.

(xxvi) He further submits that although the Respondent No. 3 purports to exercise regulatory powers in relating to Distance Education, it is a fact that there has been no amendment in either the IGNOU Act, 1985 or the UGC Act, 1956 to facilitate such transfer of regulatory function to the Respondent No. 3. Sub-Section (2) of Section 5 of the IGNOU Act still stands but despite this, the regulatory function has been usurped by Respondent No. 3. Even the Madhava Menon Committee upon whose advice this transfer of regulatory function took place, had suggested an amendment to the IGNOU Act to divest it of the power it possessed under Sub-Section (2) of Section 5 but, so far no such an amendment has been made. The manner in which the Respondent No. 3 has usurped statutory powers that properly belong to IGNOU has also invited sharp criticism

from the Parliamentary Standing Committee on Subordinate Legislation.

(xxvii) It is further submitted that while the Respondent No. 3 purports to be acting under a policy directive from Respondent No. 2, it has failed to frame Regulations strictly in accordance with the recommendations of the Madhava Menon Committee as required by the said policy decision.

(xxviii) Reference to Prof. Yashpal case (supra) by the Respondent No. 3-UGC was, as per the Learned Senior Counsel, misplaced since the decision was rendered in respect of a University in situ and not in respect of those imparting education through DEP.

(xxix) Similarly, the Learned Senior Counsel also sought to distinguish on facts the cases of Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Tourism Dept. and Others, (2009) 4 JT 43 : (2009) 3 SCALE 293 : (2009) 4 SCC 590 : (2009) 3 SCR 355 : (2009) 2 UJ 1022 : (2009) AIRSCW 1294 ; and Kurmanchal Inst. of Degree and Diploma and Others Vs. Chancellor, M.J.P. Rohilkhand Univ. and Others, AIR 2007 SC 2253 : (2007) 8 JT 24 : (2007) 8 SCALE 178 : (2007) 6 SCC 35 : (2007) 7 SCR 191 : (2007) AIRSCW 3931 : (2007) 5 Supreme 376 .

(xxx) Relying upon Jagdish Prasad Sharma Vs. State of Bihar and Others, (2014) 7 AD 629 : (2013) 3 LLN 401 : (2013) 9 SCALE 459 : (2013) 8 SCC 633 : (2014) 1 SCC(L&S) 290 , it was submitted that State Law would be valid so long it does not encroach upon the jurisdiction of Parliament. In the present case, it is strongly urged that the State Act does not at all encroach upon the jurisdiction of Parliament.

(xxxi) Regulations 2003 was never acted upon nor applied to the Petitioner-University as would appear from UGC letter dated 16-05-2005, Annexure P8, requiring the Petitioner-University to comply with UGC Regulations, 1985 and if Regulations 2003 did apply, it would be so only in respect of in situ University and not to programmes run by the Universities through Distance Mode.

(xxxii) It was submitted that the interest of the students admitted to the DEP of the Petitioner-University prior to the stop order conveyed vide its letter dated 25-10-2012, Annexure P27, should not be jeopardized and must be protected in the interest of justice.

8(i). Mr. A. Mariarputham, Learned Senior Counsel, appearing on behalf of the Respondent No. 3-UGC, at the outset submitted that the Writ Petition has to be considered in the light of the reliefs sought for therein. As per him, the first prayer is for disposal of the Petitioner-University's application dated 10-07-2012, Annexure P23, for continuation of recognition, addressed to the DEC which is no more in existence and whose function have since been taken over by the UGC; next prayer seeks to quash the decision taken by the Respondent No. 1-IGNOU at its 40th Meeting dated 08-06-2012, Annexure P22, to the extent that the State University could not have Study Centres outside the geographical limits of

the State, even if the State Legislation permitted it to do so and, the third is for quashing letter dated 28-06-2013, Annexure P34, invoking Regulations 2003 by the Respondent No. 3-UGC. These, as per Mr. Mariarputham, would be crucial for determination of the Writ Petition.

(ii) He submits that in the Writ Petition the vires of Regulations 2003 is not under challenge but, is limited to its applicability. It is submitted that while UGC Regulations, 1985, was of a general application to all Universities recognised under Sections 2(f) and 12(b) of the UGC Act, 1956, Regulations 2003 brings within its ambit the concept of Off-Campus Centres and/or Study Centres. It further made it mandatory for a Private University to fulfill the minimum criteria laid down from time to time by the UGC and other concerned Statutory Bodies including the DEC. It is submitted that Regulation 3.3.1, which makes it mandatory to seek the prior approval of the UGC and the State Government(s) where the Off-Campus Centre(s) and/or Study Centre(s) are to be set up, has been upheld in Prof. Yashpal case (supra).

(iii) As per UGC letter dated 16-04-2009, Annexure R7, all State Governments, were asked to amend the existing Act to bring them in conformity with the observations made by the Hon'ble Supreme Court in the case of Prof. Yashpal (supra) and to stop such Universities in the State from operating beyond the territorial jurisdiction of the State in any manner either in the form of Off-Campus/Study Centre/affiliated College and the Centres operating through franchises. Similarly, UGC letter dated 28-04-2009, Annexure R8, addressed to the Vice Chancellors of all Private Universities also made the same request. The question as to whether the UGC was possessed of the necessary Authority to issue such letters has been answered affirmatively free of ambiguity in Prof. Yashpal case (supra). It is submitted that even if the 40th Meeting of the DEC held on 08-06-2012 is quashed as prayed for by the Petitioner-University, it will still hold good for some other reason and will be of no consequence and relevance to the Petitioner-University.

(iv) It was submitted that Regulations 2003 brings within its ambit, inter alia, all degrees/diplomas/certificates offered through the Distant Education Mode by Private Universities defined under Regulation 2.1. Our attention was also drawn to Regulations 2.2., 2.3 and 2.4 which define Off-Campus Centre, Off-Shore Campus and Study Centre respectively. It is submitted that Regulation 3.3 provides that a Private University established under a State Act shall ordinarily operate within the boundary of the State concerned but, after development of main campus, in exceptional circumstances, it can be permitted to open such Centres after 5 (five) years of its coming into existence, inter alia, on the conditions as prescribed under Regulation 3.3.1 onwards. Regulation 3.3.1 mandates the prior approval of the UGC and the State Government(s) where the Centre(s) is/are proposed to be opened. Regulation 3.3.4 deals with Off-Shore Campus(es) requiring the permission from the Government of India and that the Government of the host country. Regulations 2003 continues to be in force and

the plea that it is not applicable is incorrect. No equity can be claimed if Centres are opened in violation of Regulations 2003 which has been considered and approved in Prof. Yashpal case (supra).

(v) The Order dated 29-12-2012, Annexure P29, of the Ministry of Human Resource Development, Respondent No. 2, is a policy decision enunciated by the Central Government issued under the powers conferred upon it by the UGC Act and, therefore, would prevail over all Statutory Authorities. This policy, as per Mr. A. Mariarputham, is not under challenge in the Writ Petition and that for that reason submissions to the contrary would have no effect. Sub-Section (2) of Section 20 of the UGC Act, 1956, mandates that whether a question is or is not a question of policy relating national purposes is a matter to be decided by the Central Government which shall be final. Section 12 of the UGC Act vests the UGC with complete freedom to regulate the promotion and coordination of University Education without any fetter. As per the Learned Senior Counsel, the policy decision dated 29-12-2012, Annexure P29, was not taken in a hurry but, after a mature consideration as would appear from the very opening words of the order which reflects constitution of a Seven-Member Committee consisting of eminent Educationists, as named in Clause 1.1 of the Madhava Menon Report, Annexure P50, which had held numerous meetings and consultations, before making the recommendations that were taken into account by the Central Government before issuing the order.

(vi) It is next contended that the decision of the 115th (Emergent) Meeting of the Board of Management of IGNOU held on 19-09-2012, Annexure P28, to repeal Statute 28 of the IGNOU Act, is not under challenge in the Writ Petition and, therefore, is presumed to have been accepted as valid. Taking into consideration that a policy decision of the Central Government has since come to existence, having been issued under the powers vested in Section 20 of the UGC Act, 1956 consequential to the situation arising out of the repeal of Statute 28, we are governed by the law and regulations that now exists which have since replaced the ones in vogue in the past. Even the Parliamentary Committee on Subordinate Legislation, Annexure P68, had accepted that the abolition of DEC was done as per procedure laid down in the IGNOU Act and Statutes made thereunder, which, as per the Learned Senior Counsel, would appear from paragraphs 16 and 17 of their Report.

(vii) It is submitted that in the Writ Petition, the Petitioner-University seeks to quash actions taken pursuant to the policy decision of the Central Government but, since the policy decision itself is not under challenge the prayers sought for cannot be granted.

(viii) On the provisions in the State Acts conferring extra-territorial jurisdiction upon the State Universities and Private Universities, it was submitted that having regard to the provisions of Sub-Clause (1) of Article 245 of the Constitution of India, such provisions in the State Acts would be unconstitutional and ultra vires.

(ix) To sum up his submission on the facts, the Learned Senior Counsel submitted that the decision taken by the DEC in its 40th Meeting dated 08-06-2012 is not arbitrary. The 40th Meeting was held as a consequence of several incidents. Complaints had been received on the issue of opening Study Centres in other States by Private and other Universities. Notices were received by the Respondent No. 1 from different High Courts of cases filed by Private Universities challenging orders directing closure of the Study Centres established by those outside the concerned States. The matter was discussed in the 4th Meeting of the Tripartite Committee of which the Ministry of Human Resource Development was a Convenor with the Statutory Bodies as its Members, and decision was taken to confine the territorial jurisdiction of the Universities within the States in the interest of general public as the quality in delivery education through distantly based Study Centre were found to be questionable and that franchising was playing havoc. The Committee also deliberated on the Study Centres opening strategies of ODL Institutions.

(x) It was thus submitted that the decision of the Tripartite Committee in its 4th Meeting was an informed one taking all aspects of the ODL system.

(xi) The recommendations of the Tripartite Committee was considered by the DEC in its 40th Meeting held on 08-06-2012, Annexure P22, and decision was taken to restrict the territorial jurisdiction of the State Universities, be it Government funded or Private, within the boundaries of their respective States and not beyond it.

(xii) It is urged that the decision of the DEC as well as the Order dated 29-12-2012, Annexure P29, on territorial jurisdiction, does not violate any right of the Petitioner-University being a creation of a State Act and also in view of the established position that the State Private Universities is not authorised to open Study Centres beyond the territorial jurisdiction of the State as per the the judgment of the Hon"ble Supreme Court in the case of Prof. Yashpal (supra).

(xiii) It is submitted that the Petitioner-University is by no means a Private University as revealed by the Act and some isolated letters where the Petitioner-University referring to it as State University are irrelevant as those are not communications deciding the status of the Petitioner-University. Often the expression "State University" is used in contradistinction to Central University, but it does not denote or mean a State run or State owned University. Incorrect or inappropriate expressions in certain communications by officials of UGC cannot form the basis for deciding the status of the Petitioner-University. The status of the Petitioner-University, i.e., whether it is a "Private University" or not, has to be decided only in terms of and with reference to and in accordance with paragraph 2.1. of Regulations 2003 and, in particular for the purpose of applicability of the Regulations 2003 to the Petitioner-University. In terms of the definition of the "Private University" in paragraph 2.1, the Petitioner-University is a "Private University".

(xiv) Relying upon the decision of State of Tamil Nadu Vs. Hind Stone and Others, AIR 1981 SC 711 : (1981) 1 SCALE 237 : (1981) 2 SCC 205 : (1981) 2 SCR 742 : (1981) 13 UJ 408 , it was submitted that whatever may have been the rule earlier, the one in existence on the day of the decision would apply. Reference was also made to P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others, AIR 1996 SC 3461 : (1997) 57 ECC 42 : (1996) 86 ELT 3 : (1996) 6 JT 435 : (1996) 5 SCALE 386 : (1996) 5 SCALE 362 : (1996) 5 SCC 268 : (1996) 2 SCR 662 Supp and V. Karnal Durai Vs. The District Collector, Tuticorin and another, (1999) 1 CTC 21 : (1998) 6 SCALE 350 : (1999) 1 SCC 475 : (1998) 3 SCR 206 Supp , on the same proposition.

(xv) On the jurisdiction of the Court's powers in interfering with the policy decision, the Learned Senior Counsel would place reliance upon BALCO Employees Union (Regd.) Vs. Union of India and Others, AIR 2002 SC 350 : (2002) 108 CompCas 193 : (2002) 1 CompLJ 205 : (2001) 10 JT 466 : (2002) 1 LLJ 550 : (2001) 8 SCALE 541 : (2002) 2 SCC 333 : (2002) 35 SCL 182 : (2002) 2 SCT 12 : (2001) AIRSCW 5135 : (2001) 8 Supreme 660 and Premium Granites and Another Vs. State of Tamil Nadu and Others, AIR 1994 SC 2233 : (1994) 1 JT 376 : (1994) 1 SCALE 393 : (1994) 2 SCC 691 : (1994) 1 SCR 579 : (1994) 2 UJ 145 .

(xvi) The restraint exercised by Courts in interfering with the decisions of academic matters of experts expounded by the well-known decision of the Hon'ble Supreme Court in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, AIR 1965 SC 491 : (1964) 4 SCR 575 , was referred to by the Learned Senior Counsel to urge upon us that we should also restrain ourselves on the same principle in the facts and circumstances of the present case.

(xvii) Distinguishing Jagdish Prasad Sharma (supra) cited on behalf of the Petitioner-University, it was submitted that the decision was rendered on different facts which involved the UGC Regulations in respect of service conditions of teachers and staff being imposed upon a State on which subject it already had in place an Act passed by the State Legislature under Entry 25 List III of the Seventh Schedule to the Constitution of India which is not the case in the case at hand.

(xviii) It is submitted that from the various correspondences, it becomes quite obvious that even the Petitioner-University had accepted the position that the UGC had assumed the regulatory role in respect of the education to the ODL Mode. Reference was made to letter dated 03-12-2014, Annexure P53, whereby compliance report to the observations of the visiting Expert Committee deputed by the UGC was submitted but, of course, denying the observations regarding franchising by it. It is submitted that letters issued by the UGC earlier would have no relevance now as being based upon the then prevailing rules. Since new rules have come in place, those are necessarily required to be complied.

(xix) Insofar as the plight of the Intervenor is concerned, Mr. A. Mariarputham would fairly submit that a sympathetic view may be taken but, without adjudicating on the issues contrary to the stand taken by the Respondent No. 3.

9. Mr. Karma Thinlay Namgyal, Central Government Standing Counsel, appearing on behalf of the Respondent No. 2-Ministry of Human Resource Development, in his brief submission, while adopting the arguments advanced by Mr. A. Mariarputham, contended that the domain of the ODL System and the Conventional System of education are now governed by Order dated 29-12-2012, Annexure P29. This Order being a policy decision of the Central Government, it is binding on all Authorities and, no University be it Central or State or Deemed University or a Private whether Government funded or not, can run DEP outside the territory of the State establishing the University under an Act by the Legislature of that State notwithstanding any provision in such Act to the contrary.

10. Mr. Gopal Subramaniam, in his reply submitted that the Distance Education was not a retrograde activity but, a system of education which was the need of the day as reflected by the National Policy on Education and also appreciated by the Madhava Menon Committee in its report.

(i) UGC Regulations, 1985 does not use the word "Private University" as would appear from sub-paragraphs 1 and 2 of Regulation 1. Even Section 2(f) of the UGC Act, 1956, does not find mention of this. Regulations 1985 was in force as an interim measure until the IGNOU Act was passed in 1985 under which the DEC was set up to regulate the ODL System by enactment of Statute 28 under the IGNOU Act. It was reiterated that DEC being a creation under the IGNOU Act, 1985, passed under plenary powers of Parliament, cannot be superseded by an executive order like Order dated 29-12-2012, Annexure P29.

(ii) Prof. Yashpal case (supra), as per Mr. Gopal Subramaniam, has no application to the present case as the Chhattisgarh University in regard to which the judgment was rendered was created under the Societies Registration Act unlike the Petitioner-University which was under a Statute in exercise of also its powers of the State Legislature under Entry 25 List III of the Seventh Schedule to the Constitution of India.

(iii) The Petitioner-University not being a Private University, Regulations 2003 would not apply and, being recognised under Section 2(f) of the UGC Act, it was granted necessary permission by the then Chairman of the UGC on 28-08-2001 to award degrees through Distance Education at their own Centres in different parts of the country. It will be apparent that the case of Prof. Yashpal (supra) which was rendered on 11-02-2005 was never applied in the case of the Petitioner-University as it was granted permission even as on 16-05-2005, Annexure P8, which is a date post the decision of Prof. Yashpal (supra). It would also be apparent from letter dated 24-05-2010, Annexure P21, whereby the IGNOU had accorded formal approval of the programmes of the Petitioner-

University for the academic years 2009-10 to 2011-12 as recommended by the DEC in its 35th Meeting of the DEC held on 10-03-2010, Annexure P19, which is also post Prof. Yashpal case (supra).

(iv) Referring to the decision of the Hon'ble Madras High Court in Annamalai University (supra), it was submitted that the very Order of the Ministry of Human Resource Development, Respondent No. 2, dated 29-12-2012, Annexure P29, has been set aside and since the order has not been superseded by any decision of a superior Court, it still holds good and also would apply to the case of the Petitioner-University.

(v) It is submitted that the UGC by exercising its executive powers cannot denude a State Legislation enacted under the plenary powers. Even the Madhava Menon Committee Report accepted by the Ministry of Human Resource Development, Respondent No. 2 would have no application. The actionable points suggested therein had not been put in place any regulatory mechanism thereby rendering the decision abolishing the DEC unreasonable by application of Wednesbury Principles.

(vi) It is submitted that in all its applications for approval of the programmes being offered in ODL Mode, the Petitioner-University had given full disclosure of the facts as regards the Study Centres and its franchising to outside Agencies to run such Study Centres and, the Respondents had never communicated such factor as a deficiency to be removed. Even though the DEC was abolished, the UGC, by Notification dated 17-06-2013, Annexure P31, had adopted the "Guidelines of DEC on Minimum Requirements for Recognition of OLD Institutions". Therefore, when the DEC Guidelines which still prevails, did not prohibit having Study Centres outside the State, it was inexplicable as to how the Respondents were found to have been acting contrary thereto.

(vii) Insofar as the Intervenors were concerned, it was his submission that since they had been admitted prior to 08-06-2011 when the territorial jurisdiction issues had cropped up for the first time, their degrees cannot be invalidated due to its subsequent events. It would, therefore, in the interest of justice that their degrees should be protected as valid.

11. Upon hearing the Learned Senior Counsel for the parties, the pleadings and the records of the case, we find that the following questions arise, the answers of which would determine the issues raised in the Writ Petition:-

(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?

12. Question No. (a)

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

(i) This question, in our view, is no more *res integra* considering the decisions of the Hon'ble Supreme Court in Prof. Yashpal (*supra*), Rai University (*supra*), Kurmanchal Institute (*supra*) and, more recently, with greater clarity, in Annamalai University (*supra*).

(ii) Let us, therefore, consider relevant parts of these decisions.

(iii) In Prof. Yashpal case (*supra*), Section 5 of the Chhattisgarh Niji Kshetra Viswavidhalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002, empowering the State of Chhattisgarh to incorporate and establish a University by issuing a Notification in the Gazette and, Section 6 permitting such University to affiliate any College or other Institution or to set up more than one Campus with the prior approval of the State Government, were issues under consideration and the Legislation was challenged on the ground that it had the implication of completely doing away with any kind of control of the UGC over the Private Universities by giving a complete go-by to the guidelines issued by the UGC on the courses being taught and award of academic degrees. The requirement obtaining prior permission from the regulatory bodies had not been followed rendering the UGC Act a nugatory as the Private Universities were not subscribing to the standard laid down by the UGC. Amongst the several issues raised, the principal one was the manner in which these Private Universities were functioning which was likely to result in creating complete chaos in the system of Higher Education in the country.

(iv) In analysing the scope and interplay between List I, List II and List III of the Seventh Schedule to the Constitution of India relating to subject of "Education", the Apex Court in the aforesaid case took note of some of its earlier decisions, which were as follows:-

"28. Though incorporation of a university as a legislative head is a State subject (Entry 32 List II) but basically university is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions of this Court. In *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, AIR 1963 SC 703 : (1963) 1 SCR 112 Supp a decision by a Constitution Bench rendered prior to

Forty-second Amendment when Entry 11 of List II was in existence, it was held that Items No. 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament. The use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In AIR para 23, the Court held as under: (SCR pp. 137-38)

"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, be deemed to be restricted. If a subject of legislation is covered by Items 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 Parliament. ... Item 11 of List II and Item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap; but to the extent of overlapping, the power conferred by Item 66 List I must prevail over the power of the State under Item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour."

.....

30. The same question was also examined in considerable detail in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, (1995) 3 JT 136 : (1995) 2 SCALE 401 : (1995) 4 SCC 104 : (1995) WritLR 549 and the conclusions drawn were summarised in para 41 of the Report and sub- paras (i) and (ii) thereof are being reproduced below: (SCC pp. 134-35)

"41. (i) The expression "coordination" 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 "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of the valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation 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 Center under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative." "

[emphasise supplied]

(v) After noticing the principles enunciated in the above decisions, it was then held as follows:-

"33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative head being in the State List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific Entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

.....

56. Shri Amarendra Sharan, learned Additional Solicitor General appearing for UGC, has submitted that Section 5(1) of the impugned Act which permits establishment of a University merely by an executive action of issuing a notification in the gazette is illegal. The University Grants Commission Act, a law made by Parliament with reference to Entry 66 List I, having empowered UGC to make regulations, any provision of an enactment made by the State Legislature concerning higher education which is in conflict with the Regulations, would be ultra vires, as held in sub-para (ii) of para 41 of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, (1995) 3 JT 136 : (1995) 2 SCALE 401 : (1995) 4 SCC 104 : (1995) WritLR 549 . He has referred to Regulation 3.1 of the University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulation, 2003 which lays down that each private university shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956 as amended from time to time. He has also submitted that this Court had clearly ruled in Prem Chand Jain and Another Vs. R.K. Chhabra, AIR 1984 SC 981 : (1984) CriLJ 668 : (1984) 1 SCALE 279 : (1984) 2 SCC 302 : (1984) 2 SCR 883 that a university established by special legislation alone can have the right to confer degrees, where while referring to Section 2(f) and 23 of the UGC Act it was said as under: (SCC pp. 307-08, paras 7-8)

"The words "established" or "incorporated" referred to Acts under which universities are established or incorporated. Several universities in this country have been either established or incorporated under special statutes, such as the Delhi University Act, the Banaras Hindu University Act, the Allahabad University Act etc. In these cases, there is a special Act either of the Central or the Provincial or the State Legislatures establishing and incorporating the particular universities. There is also another pattern - where under one compendious Act several universities are either established or incorporated - for instance, the Madhya Pradesh Universities Act, 1973. The definition of university and

provisions in Section 23 of the Act refer to Acts of the Central, Provincial or the State Legislatures by which one or more universities are established or incorporated and not to institutions incorporated under a general statute providing for incorporation.

* * *

"Education including universities" was a State subject until by the Forty-second Amendment of the Constitution in 1976, that entry was omitted from the State List and, was taken into Entry 25 of the Concurrent List. But as already pointed out the Act essentially intended to make provisions for the coordination and determination of standards in universities and that, as already indicated, is squarely covered under Entry 66 of List I. While legislating for a purpose germane to the subject covered by that entry and establishing a University Grants Commission, Parliament considered it necessary, as a regulatory measure, to prohibit unauthorized conferment of degrees and diplomas as also use of the word "university" by institution which had not been either established or incorporated by special legislation."

[emphasise supplied]

(vi) Thus, the supremacy of the UGC, an Authority created under the UGC Act, 1956, passed by Parliament under Entry 66 List I of the Seventh Schedule to the Constitution of India, in the matter of coordination and determination of standards of education in the country, stands settled. The question as regards the applicability of the Regulations 2003 has also been answered in the very judgment, the relevant portions of which read as follows:-

"54. In exercise of power conferred by Section 26 of the UGC Act, the University Grants Commission has made the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. The Regulations have been made with the object of providing for a regulatory mechanism for establishment and operation of private universities and for safeguarding the interests of the student community with adequate emphasis on the quality of education and to avoid commercialisation of higher education and also to maintain standards of teaching, research and examination. Regulation 1.2 provides that the same shall apply to every private University established by or incorporated under a State Act, before or after the commencement of these Regulations. Regulation 1.5 provides that any private university which has started functioning before the commencement of these Regulations shall ensure adherence to these Regulations within a period of three months from the notification thereof and failure to comply with this requirement shall render any degree/diploma awarded by a private university as unspecified in terms of Section 22(3) of the UGC Act and shall invite penalty under Section 24 of the said Act. Regulations 3.1, 3.2, 3.6 and 3.7 are important and they are being reproduced below :

"3.1. Each private university shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956, as amended from

time to time.

3.2. A private university shall be a unitary university having adequate facilities for teaching, research, examination and extension services.

* * *

3.6. The programmes of study leading to a degree and/or a postgraduate degree/diploma offered by a private university shall conform to the relevant regulations/norms of UGC or the statutory body concerned as amended from time to time.

3.7. A private university shall provide all the relevant information relating to the first degree and postgraduate degree/diploma programme(s) including the curriculum structure, contents, teaching and learning process, examination and evaluation system and the eligibility criteria for admission of students, to UGC on a pro forma prescribed by UGC prior to starting of these programmes.

55. Regulation 3.3 puts restriction on establishment of a university outside the State. Regulation 5 provides consequences of violation and lays down that if the Commission is satisfied that a private university has, even after getting an opportunity to do so, failed to comply with the provisions of any of the Regulations, the Commission may pass orders prohibiting the private university from offering any course for award of the degree or diploma. Similarly, UGC is empowered to take action against a private university awarding first degree and/or a postgraduate degree/diploma, which is not specified by the UGC and any private university continuing such programme and awarding unspecified degree shall be liable for penalty under Section 24 of the UGC Act."

(vii) On the issue as regards the provisions of extra-territorial jurisdiction conferred by a State Act upon Universities to open Off-Campus Centre, it has been held as follows:-

"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 extraterritorial operation. Section 2(f) of the amended Act defines "off-campus center" which means a center 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 study centers 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 center

outside the State is clearly beyond the legislative competence of the Chhattisgarh Legislature."

[emphasise supplied]

(viii) The challenge to the vires of Regulation 3.3.1 of Regulations, 2003, which mandates prior approval of the UGC and that of the State Government where the Centre is proposed to be opened for setting up Off-Campus Centre, was rejected as being devoid of merit. The submission of Mr. Gopal Subramaniam that Prof. Yashpal case (supra) did not deal with matters pertaining to the programmes of education in the ODL Mode but, was on the Conventional Universities, in our opinion, does not appear to be correct in view of the clear and unambiguous finding at paragraph 60 of the judgment extracted above considered with paragraphs 62 and 63 where the subject-matter has been squarely dealt with.

(ix) The Rai University (supra) that followed Prof. Yashpal case (supra) has given clarity on this position, as would appear from the following:-

"9. At the time of hearing of the writ petition filed by Prof. Yashpal, it was not brought to the notice of the Court that the private universities had established large number of study centers at various places all over the country. We, therefore, consider it proper to clarify that while making the aforesaid observation, it was not meant that affiliation must necessarily be sought only with an already existing State university in Chhattisgarh. The 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. The decision on the application may be taken expeditiously in the interest of student community and there should be no prolonged uncertainty about their future.

.....

11. The study centers of erstwhile Rai University which are outside the State of Chhattisgarh may take appropriate steps for their affiliation in the light of the clarification made above and the letter dated 23-3-2005 of the Chairman of Chhattisgarh Niji Kshetra Vishwavidyalaya Regulatory Commission."

[emphasise supplied]

(x) In Kurmanchal Institute (supra) on the very question of extra-territoriality, it was observed as follows:-

"16. The University Grants Commission, which has been constituted in terms of Entry 66, List I of the Seventh Schedule of the Constitution of India, has framed regulations in the year 1985 relating to distance education, from a perusal whereof it would appear that the study centers are such which are established for helping the students who are undergoing distance education course.

.....

18. Although we are inclined to agree with the learned counsel appearing on behalf of the appellants that for all intent and purport the requirements of law for making an ordinance by the Executive Council of the University had been done pursuant whereunto new courses could be opened, we are, however, unable to persuade ourselves to accept the contention that such study centers should be permitted to be operated beyond the territorial jurisdiction of the University. Section 5 of the Act clearly states in regard to the territorial jurisdiction of the University. In terms of the Schedule appended to the Act, the territorial jurisdiction of the University is confined only to seven districts, Nainital not being one of them. Each university in the country which is recognized under the University Grants Commission Act must have their own territorial jurisdiction save and except for the Central Universities or specified in the Legislative or parliamentary Act.

19. The submission of the learned counsel that for the purpose of running a distance education course, extraterritorial activities must be carried out may not be entirely correct. It is one thing to say that the university takes recourse to the correspondence courses for conferring degrees or diplomas but it would be another thing to say that study centers would be permitted to operate which requires close supervision of the university. In a study center, teachers are appointed, practical classes are held and all other amenities which are required to be provided for running a full-fledged institution or college are provided. Such an establishment, in our opinion, although named as a study center, and despite the fact that the course of study and other study materials are supplied by the university cannot be permitted to be established beyond the territorial jurisdiction of the university. Nainital is outside the territorial jurisdiction of the University. In fact it is not situated in the State of U.P. and, thus, beyond the provisions of the Act.

20. The submission of the learned counsel that the UGC Regulations, 1985 provide for study centers of this nature cannot be countenanced. The UGC Regulations being a subordinate legislation must be read with the principal Act. The subordinate legislation will be ultra vires if it contravenes the provisions of the principal Act. (See Vasu Dev Singh and Others Vs. Union of India (UOI) and Others, (2006) 144 PLR 802 : (2006) 11 SCALE 108 : (2006) 12 SCC 753 : (2006) 9 SCR 565 Supp A statutory authority, it is well known, must act within the four corners of the statute. A fortiori it has to operate within the boundaries of the territories within which it is to operate under the statute. Such territorial jurisdiction of the university must be maintained as otherwise a chaos would be created. If distance education of such a nature is to be encouraged, the only course would be to suitably amend the provisions of the Act."

[emphasise supplied]

(xi) In the decision of the Hon''ble Supreme Court in Annamalai University

(supra), all questions involved in the present Writ Petition have been found squarely dealt with as would appear from the following:-

"40. The UGC Act was enacted by 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 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 equalise 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 an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination 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. The 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 coordination 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 UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A 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 (sic the Regulations) are applicable and binding on all concerned. The 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-?-vis the Universities constituted under the State Universities Act which would include within its purview a university made by Parliament also is now no longer 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 the two Acts operate in different fields, namely, conventional university and open university. The 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 with 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..... 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."

[emphasise supplied]

(xii) On the above, we may also refer to the recent decision of the Hon'ble Supreme Court in Kalyani Mathivanan Vs. K.V. Jeyaraj and Others(2015) 3 AD 238 : AIR 2015 SC 1875 : (2015) LabIC 1899 : (2015) 1 LLN 545 : (2015) 3 SCALE 369 : (2015) 4 SCJ 400 : (2015) 2 SCT 676 : (2015) 2 SLJ 107 .

13. Having thus examined the conspectus of decisions on the questions requiring determination in the present Writ Petition, we find that the following positions now stand crystallised.

(a) The UGC Act under which the UGC has been created has supervening influence over all other Legislations on the subject of education for maintenance of minimum standards in the country. The UGC Act was enacted by Parliament in exercise of its powers under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its powers under Entry 25 of List III and, therefore, the former would prevail over the Open University Act. The UGC Act indisputably governs Open Universities also.

(b) The University Grants Commission Act is a law made by Parliament with reference to Entry 66 List I, having empowered UGC to make Regulations. Therefore, provisions of any enactment made by the State Legislature concerning Higher Education which is in conflict with the UGC Regulations, would be ultra vires.

(c) Furnishing information of its programmes by an University in its application for recognition by itself would not satisfy the requirement of the Regulations. Only because no action was taken by UGC in that behalf would not mean that an illegality has been cured.

14. In the light of the legal propositions emerging from the above that would have direct bearing on the questions before us, we may now examine the relevant facts and the issues involved in the Writ Petition.

(i) As pointed out by Mr. A. Mariarputham, the sole question that ultimately survives is prayer (a) sought for in the Writ Petition by which the Petitioner-University calls upon this Court to direct the Respondent No. 1 to dispose the application dated 10-07-2012, Annexure P23, of the Petitioner-University for extension of recognition of its programmes through the Distance Education Mode

for academic session 2012-13 and onwards. But, before dealing with this question, it would be essential to discuss certain facts that have been set out in the Writ Petition and canvassed by Mr. Gopal Subramaniam during the course of his arguments.

(ii) The case of the Petitioner-University in a nutshell is that after its coming into existence as a consequence of the Sikkim-Manipal Act, 1995, it had commenced with the DEP after having sought the permission of the UGC which was conveyed by letter of the Chairman dated 28-08-2001, Annexure P5 and had continued thereafter on periodical extensions of approval by the UGC. The IGNOU Act, 1985, was passed by Parliament to conduct education through Distance Education Mode and as regards the regulatory part of the Distance Education, the IGNOU created the DEC by insertion of Statute 28 to the IGNOU Act. In compliance to the directions of the DEC, application was filed for its recognition, a requirement which was reiterated by the UGC by its letter dated 16-05-2005, Annexure P8, which by implication recognised the DEC's supremacy in matters of DEP.

(iii) The fact that Regulations 2003 was not acted upon would be evident from letter dated 16-05-2005 of the UGC, Annexure P8, which did not make any mention of it but, rather emphasised compliance of UGC Regulations, 1985 and the requirement of prior approval by the DEC. Even after the constitution of the Joint Committee in terms of MoU dated 10-05-2007, Annexure P10, entered between the UGC, AICTE and DEC, provisional recognitions were continued to be granted as a normal course without insisting upon compliance of Regulations 2003 until the course for the academic year 2007-08 as conveyed vide IGNOU letter dated 26-11-2008, Annexure P14.

(iv) In such manner the Respondent No. 1 then issued letter dated 09-09-2009, Annexure P16, directing compliance of certain recommendations made by the Expert Committee and ultimately by letter dated 17-09-2009, Annexure P16A, further extension of recognition for another year was granted on the condition that the Petitioner-University will strictly implement the recommendations within three months.

(v) As per the Learned Senior Counsel, letter dated 09-09-2009, Annexure P16, requiring compliance of the observation that very few Centres have been opened in Sikkim or the NE Region would clearly imply that the Respondent No. 1 had recognised the extraterritorial jurisdiction of the Petitioner-University to have Study Centres outside the geographical boundaries of the State of Sikkim.

15(i). However, we are unable to accept these contentions as it does not appear to be correct in view of the subsequent letter dated 15-10-2009, Annexure P17, issued by the Respondent No. 1 as also the preceding letters of the IGNOU dated 09-09-2009, Annexure P16 and 17-09-2009, Annexure P16A, as would appear from Clauses 6 and 7 of the conditions of the recognition mentioned therein which provided as follows:-

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

7. The Distance Education Council prohibits franchising of Study Centres. Thus, your University will not franchise any Study Centre."

(ii) This was followed by another letter of the Respondent No. 1 dated 06-11-2009, Annexure P18, issued in continuation of the letter dated 15-10-2009, Annexure P17, which re-emphasised the terms and conditions conveyed earlier as would appear from the following:-

".....

The terms & conditions which have been communicated to you vide our letter No. F.No.DEC/Recog/2009/3947 dated 15/10/2009 will remain in force and subject to the compliance of the same.

....."

(iii) Quite evidently these letters, apart from emphasising on the pre-eminence of the latest UGC Notifications over all previous Notifications and Circulars, in no uncertain terms conveyed the jurisdiction of the Universities, be it Private or Government funded or Deemed Universities or Private Universities, being confined within the territory of the State.

16(i). Again, the contention of the Petitioner-University, albeit at the cost of repetition, is that under item number 35.3 of the 35th Meeting of the DEC held on 10-03-2010, Annexure P19, it was clearly decided that the Joint Committee cannot supersede the Statutory Authority of the DEC and that the Distance Education and Online Education cannot have the territorial jurisdiction and Central Universities and State Universities will have territorial jurisdiction as per their Acts and Statutes for offering programmes through the Distance Mode. In view of this decision, the programmes of the Petitioner-University being carried out outside the territory of the State of Sikkim would be valid which would be established by the fact that the Council had ratified the decision of the Chairman, DEC, to accord recognition of the ODL programmes of the Petitioner-University for the academic years 2009-10 to 2011-12. Since the decision of the Joint Committee of UGC, AICTE and DEC holding UGC Notification as prevailing over all previous Notifications and Circulars of the DEC was rejected by the DEC in its

35th Meeting, the position as prevailing earlier would continue and the jurisdiction of the Petitioner-University would be as per the State Act which conferred upon it extraterritorial jurisdiction to run education through the Distance Mode. This fact would be apparent from the Notification dated 29-03-2010, Annexure P20, issued by the IGNOU as well as the letter dated 24-05-2010, Annexure P21.

(ii) That the minutes of the 40th Meeting of the DEC dated 08-06-2012, Annexure P22, inter alia, resolving that in the case of State Universities, both Government and Private funded, the territorial jurisdiction will be as per their Acts and Statutes but, not beyond the boundaries of their respective States, is a complete turnaround of the earlier decision of the DEC and in conflict with the State Act under which the Petitioner-University was created. So was the case of the Notification issued thereafter by the DEC announcing such decision. The application for renewal of approval to the programmes of the Petitioner-University dated 10-07-2012, Annexure P23, has thus far remained undecided by the Respondents despite reminders. To make the matter worse, by letter dated 10-10-2012, Annexure P26 of the Respondent No. 1, it was conveyed that the application for renewal of the Petitioner-University was under process at DEC but, no programme would be offered through Distance Mode for the period beyond the previously granted extension till a decision was taken by DEC.

(iii) Then the 115th (Emergent) Meeting of the Board of Management of IGNOU dated 19-09-2012, Annexure P28, finally decided to abolish DEC by repealing Statute 28. The submission is that a body statutorily created cannot be abolished by an executive decision and, therefore, would be non est which would by implication keep the DEC in existence and the decision taken by it restored.

(iv) That Order dated 29-12-2012, Annexure P29, issued by the UGC also being an Executive Order cannot have an overriding effect over the statutorily created bodies including the DEC. In any case, in the absence of the DEC, no Regulations has been put in place by the UGC to take care of the DEP and, therefore, a situation of flux has resulted. Under such circumstances, it was inappropriate for the Respondent No. 3 to have taken any decision leave alone issuing Order dated 29-12-2012.

(v) That in any case, the task of regulating the education to the ODL Mode having been taken over the UGC and AICTE by Notification dated 17-06-2013, Annexure P31, the UGC has adopted the very guidelines of DEC issued earlier and, therefore, there was no change in the circumstance.

17(i). We have carefully considered the submissions of both the Learned Senior Counsel for the Petitioner-University as well as the UGC.

(ii) We are unable to be persuaded to accept the contentions placed on behalf of the Petitioner-University. Although the argument on behalf of the Petitioner-University that no restrictions on territoriality existed initially for offering programme in the Distance Education Mode was quite irresistible to us but, the

admitted position that from 1985 onwards the UGC Regulations were brought into existence belies the submission. Notwithstanding the finding to the contrary on this in paragraph 18 of the decision in Kurmanchal Institute (supra) reproduced earlier, even if it is considered that the UGC Regulations, 1985 did not specifically make any provisions defining territoriality of the Universities, both Private and Government funded, Regulations 2003 introduced a change in the situation by providing restrictions in this regard under Regulation 3 and Sub-Clauses thereunder as alluded earlier.

(iii) The validity of Regulations 2003 having been upheld by the Hon'ble Supreme Court in Prof. Yashpal case (supra) and, Regulations framed under Clauses (e), (f), (g) and (h) of Sub-Section (1) of Section 26 of the UGC Act, 1956, held to be binding on all Universities in Annamalai University (supra), there can be no doubt of its applicability on the Petitioner-University. Of course, Mr. Gopal Subramaniam, would argue that the Petitioner-University cannot be treated as "Private University" considering its structure where the Chancellor is the Governor of the State and the Governing Council represented substantially State Government nominees but, in our opinion, such features or the fact that it had been recognised under Section 2(f) of the UGC Act, would not confer upon the Petitioner-University, the legal statutes of a "State University". We are rather convinced that the Petitioner-University is a "Private University" as will be revealed from what will follow hereafter.

(iv) Under Clause 2.1 of Regulation 2003 "Private University" is defined as under:-

"2.1. "private university" means a university duly established through a State/Central Act by a sponsoring body viz. a Society registered under the Societies Registration Act 1860, or any other corresponding law for the time being in force in a State or a Public Trust or a Company registered under Section 25 of the Companies Act, 1956."

(v) The relevant portions of the Preamble to the Sikkim-Manipal Act, 1995, reads as follows:-

".....

WHEREAS the Government of Sikkim, being desirous of improving the educational opportunities and health services in the State of Sikkim, entered into an agreement dated the 12th day of March, 1992 for collaboration with the Manipal Education and Medical Group, Manipal, a registered Trust, which has wide and accumulated experience in establishing and running various educational institution of high standard in the State of Karnataka and else where;

AND WHEREAS the purpose of the collaboration was to establish an Institute of medical sciences, for medical, dental, nursing, pharmacy and other allied health training at the under-graduate, graduate and post-graduate levels and establish a referral teaching hospital;

AND WHEREAS pursuant to the terms of the agreement aforementioned, the said Group or its successor known as "Manipal Pai Foundation", a registered Trust has established or is engaged in the establishing of several educational institutes in the State of Sikkim;

AND WHEREAS in furtherance of the above objects and to manage the said Institute, rules have been framed by the said Trust providing for constitution of different authorities and other matters relating to the University;

AND WHEREAS the Manipal Pai Foundation has requested the State Government to establish the Sikkim-Manipal University of Health, Medical and Technological Sciences on the lines of the rules of the Trust to carry out its objects and functions effectually;

AND WHEREAS it is considered necessary to encourage the establishment by the Manipal Pai Foundation of such Institutes of high standards in the State of Sikkim;

AND WHEREAS it is deemed expedient therefore to establish the Sikkim-Manipal University of Health, Medical and Technological Sciences for the purposes hereinafter appearing;

....."

The Preamble, therefore, reveals that the State University has been established by the Manipal Pai Foundation, a Registered Trust, thereby falling squarely within the meaning of "Private University" in Clause 2.1 of the Regulations 2003.

(vi) For these reasons, we are of the considered opinion that Regulations 2003 would apply in full force to the Petitioner-University.

18(i) It was no doubt contended that, at the time of seeking approval, the Petitioner-University had given a clear disclosure of each Study Centre, its locations and other details and, on that basis the DEC and UGC had granted the approvals and, therefore, it was not now open for the UGC to take a different position, especially since it has adopted and applied the DEC Guidelines which were the very norm that were applicable at the time the approvals were granted. We are, however, not convinced by this argument. As held by the Hon'ble Supreme Court in Annamalai University (supra), only because no action was taken by UGC on such disclosure, it would not mean that the illegality had been cured or the Regulations abandoned.

(ii) Also, on the contention that there was no restriction imposed upon the Petitioner-University earlier on its extra-territorial jurisdiction in imparting its programmes through the Distance Education Mode, we find that there were certain incidents, although referred to in a different context by the Petitioner-University, which left a profound influence on the system that first led to the framing of the Regulations 2003, followed by the MoU of the three Statutory Bodies, namely, UGC, AICTE and the DEC in 2007, Annexure P10, the 35th Meeting of the DEC, Annexure P19, the 40th Meeting of DEC, Annexure P22 and

finally the 115th (Emergent) Meeting of the Board of Management of IGNOU, Annexure P28, followed by the Government of India Order dated 29-12-2012, Annexure P29. It may also not be out of place to mention the inquiry by the CBI on the issue.

(iii) It was submitted also on behalf of the Petitioner-University that until the UGC Regulation, 1985 was framed, there were no Regulation at all in place to govern education through the ODL Mode. Indeed, this situation and the vagueness on the aspect of extra-territorial jurisdiction in the UGC Regulations, 1985 appears to have been taken advantage of leading to proliferation of programmes in the Distance Mode by various Universities creating a situation of chaos. This appears to have led the UGC in framing the Regulations 2003 which for the first time introduced the element of territoriality in offering programmes through ODL Mode.

(iv) When the Universities continued with their programmes outside the territories of the States under the Legislations of which those were created, the three Primary Statutory Authorities, namely, UGC, AICTE and the DEC, convened a meeting and entered into a MoU in 2007 with the object to ensure quality, technical and general education through the Distance and Mixed Mode and avoid duplication of efforts in streamlining of activities. The expertise of DEC was decided to be utilised in respect of review of programmes and courses, norms and standards and approval of new courses, etc. Following from this, DEC for the first time imposed restrictions on the territorial jurisdiction of the Petitioner-University as would appear from paragraph 6 of letter dated 15-10-2009, Annexure P17, reproduced earlier.

(v) In the 35th Meeting of the DEC held on 10-03-2010, Annexure P19, the decision of the Joint Committee taken in its meeting on 17-08-2009 that latest UGC Notifications will prevail over all previous Notifications and Circulars of the DEC in matters of territorial jurisdiction for offering programmes through Distance Mode, appears to have been discussed and, after holding that the Joint Committee could not supersede the Statutory Authority of the DEC, it was decided that territorial jurisdiction of the Central and State Universities will be as per their Acts and Statutes for offering programmes through the Distance Mode, the Deemed Universities as per UGC which mandates its prior approval for opening Centres/Off-Campus Centres outside the Headquarters and, in respect of the Private Institutions (other than Universities) as decided by the Joint Committee. It was then decided to ratify the decision of the Chairman, DEC, granting recognition to the programmes of the Petitioner-University for three academic years 2009-10 to 2011-12.

(vi) The apparent conflict amongst the bodies as would be evident from the aforesaid events, appears to have led the IGNOU in deciding to repeal Statute 28 and thereby abolishing DEC in its 115th (Emergent) Meeting held on 19-09-2012, Annexure P28.

19(i). The sequence of events narrated above would reveal the serious crisis prevailing in the country in matters of education in the Distance Mode which appears to have spurred the UGC to issue order dated 29-12-2012, Annexure P29. The opening paragraph of Order dated 29-12-2012 reveals that the Central Government was alive to the critical situation and had, therefore, constituted a Seven Member Committee of eminent persons under the Chairpersonship of Prof. Madhava Menon "to harmonize the legal position in respect of Distance Education Programmes in various disciplines, as they concern the UGC Act, AICTE Act and IGNOU Act and to suggest the measures to regulate the standards of education imparted through distance mode". The actionable points on recommendations of the Madhava Menon Committee attached to the said Order indicate the seriousness with which the Central Government had taken up the matter.

(ii) The Order dated 29-12-2012, Annexure P29, obviously does not appear merely to be an Executive Order of the Central Government as the Petitioner-University would want us to believe. To the contrary, we find that it has been passed in exercise of its powers under Sub-Section (1) of Section 20 of UGC Act, 1956 and the AICTE Act, 1987 thereby giving it a statutory character. The Order undoubtedly reflects the policy adopted by the Central Government in respect of the programmes/courses in the ODL Mode and made it a requirement to get such courses recognised by the UGC, AICTE and DEC and other regulatory bodies of the conventional mode of education in those areas of study.

(iii) Incidents of significance preceding the aforesaid Order were - (a) the recommendations of the Madhava Menon Committee was accepted under actionable Point 9 of which it was proposed that the Study Centres for ODL programmes were to be located within the statutory territorial jurisdiction of the relevant Acts/Statutes governing the Institution irrespective of whether a State Act mentions territorial jurisdiction beyond its State limits; (b) This aspect was discussed in the 115th (Emergent) Meeting of the Board of Management held on 19-09-2012, Annexure P28, as revealed from agenda item No. 115.1.8, which reflects the minutes of the 114th Meeting when the Madhava Menon Committee Report was discussed; (c) Even in the letter dated 15-10-2009, Annexure P17, of the Respondent No. 1 to the Petitioner-University, it is found to have categorically mentioned that regarding territorial jurisdiction for offering programmes through Distance Education Mode the latest UGC Notifications will prevail over all previous Notifications and Circulars which was again found to have been repeated in the Notification of the Respondent No. 1 dated 29-03-2010, Annexure P20. What followed thereafter was in the culmination of the Order dated 29-12-2012, Annexure P29, setting out the policy of the Central Government.

(iv) We are of the considered opinion that since it has been held that the UGC Act being an Act of Parliament passed under Entry 66 List I of the Seventh Schedule to the Constitution of India, it will prevail over the Open University Act and all other Universities and, that as the function of the UGC is all-pervasive in

respect of matters provided, inter alia, under Sections 12A, 22 and 26, the Order of the Central Government dated 29-12-2012 assumes a statutory character. Similarly, the Regulations framed under Section 26 of the UGC Act being Subordinate Legislations would also become part of the Act and, therefore, binding.

20. There is another aspect raised on behalf of the Petitioner-University. It was argued that when the DEC had been charged with the responsibility to regulate Distance Education Institutions, it would amount to duplicity in Regulation if the UGC also was to regulate on the same field. This argument does not appear to be apposite to us. In the first place, the DEC stands dissolved by virtue of repeal of Statute 28. The IGNOU has not made any Regulations but, is guided by the Regulations framed by the UGC which was what the Hon'ble Supreme Court had previously held in Annamalai University (supra). In any case, in the event of there being a conflict in the Regulations framed by the UGC and the guidelines issued by the DEC, assuming that the DEC is still in existence, the former would prevail over the latter in view of the fact that the UGC Act enjoys a supervening position over the IGNOU Act under which the DEC was created. As held by the Apex Court in Annamalai University (supra) at paragraphs 40, 41, 42, 50 and 51 reproduced earlier, such position of the UGC Act is acquired by virtue of it being passed by Parliament under Entry 66 List I of the Seventh Schedule to the Constitution of India whereas, the IGNOU Act was enacted under Entry 25 List III thereof.

21. In the light of the above, the first question that we have asked stands answered in the affirmative.

22. Question No. (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?

Question No. (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?

Question No. (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?

(i) The three questions being interrelated may be taken up together.

(ii) The submission on behalf of the Petitioner-University that even if Regulations 2003 had been validly framed, it was never applied in the case of the Petitioner-University and stood abandoned, does not appear to be sound and acceptable. We have already noted that Supreme Court in Annamalai University (supra)

observed that 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 retrospective effect and non-compliance will certainly entail consequences.

(iii) The validity of Regulations 2003 has been upheld in Prof. Yashpal case (supra) and, therefore, there can be no doubt that the Universities offering DEP would mandatorily require to follow the same. Even if it is accepted that the Petitioner-University had earlier been granted recognition for its ODL programmes without following Regulations 2003 or other Notifications of the UGC, the situation now stands altered in view of the policy decision of the Central Government and the Notifications and Orders following thereafter under which it is mandatory for the ODL programmes of the Universities to be recognised by the UGC, AICTE and IGNOU and, that these Universities shall be subject to its operations within geographical territorial limits of the State under the Statute of which the Universities are created.

(iv) Order of the Respondent No. 2 dated 29-12-2012, Annexure P29, is admittedly a policy decision of the Government of India. This policy decision having been issued under Sub-Section (1) of Section 20 of the UGC Act, 1956, has statutory force and would stand engrafted in the Act and, thus would be all-pervasive and binding on all Universities. Permissibility of interference in matters of policy of Government, particularly, with regard to education, is well-settled.

(v) In University Grants Commission and Another Vs. Neha Anil Bobde (Gadekar), (2013) 6 ABR 900 : (2013) 10 AD 174 : (2013) 11 SCALE 593 : (2013) 10 SCC 519 : (2014) 1 SCC(L&S) 842 : (2014) 1 SCT 295 , it has been held as under:-

"31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the regulations or the notification issued, the courts shall keep their hands off since those issues fall within the domain of the experts. This Court in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, AIR 1965 SC 491 : (1964) 4 SCR 575 , Tariq Islam Vs. Aligarh Muslim University and Others, AIR 2001 SC 3058 : (2001) 8 JT 459 : (2002) LabIC 566 : (2001) 7 SCALE 86 : (2001) 8 SCC 546 : (2002) 1 SLJ 343 : (2001) AIRSCW 4128 : (2001) 7 Supreme 401 and Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another, (2008) 8 JT 621 : (2008) 11 SCALE 211 : (2008) 9 SCC 284 : (2008) 2 SCC(L&S) 887 : (2009) 1 SLJ 109 : (2009) 8 SLR 640 , has taken the view that the court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the courts to leave the decision of the academic experts who are more familiar with the problem they face, than the courts generally are. UGC as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University."

Although the aforesaid decision was rendered in respect of fixing eligibility criteria for appointment as Lecturers and for awarding Junior Research Fellowship, the principle would equally apply in this case.

(vi) On the same principle, we may also refer to C.D. Govinda Rao (supra) and Medical Council of India Vs. Sarang and Others, (2001) 7 AD 93 : (2001) 7 JT 103 : (2001) 5 SCALE 542 : (2001) 8 SCC 427 : (2001) 4 SCT 332 : (2002) 1 UJ 50 : (2001) AIRSCW 3350 : (2001) 6 Supreme 521 .

23(i). Having answered the questions in the manner above, what is left for determination is prayer (a) in the Writ Petition whereby direction has been sought to be issued to the Respondent No. 1 to expeditiously dispose of the Petitioner-University's application for continuation of recognition dated 10-07-2012, Annexure P23. In this regard, we have noted that the Respondent No. 1, in response to the application of the Petitioner-University dated 10-07-2012, Annexure P23 and reminders dated 06-08-2012 and 06-09-2012, Annexure P24 (collectively), had conveyed vide letter dated 10-10-2012, Annexure P26, that the application was under process at DEC and, that the recognition granted up to the academic year 2011-12 having expired, no programme may be offered till a decision is taken by DEC. In the subsequent letter of the Respondent No. 1 dated 28-06-2013, Annexure P34, which is sought to be quashed vide prayer (bb) in the Writ Petition, it has further been conveyed that all Study Centres run by the Petitioner-University should be closed down and stop conducting courses under the Distance Mode till such time a policy is framed by the UGC in this regard.

(ii) Therefore, it is quite evident that the Respondent No. 1 or for that matter the Respondent No. 3, has not completely refused the request of the Petitioner-University. It has rather been stated that they should wait until the UGC framed a policy on the subject. It is an admitted position that by Notification dated 17-06-2013, Annexure P31, the UGC has adopted the "Guidelines of DEC on Minimum Requirements for Recognition of ODL Institutions" of the earlier DEC as an interim measure and, Regulation 3.3 of Regulations 2003 prescribes that in exceptional circumstances the University may be permitted to open Off-Campus Centres, Off-Shore Campuses and Study Centres after 5 (five) years of its coming into existence subject to fulfillment of the conditions stipulated in Sub-Clauses thereunder.

(iii) Apart from the above, it appears that after the Expert Committee visited the Petitioner-University on 23/24-05-2014, the UGC by its letter dated 22-10-2014, Annexure P52, had informed it of the deficiencies indicated in their report for rectification. In response thereto, the Petitioner-University had submitted its compliance report by letter dated 03-12-2014, Annexure P53, however, requesting that since it was likely to take 2 to 3 months' time for introducing specialisation in Campus Management Programmes and, one year for increasing the floor area for the DDE building, conditional approval be granted on the basis of an undertaking to comply with the observations of the UGC Committee. This

was followed by letter dated 03-01-2015, Annexure P54, of the Petitioner-University, conveying to the UGC compliance of some more of the observations of the Expert Committee. To this, the UGC by letter dated 30-01-2015, Annexure P55, informed the Petitioner-University that the compliance report submitted by it was not acceptable since it had not fully complied to most of the conditions suggested by the Expert Committee and requested resubmission of the compliance strictly as per UGC terms and conditions. The Petitioner-University in its reply again sought for consideration of its application based on the responses submitted by it earlier.

(iv) The case of the UGC is that the conditional recognition sought for by the Petitioner-University was not permissible in terms of the policy decision and directives of the Government of India dated 29-12-2012, Annexure P29, which prescribes under Point 5 of the Actionable Points of the Madhava Menon Committee attached thereto that "no conditional or post facto recognition to be granted". It is, therefore, the case of the UGC that in view of the specific policy directive of the Government of India, unless all deficiencies are first rectified, there is a restriction on UGC in granting permission. This, in our view, would also reveal that the request of the Petitioner-University has not been ruled out or refused by the UGC but, has only insisted on the rectification of the deficiencies before it can grant permission. This is also the stated case of the UGC both in its counter-affidavit as well as in the oral arguments advanced by Mr. Mariarputham.

(v) Under these circumstances, particularly when the UGC is yet to take a decision, we find no reason as to why the Petitioner-University should not approach the Respondent No. 3 for recognition of its programmes offered through Distance Mode.

24(i). Before finally concluding, it is essential to record here that some students of the Petitioner-University who have undergone studies in the DEP have approached this Court as Intervenors and were represented by Mr. P.N. Misra, Learned Senior Counsel. The Intervenors are students who passed out degree courses from the Petitioner-University through their Study Centre set up in Nepal, a foreign country. They have approached this Court in the present proceedings as the degrees issued by the Petitioner-University were not recognised by the Australian Government where they intended to pursue higher studies.

(ii) On a perusal of the application for intervention and the records, the Intervenors appear to be students who had commenced with their degree courses on and from the year 2010. While the Intervenors No. 1, 2 and 3 had commenced with their courses with effect from August, 2010 to July, 2013, the Intervenor No. 4 from February 2011 to January, 2013. The Intervenors No. 1 and 3 had undergone Bachelor of Business Administration (BBA), Intervenor No. 2 had undertaken bachelor of Science in Information Technology (BScIT) and the Intervenor No. 4 in Master of Business Administration (MBA) examinations. Thus, having undergone the courses when the Petitioner-University was offering

programmes on the recognition granted by the Respondent No. 1 through its Chairman for 3 (three) academic years commencing from 2009-10 to 2011-12, which was ratified by the Council in its 35th Meeting, they cannot be denied recognition of the degrees awarded to them by the Petitioner-University. This fact also appears to have been conveyed to the Respondent No. 1 by the Petitioner-University through its letter dated 25-10-2012, Annexure P27, apart from the fact that it had directed a freeze on new admissions on 09-10-2012 even before direction to that effect was issued by the Respondent No. 1 in its letter dated 10-10-2012, Annexure P26.

25(i). That apart, by order dated 22-02-2013, this Court in this very proceeding had stayed the operation of the condition "but not beyond the boundary of their respective States" contained in the minutes of the 40th Meeting of the DEC held on 08-06-2012 and that any consequential directions in this regard shall remain stayed and further that the Petitioner-University shall be permitted to continue to act in accordance with the communication dated 15-10-2009, Annexure P17. This interim order which was extended by order dated 19-07-2013 was confirmed on 07-11-2013 after impleadment of the UGC-Respondent No. 3 as a party after notice.

(ii) By order dated 13-04-2015 of this Court in CM Appl No. 33 of 2015 had further confirmed the aforesaid two orders, the relevant portion of which is as follows:-

"6. At this stage, Mr. Misra submits that by making an observation of de-recognition of the degrees of the intervenors, their job prospects are being jeopardized and they are being deprived of prosecuting their further studies, therefore, some protection may be granted to them.

7. There is no occasion for this Court to deliberate on this point in an application filed for permission to intervene in the main writ petition. However, it is observed that by interim order dated 22.02.2013 passed in W.P. (C) No. 04/2013, it has clearly been held by this Court that during the pendency of the Writ Petition, the operation of the condition "but not beyond the boundary of their respective States", which clearly relates to the territorial jurisdiction of the Petitioner-University, contained in the Minutes of 40th Meeting of the Distance Education Council of Indira Gandhi National Open University held on 08.06.2012, and any consequential direction in this regard shall remain stayed and the same order by a subsequent order dated 07.11.2013 has also been held to be binding on all the parties including the University Grants Commission (UGC). We are of the view that the earlier two interim orders would make the situation very clear and it is expected that all the parties concerned, including the UGC, would implement the said orders in their letter and spirit."

(iii) None of the Respondents have taken any steps to approach this Court for either alternation/modification or vacation of this order. They also do not appear to have approached the Hon"ble Supreme Court to get the above orders set

aside. Thus these orders having been confirmed, are held to be binding on all parties including the Respondent No. 3 as observed in order dated 13-04-2015.

(iv) So far as the case of the Intervenors are concerned, considering the facts and circumstances set out above, we are of the view that their degrees should stand protected as valid. This order would also apply to all the students who are in similarly placed as the Intervenors although they are not before us.

26. The decisions in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, AIR 1957 SC 628 : (1957) 1 SCR 930 , *The State of Bihar and Others Vs. Charusila Dasi*, AIR 1959 SC 1002 : (1959) 2 SCR 601 *Supp and Transport Corporation of India Vs. Employees" State Insurance Corpn. and Another*, AIR 2000 SC 238 : (1999) 9 JT 12 : (1999) 9 JT 112 : (2000) 1 LLJ 1 : (1999) 7 SCALE 63 : (2000) 1 SCC 332 : (2000) SCC(L&S) 121 : (1999) 4 SCR 393 *Supp* : (2000) 1 UJ 287 : (1999) AIRSCW 4340 : (1999) 9 Supreme 370 , cited on behalf of the Petitioner-University, in our view, have no application to the present case as the factual matrix on which those decisions were rendered are clearly distinguishable.

27. As regards the decision of the Hon"ble Madras High Court in *Annamalai University (supra)* referred to on behalf of the Petitioner-University, it appears from order dated 15-04-2015, copy of which was placed before us in the course of hearing, that the UGC and the DEC have preferred an Appeal before a Division Bench and is pending decision. The order clearly reflects notice having been issued with the direction that all appointments made by the University in the DEP for the Centres situated outside the territorial jurisdiction shall be subject to final decision of the Appeal. In any case, the question of territorial jurisdiction of Universities in respect of DEP having now been settled by the Apex Court in the decisions discussed earlier, the proceedings in the Hon"ble Madras High Court will be of no consequence.

28. As regards the case of *Jagdish Prasad Sharma (supra)*, we are inclined to agree with the Learned Senior Counsel for the Respondent No. 3-UGC, that it will be of no relevance to the present case as in that case the extra-territorial jurisdiction of the University under the Patna University Act, 1976, was not in question. The issue was when the Patna University Act which was passed under Entry 25 List III of the Seventh Schedule to the Constitution of India, already had a provision governing the age of the superannuation of teachers of the University, where the imposition of the scheme under the UGC Regulations on the same subject was permissible or not. The position being just the contrary to the one under consideration before us, the decision would certainly not be applicable to the case of the Petitioner-University.

29. For the aforesaid reasons, we hold that the Order of the Central Government dated 29-12-2012, Annexure P29, is valid and binding upon all Universities in the country, be it State or Private or Central Universities, being a policy decision of the Government. Notifications/Orders issued consequential thereto and also preceding those to the same effect or consistent therewith, are also held to be

valid and binding.

(i) Consequently, all prayers except prayer (a) alluded to above shall stand rejected.

(ii) The Petitioner-University shall approach the Respondent No. 3-UGC and Respondent No. 1-IGNOU for recognition of its programmes through ODL Mode.

(iii) If the Petitioner-University approaches them as directed, the Respondents shall dispose of the application expeditiously, preferably within a period of 6 (six) months, as per the prevailing Rules.

30. With these directions, the Writ Petition stands disposed of with no orders as to cost.