

(2015) 07 GAU CK 0047

In the Gauhati High Court

Case No : WA Nos. 116 and 254 of 2014

University Grants Commission and Others

APPELLANT

Vs

Punal Kumar Das and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

University Grants Commission Act, 1956 — Section 3, 3(2), 5

Citation : (2015) 4 GLT 150

Hon'ble Judges : K. Sreedhar Rao, Actg. C.J. and Prasanta Kumar Saikia, J.

Bench : Division Bench

Advocate : D. Saikia, Sr. Advocate, B. Choudhury, SC, A. Chamuah, P.P. Borthakur, R. Borah, U. Saikia, T. Madhukallya, M.K. Mishra and A. Das, for the Appellant; D. Saikia, M.P.K. Goswami, Senior Advocates, M.K. Mishra, D. Choudhury, B. Jha, B. Chodhury, T.P.R.K. Sungay, K.K. Choudhury, B.D. Goswami, G. Bokalia and D. Bora, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, Actg. C.J.

1. The Kuvempu University, established under the Karnataka State Universities Act, 2000, had established distant education study centres at Guwahati and also in other places. The respondent-petitioners were admitted to B.Sc. (IT) course. The issue in this case concerns itself to the study centers established at Guwahati. The students who were admitted to B.Sc. (IT) course through distance education programme were attending to the courses at study centers at Guwahati. It is the case of the respondent-petitioners that the courses offered in B.Sc. (IT) as a distance education method at the study centers in Assam was duly recognized by the Distant Education Council constituted under the Indira Gandhi National Open University Act, 1985. The petitioners successfully completed the course and passed in the examinations and degrees were awarded by the Kuvempu University. The petitioners applied for admission into Master of Computer Application (MCA) course in Cotton College State University. The

petitioners successfully passed the entrance examination and took admission. However, about two months after the admission, their admissions were cancelled by the Cotton College State University on the ground that they do not recognize the degree granted by the Kuvempu University since it is not in accordance with the DEC and the UGC guidelines. The respondent-petitioners, thus, aggrieved, filed a writ petition seeking mandamus against the Cotton College State University to restore their admission and permit them to pursue the course. An interim order was passed in the said writ petition directing the Cotton College State University to restore the admission and permit the petitioners to complete their course. It appears that the petitioners, who took the interim order, did not avail the benefit of the interim order and did not pursue the course saying that Cotton College State University refused to entertain them. However, no contempt proceedings have been initiated against the violation of the interim order. The learned Single Judge, after hearing all the parties in the writ petition, allowed the writ petition and held that the degree obtained by the respondent-petitioners is a valid degree in law.

2. The State of Assam, which has established the Cotton College State University, aggrieved by the said order, has filed Writ Appeal (WA 116/2014). The UGC also felt aggrieved by the order of the learned Single Judge, has filed Writ Appeal (WA 254/2014).

3. Mr. D. Saikia, learned Senior Counsel for the UGC, has made reference to the following Regulations of the UGC and the DEC to assail the order of the learned Single Judge:

"(1) The UGC Regulations of 1985 referred to the provisions of Section 3(2) , Sub-section (4) and Section 5 , which reads as follows:

"3(2) The headquarters of the University shall be at Delhi and it may establish or maintain colleges, Regional Centers and Study Centers at such other places in India as it may deem fit.

3(4) The University shall have perpetual succession and a common seal and shall sue and be sued by the said name."

"5. Powers of the University.

(1) The University shall have the following powers, namely:--

(i) to provide for instruction in such branches of knowledge, technology, vocations and professions as the University may determine from time to time and to make provision for research;

(ii) to plan and prescribe courses of study for degrees, diplomas, certificates or for any other purpose;

(iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and

Ordinances;

(iv) to confer honorary degrees or other distinctions in the manner laid down by the Statutes;

(v) to determine the manner in which distance education in relation to the academic programmes of the University may be organised;

(vi) to institute professorships, readerships, lectureships and other academic positions necessary for imparting instruction or for preparing educational material or for conducting other academic activities, including guidance, designing and delivery of course and evaluation of the work done by the students, and to appoint persons to such professorships, readerships, lectureships and other academic positions;

(vii) to co-operate with, and seek the cooperation of, other universities and institutions of higher learning, professional bodies and organisations for such purposes as the University considers necessary;

(viii) to institute and award fellowships, scholarships, prizes and such other awards for recognition of merit as the University may deem fit.

(ix) to establish and maintain such Regional Centres as may be determined by the University from time to time;

(x) to establish, maintain or recognise Study Centres in the manner laid down by the Statutes;

(xi) to provide for the preparation of instructional materials, including films, cassettes, tapes, video cassettes and other software;

(xii) to organise and conduct refresher courses, workshops, seminars and other programmes for teachers, lesson writers, evaluators and other academic staff;

(xiii) to recognise examinations of, or periods of study (whether in full or part) at, other universities, institutions or other places of higher learning as equivalent to examinations or periods of study in the University, and to withdraw such recognition at any time;

(xiv) to make provision for research and development in educational technology and related matters;

(xv) to create administrative, ministerial and other necessary posts and to make appointments thereto;

(xvi) to receive benefactions, donations and gifts and to acquire, hold, maintain and dispose of any property movable or immovable, including trust and Government property, for the purposes of the University;

(xvii) to borrow, with the approval of the Central Government whether on the security of the property of the University or otherwise, money for the purposes of

the University;

(xviii) to enter into, carry out, vary or cancel contracts;

(xix) to demand and receive such fees and other charges as may be laid down by the Ordinances;

(xx) to provide, control and maintain discipline among the students and all categories of employees and to lay down the conditions of service of such employees, including their codes of conduct;

(xxi) to recognise any institution of higher learning or studies for such purposes as the University may determine and to withdraw such recognition;

(xxii) to appoint, either on contract or otherwise, visiting Professors, Emeritus Professors, Consultants, fellows, scholars, artists, course writers and such other persons who may contribute to the advancement of the objects of the University;

(xxiii) to recognise persons working in other universities, institutions or organisations as teachers of the University on such terms and conditions as may be laid down by the Ordinances;

(xxiv) to determine standards and to specify conditions for the admission of students to courses of study of the University which may include examination, evaluation and any other method of testing;

(xxv) to make arrangements for the promotion of the general health and welfare of the employees;

(xxvi) to confer autonomous status on a College or a Regional Centre in the manner laid down by the Statutes;

(xxvii) to admit to its privileges any College in or outside India subject to such conditions as may be laid down by the Statutes;

Provided that no College shall be so admitted except with the prior approval of the Visitor;

(xxviii) to do all such acts as may be necessary or incidental to the exercise of all or any of the powers of the University as are necessary and conducive to the promotion of all or any of the objects of the University."

(2) The DEC guidelines were formulated under the Open and Distance Learning Programme of India (ODL) in 2006. Section 3.2 and 3.3 and 4.12, which reads as follows:

"3.2. That the parent institution which intends to start or which has already started Distance Education Institutions (DEIs) should have a provision in this Act/MoA for running Distance Education Programme(s):

Provided that the universities which have already started DEIs in absence of such provision in their Act, shall amend their Act to that extent.

3.3. That the parent institution shall not establish its Study Centers/Regional Centers outside its jurisdiction as specified in the parent institution Act/MoA. In case of Deemed to be universities the offering of distance education programmes will be confined to the State in which the main campus of the parent institution is located, except for programmes that are culturally and linguistically relevant even outside their State. Explicit approval of DEC should be obtained for offering such programmes.

4.12. Study Centre

The Directorate should establish well-equipped Study Centers as per DEC guidelines. These centers should preferably be established in colleges/academic institutions having adequate infrastructure within the geographic limits of the jurisdiction of the parent institution and not beyond it. There should be a proper justification for opening a Study Centre at a particular location."

(3) Since the degrees accorded are not in accordance with the Regulations and guidelines of UGC and the DEC, the degrees awarded to the respondent-petitioners are held to be invalid and they should not pursue any further course or seek employment on the basis of the said invalid degrees."

4. With reference to the above guidelines, it was argued that the study centers set up by the Kuvempu University at Guwahati are in total violation of the guidelines. The counsel referred to the MoU entered into between the Kuvempu University and the NUT and argued that the terms and conditions of the MoU are contrary to the guidelines and that the study centers are virtually in the nature of formal educational course and not in the nature of distance education mode. The study centers are effectively managed and conducted by the NIIT. The Kuvempu University had no effective control or role in conducting the study centers at Guwahati. Therefore, the conduct of Kuvempu University in franchising the study centers to be managed by the NUT is in blatant violation of the statutory guidelines of the DEC and the UGC. Therefore, the B.Sc. (IT) degree awarded to the respondent-petitioners in the year 2009-2012 are invalid in law.

5. The decision of the Supreme Court, in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, , is relied upon to contend that the legislative power of the State to legislate is limited to the territorial jurisdiction of the State concerned. In so far as the powers of the universities to have study centers or colleges outside the jurisdiction of the State can only be legislated by the Parliament and the State Acts giving such power to the State universities to establish study centers/off-shore campus is held to be bad in law and beyond the competence of the State legislature.

6. With regard to website information of the UGC regarding according of recognition to University/institutions for offering programme through distance mode, item No. 71 suggest only that there was recognition of an institution and there was no recognition for the B.Sc (IT) course as such. Therefore, the website material relied upon by the respondent-petitioners cannot be of any avail to

contend that the DEC and the UGC had recognized distance mode education conducted by Kuvempu University in the State of Assam.

7. In the light of the said submissions, it was argued that the learned Single Judge erred in holding that the degrees awarded by the Kuvempu University to the respondent-petitioners is valid in law and, hence, prays for allowing the appeal.

8. Shri M.K. Mishra, counsel appearing for the State of Assam, adopted the arguments of learned Senior Counsel Mr. D. Saikia in assailing the order of the learned Single Judge.

9. Shri P.K. Goswami, learned Senior counsel, appearing for the NUT (respondent 11), submits that the Kuvempu University in the year 2007 made an application for recognition of the programmes offered through distant mode and that the IGNOU accorded permission by its communications, dated 03.09.2007, 17.12.2009 and 29.03.2010, which read as follows:

"Prof. Swaraj Basu

Date 3.9.2007

Director Sub: Provisional Recognition

Dear Sir,

This has reference to your application to the Distance Education Council requesting for recognition of programmes offered through distance mode by your university.

We would like to inform you that your university has been granted provisional recognition for offering programmes (approved by the statutory bodies of your university) through distance mode for a period of one year w.e.f. the date of issue of this letter.

However, for recognition of your institution for offering programmes through distance mode in the next academic year i.e. from June-July 2008, you are requested to submit a fresh application in the prescribed format developed by the DEC which may be downloaded from the DEC website: www.dec.ac.in.

We would also like to inform you that the DEC has decided not to insist on territorial jurisdiction to be followed by institutions in Offering programmes through distance mode and on that matter universities should be governed by their own Acts and Statutes.

With regards,

Yours sincerely, Sd/- (Illegible) (Swaraj Basu).

Prof. S.A. Bari, Director Directorate of Distance Education Kuvempu University
Jnana Sahyadri Shankaraghatta-577 451. (Karnataka)"

"Prof. Manjulika Srivastava

Date 17.12.2009

Director

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

Dear Sir/Madam,

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

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

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

The DEC does not allow franchising of study centres.

Further, we would also like to mention that the territorial jurisdiction for offering distance education programmes would be as per Acts and Statutes of your University and in accordance with the UGC guidelines. Your Institutions shall also follow all norms/guidelines issued by the DEC for offering programmes through distance mode a copy of which is enclosed.

With regards,

Yours sincerely, Sd/- (Illegible) (Manjulika Srivastava)

To

The Vice Chancellor, Kuvempu University" "Prof. Manjulika Srivastava

29.03.2010

Director Notification

Sub: Territorial Jurisdiction in offering programmes through distance mode-reg.

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

decided that the latest UGC notifications will prevail over all previous notifications and circulars of the DEC.

On the requests received from various institutions offering programmes through distance mode requesting DEC to reconsider its decision on territorial jurisdiction the matter was referred to the Council for its consideration. In its 35th meeting the Council noted that distance education and online education cannot have the Territorial Jurisdiction. Further, it was decided that in case of Central Universities and the State Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode. The Territorial Jurisdiction in case of deemed universities will be as per UGC, which mandates the prior approval of the UGC for opening Centers/off campus centers outside the Headquarters. The Territorial Jurisdiction in case of Private Institutions (other than Universities) will be as decided by the Joint Committee.

This is issued with the approval of the Chairman, DEC.

Yours sincerely,

(Manjulika Srivastava)"

10. The learned Senior counsel refers to the communication issued by the UGC, dated 16.09.2013, to the Kuvempu University, which reads as follows:

"To

The Director Directorate of Distance Education Kuvempu University
Shankaraghatta-577451 Dist-Shimoga (Karnataka)

Subject: Issue of recognition of BSc (IT), BSc (ITIM) and MSc(IT) programmes offered by Kuvempu University Shimoga to distance mode in collaboration with NIIT-regarding.

Sir,

The undersigned is directed to refer to your letter date 11.09.2013 on the above subject requesting for certain information from the UGC with regard to certain courses run by the University and state as under:--

2. Attention is invited to Notification F. No. 1 -4/2013 (CPP-II), dated 17th June 2013 of University grants Commission with regard to transfer of regulatory functions of the Open and Distance Learning (ODL) system from Indira Gandhi National Open University (IGNOU) to UGC (copy enclosed).

3. The erstwhile Distance Education Council (DEC) had accorded provisional institutional recognition to the University in 2007-08 with respect to the programmes approved by the statutory bodies of the University through distance mode. This institutional recognition was valid till such time programme-wise recognition was to be granted by the DEC after conducting inspection under the DEC guidelines.

4. After conducting the inspection on 28th and 29th August, 2011, the recommendations of the Expert Committee (which conducted the inspection) were placed before the Tripartite Committee of UGC-AICTE-DEC and subsequently before the Distance Education Council which approved 31 programmes. The decision was communicated to the University vide letter No. DEC/KU/SHMG/KTK/09/11/14198-14200 dated 27.08.2012. The list of programmes included therein did not include the programmes referred to your aforementioned letter i.e. BSc (IT), BSc (ITIM) and MSc(IT).

5. In the light of the above, it is clarified that the recognition of the 3 programmes mentioned above offered by Kuvempu University in distance education mode during the period of institutional recognition leading to award of degrees would be valid provided the programmes were approved by the Statutory Bodies of the University and offered within the territorial limits stipulated by DEC, till the period the University received programme-wise recognition by the erstwhile DEC. Further, DEC has always maintained that franchising of study centers is, prohibited and this has also been communicated to the University from time to time.

Yours faithfully,

(Vandana Varma), Asst Director, Distance Education Bureau, UGC".

11. In the light of the said communications, it is argued that the open university as well the UGC both had accorded sanction for conducting programmes by Kuvempu University by distance mode from the year 2007 onwards.

12. With reference to the DEC guidelines, it is argued that the accord of permission is in consonance with the DEC guidelines of 2009. The guidelines regarding institutions that needed approval is as follows:

"I. Institutions that need approval.

The types of institutions that offer or intend to offer education through distance mode need approval from the Distance Education Council are as follows:

National/State Open Universities

DEIs in conventional universities established by

Act of Parliament or State Legislature

Deemed to be universities declared by the Central Government under Section 3 of the University Grants Commission Act, 1956

Institutions of National Importance under an Act of Parliament

Other ODL Institutions of higher learning which are recognized by Central/State Government/statutory councils.

For recognition purposes mainly processes and infrastructure facilities of the

institution will be considered which inter alia include the following:

- i. The study material is as per the level of award for which it is prepared matches the credit worth as prescribed by the DEC.
- ii. The study material is in Self-Learning Format as per DEC Guidelines;
- iii. Core faculty is in position as per the DEC guidelines;
- iv. In case of Professional/Specific Programmes norms/guidelines of the respective apex body are to be followed and approval/recognition sought, wherever necessary.
- v. Institution follows criteria like eligibility for admission, duration of the programme etc as per guidelines of the respective apex bodies;
- vi. Hands-on experiences/practicals are arranged as per requirements of the programme/course.
- vii. Study centers are not franchised. Admissions, examinations and evaluations are managed by the parent institution.

II. Procedure to be followed by ODL institutions for seeking recognition from Dec.

1. The application is to be submitted in the prescribed formant through:

The Registrar,

Director/Secretary of the Governing Body in case of other institutions.

2. All proposals received may be scrutinized and deficiencies, if any, will be communicated to the institution for rectification.

3. Once the application is complete in all respects and found satisfactory, DEC may constitute a committee for an on-site assessment.

4. The committee may have a nominee of UGC and a nominee from AICTE for institutions with Technical and Professional Programmes.

5. Seven hard copies along with a soft copy of the filled in formant need to be sent to the DEC.

6. The ODLI should justify its claims in the application submitted for recognition by the DEC for recognition and providing documentary evidences for the same to be provided to the committee visiting them.

7. The committee shall give a detailed report and justify its findings/recommendations with supporting documentary evidence.

8. On the recommendations of the assessment Committee, the DEC shall consider grant of recognition status to the institution.

9. The decision on the recommendations recognition along with recommendations of the committee will be communicated to the ODL institution.

10. The institution is required to give an undertaking that it will comply with the conditions of recognition prescribed by the DEC.

11. The recognition means that the institution is fit to offer distance education programmes and the qualifications awarded by it are recognized by the DEC.

12. The recognition is valid for a period of three years unless specified otherwise by the DEC

13. Application fee of Rs. One lakh by demand draft payable to IGNOU at New Delhi has to be submitted by Universities/Institutions other than those run/managed by the State/Central Government

III. Withdrawal of recognition status.

If the institution fails to comply with the conditions of recognition or if it is found conducting affairs in a manner that leads to deterioration of academic standards, DEC may withdraw the recognition status.

In case, any information, documentary evidence submitted/produced by the university/institution is found to be false or fake at a later stage, the recognition of the university/institution shall be withdrawn and the university/institution concerned shall be solely responsible for the career of the students enrolled."

13. In the said guidelines, it is further stipulated that if the institution fails to comply with the conditions of recognition or if it is found conducting affairs in a manner that leads to deterioration of academic standards, the DEC may withdraw the recognition status.

14. In the light of the said guidelines, it is argued that in the distance mode education, education centers are permitted to be open and standards are fixed for conducting the Courses. The guidelines strictly prohibit franchising the centers to some other agency and if there is any violation of the stipulation in the guidelines, the UGC could take action against the university concerned. However, the UGC has no right to hold that the degree awarded is invalid nor can argue that the Court should hold that the degree awarded is invalid.

15. The tripartite MoU entered between the Kuvempu University, the NIIT and the Trust created by the University nowhere disclose that vital requirements of selection of faculty, prescription of course material, conduct of examination, evaluation of papers have been outsourced to NIIT. The Kuvempu University has retained all the vital functions prescribed under the guidelines and the NIIT had only offered faculty as chosen by the University and the distance education courses conducted were fully in accordance with the guidelines of the UGC and the DEC and there has not been any element of franchising in favour of the NIIT. Neither the UGC nor the State of Assam as respondents in the writ petition can hold that the degrees awarded are invalid. The UGC if at all found that Kuvempu University had violated any of the guidelines, proper action, as per the UGC guidelines, should have been taken against the Kuvempu University, The UGC

has no right to de-recognise the degree nor seek intervention of the Court to de-recognise the degree. The UGC has never initiated any action against the Kuvempu University for violation of the guidelines.

16. The counsel referred to the website information regarding recognition accorded to the University for offering programmes through distance education mode. The Kuvempu University is shown to have recognized to conduct the programme through distance education mode. The said information also discloses that the DEC had earlier given such recognition and that the recognition came to be continued provisionally till 2012. The DEC modified their norms and only distant education programme mode was permitted in respect of 31 subjects in which B.Sc (IT) is not included by its communication dated 27.08.2012. Hence, Kuvempu University after the date of the said communication, discontinued distance education centre in B.Sc. (IT) at Guwahati. The respondents, in question, who pursued the course for the period during which there was a provisional recognition are deemed to have acquired valid degrees and it is not permissible for the UGC or the State of Assam to argue that the degrees awarded are invalid in law in view of the provisional institutional recognition granted by the DEC and the UGC.

17. Shri R.K. Sungay, counsel for the Kuvempu University, adopted the arguments of Mr. P.K. Goswami, Senior counsel in supporting the judgment of the learned Single Judge.

18. The respondent 2 and 5 in this appeal have graduated from the offshore centre of the Sikkim Manipal University(SMU) situated at Jorhat. The SMU is a private university established by an Act of the legislature of the state of Sikkim.

19. Indira Gandhi National Open University (IGNOU) by its communication dated 24th May, 2010 has approved the distance education course of the SMU for a period of three years. The said communication is as follows.

"With reference to the 35th meeting of the Distance Education Council held on 10th March, 2010, I am conveying herewith the decisions of the above mentioned meeting.

i) Territorial Jurisdiction for Distance Education Programme: (Item 35.01) The Council resolved that the Distance Education and On-line education cannot have the territorial jurisdiction and in the case of Central Universities and State Universities, the territorial jurisdiction shall be as per the Act, Statutes and distance education regulations of the respective Universities for all their programmes.

ii) Recognition of Sikkim Manipal University Health Medical & Technological Sciences Distance Education Programme: The Distance Education Council noted the acceptance of the compliance report submitted by the Sikkim Manipal University of Health Medical & Technological Sciences in response to the UGC-AICTE-DEC Joint Committee's recommendations. The Council ratified the

decision(item 35.06.vi) taken by the Chairman in accepting the compliance report and accorded recognition for a period of 3 years w.e.f. 2009-10 to 2011-2012. The University may offer the programmes following these provisions."

20. The Distance Education Council has also accorded the necessary permission as per the communication dated 15th October, 2009, which reads as follows:

"This is in continuation with our earlier communication No. F. No. DEC/Recog/2009/3297, dated 17.09.2009 with reference to your application seeking recognition of Distance Education Council for offering programmes through distance education mode. Further to your request, I have been directed to inform you that based on the acceptance of the compliance report submitted by you, the Chairman, Distance Education Council, has been pleased to accord recognition to your university for a period of three academic years w.e.f. academic year 2009-10 to academic year 2011-12 for offering programmes through distance education mode:

The university/institution may note that:

1. The university will offer only such programme through distance mode which are offered by the institution through regular face-to-face mode.
2. The nomenclature of the programmes should be strictly as prescribed by the UGC/AICTE.
3. The eligibility conditions and duration of programmes will be as per the DEC norms and for professional and technical programmes as per the norms laid down by the AICTE. No admission to MBA/PGBDM programme can be done without ensuring that the student has secured a valid score in the entrance test examination for this purpose.
4. The institution shall limit admission to maximum 60 seats per programme per study centre for Management, Computer & IT and Allied Health Sciences programmes. For laboratory/Practical work, the institution can have a maximum 30 students in a batch subject to maximum 60 students per study centre. The study centre be owned by the university and should be opened with the approval of EC/BOM of the university concerned.
5. The university should have at least one full time faculty member exclusively for coordinating each programme.
6. Regarding territorial jurisdiction for offering programmes through distance mode the latest UGC notifications will prevail over all previous notifications and circulars. As per the UGC notification, State Universities (both private as well as Govt. funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in no case outside the state. However, Deemed Universities may seek the permission to open off campus centers in other states and offer distance education programmes through the approved off campuses only after approval of UGC and DEC. Central Universities will also

adhere to the UGC norms. The territorial jurisdiction for the institutions (both private as well as Govt. funded) shall be the Headquarters and in no case outside the State.

7. The Distance Education Council prohibits franchising of Study Centers. Thus, your university will not franchise any study centre.

8. The university's management of the distance education programmes will be open for review and inspection from time to time by DEC to provide inputs for further improvement or as deemed necessary. The academic norms of the programmes shall be under monitoring and regulation by the concerned regulatory authorities.

9. For Management and Computer Science programmes, the institution should also note that

The programme should have a mandatory internship of six months;

Institute/University concerned should seek accreditation from National Board of Accreditation as per prevailing rules;

Institute/University concerned should have concerned Department and the conventional universities should have on campus programme on offer;

Institute/University concerned should not have advertised for the programmes before receiving the approval letter;

Institute/University concerned should disclose, online, in public domain the details of the student admitted, center-wise, as per the formant to be prescribed by the AICTE;

Institute/University concerned should ensure delivery of the course material on-line with the one year of the date of approval.

10. The programmes approved by DEC will be intimated to you separately.

It may be noted that before launching the programme the university should submit an affidavit within 30 days from date of issue of this letter that it agrees to and will abide by all terms and conditions contained in this letter. In case, the DEC does not receive the affidavit within 30 days from the date of issue of this letter, the approval accorded to your institution will be considered as withdrawn. Further, if it is found that the university is flouting any norms, then the recognition accorded to your university will be withdrawn without any notice.

Thanking you,

Yours faithfully, (Manjulika Srivastava) Director, DEC"

21. In the light of the said recognition Shri BD Goswami, the counsel for the Sikkim Manipal University, argued that the degrees granted to respondent 2 and 5 are valid in law and they cannot be set aside.

22. Upon thorough consideration of the rival contentions the following propositions arise for consideration.

"(i) Whether the study centres opened by Kuvempu University at Panbazar and Ganeshguri in Guwahati is in accordance with law.

(ii) Whether the private respondents who took degrees in BSc (IT) from Kuvempu University and Sikkim Manipal University have acquired valid degrees.

(iii) Whether the University Grants Commission can seek a relief that the degrees granted by Kuvempu University and Sikkim Manipal University to the respondents who have undergone courses at their study centres at Guwahati and Jorhat is illegal, since the study centres were not run in conformity with the guidelines of the University Grants Commission and the Distance Education Council.

(iv) Whether the state legislation permitting study centres outside its jurisdiction suffers from lack of legislative competence in view of the decision of the Supreme Court in Yaspal case (supra)."

23. The Karnataka State University Act and as well the Sikkim Manipal University Act empower the universities in question to have study centres outside their jurisdiction. The UGC and the DEC guidelines do permit distance education mode by having study centres outside their jurisdiction upon fulfillment of certain conditions. There is mounting criticism against the Kuvempu University that its study centres in Guwahati are virtually imparting formal education and not distance education.

24. It is argued that the MoU entered into between the Kuvempu University and the NIIT discloses that it is virtually in the nature of a franchisee, not permitted by the guidelines of the UGC and the DEC. However, upon thorough consideration of the terms of the MoU and the guidelines of the UGC and the DEC we do not find that there has been any violation of the guidelines. The course in question is a technical course. Unlike the social science it requires a part-time formal training in practicals. The approvals given by the DEC and the UGC are produced by the respondents. The DEC in particular in its correspondence has approved opening of study centres outside its jurisdiction if the Act under which the university is established permits such study centres outside its jurisdiction. Indeed, both the said Acts permit the Universities to have study centres outside its jurisdiction.

25. The website of the UGC relating to Kuvempu University shows that a provisional permission was given for opening of the courses outside its jurisdiction. It appears that the UGC from the year 2013 has revised its policy and did not accord permission for opening the courses by distance education mode in respect of BSc(IT) course. The said course was deleted from the list of approved courses. It is therefore the contention of the Kuvempu University that subsequent to 2013, they have discontinued the courses at the study centres

outside its jurisdiction in respect of BSc(IT) course. The respondents are ones who have graduated from the university during the currency of the approval. The case of respondent 2 and 5 who have graduated from the SMU also passed out their course during the currency of the approval.

26. The MoU and the material produced disclose that the syllabus, faculty selection, setting of question paper for examination, evaluation of answer-sheets, modulation and declaration of results, grant of degrees have all been done by the Kuvempu University and as well the Sikkim Manipal University. It may be that the NIIT had collaborated and extended cooperation in offering faculty services; however, the said faculty services were also under the effective control and supervision of the university concerned. In that view, there appears to be no violation of the guidelines of the DEC and UGC. The question arises whether the said legislations which permit the university concerned to have study centres outside the territorial jurisdiction suffer from legislative competence is the one that requires serious consideration.

27. The Supreme Court in *Yaspal* case (supra) has laid down that the competence of the state legislatures to make laws is only within the territorial jurisdiction of the state. For the State Universities to have study centres or offshore campus outside the state is to be within the domain of the Central Government. In *Yaspal* case (supra) the state created private universities are authorised to have their offshore campus. There is no approval from the DEC and the UGC. Here (in the instant case) the UGC and the DEC are created by the Central enactments and under the said enactments they have been authorised to regulate and to grant permissions to the universities to have their study centres outside their jurisdiction provided the state Acts empower them to do so. In that context whatever permission granted by the UGC and the DEC should be deemed to be one authorised by the Central legislation. The ratio laid down by the Supreme Court in *Yaspal* case (supra) does not have any application to the facts of the present case. It needs to be academically considered that under the scheme of the UGC Act the UGC is the competent authority to recognise universities and also the courses. If there is any violation of the guidelines the UGC can withdraw the recognition. The UGC has got effective supervisory role to enforce the compliance of its guidelines by the universities to whom it has granted recognition. Certain amount of arguments were canvassed that the study centres were not run in accordance with the guidelines and it was purely based on the MoU entered into between the Kuvempu University and the NUT. The wholesome reading of the MoU does not disclose that there is any violation of the guidelines, however, in practice if there was any violation the UGC should have made regular inspections to detect any breach and timely action should have been taken against the university concerned violating the directions and the guidelines. In this case the UGC does not appear to have done the diligent exercise. Henceforth, the UGC should make periodical inspections(at least twice a year) to inspect all the universities and the institutions to whom it has accorded permission to find out whether there is proper adherence to the guidelines and

the norms and such regular checks by the UGC would prevent the illegal growth of study centres or the offshore campuses and ultimately it would be for the benefit of the innocent students who becomes the victim of the illegal study centres or the offshore campuses. With these observations we find no merit in the appeal filed by the State and the UGC. Accordingly, the appeals are dismissed.