

(2007) 08 MP CK 0077
In the Madhya Pradesh High Court

Uttaranchal Education Trade and Technology Pvt. Ltd.	APPELLANT
Vs	
State of M.P. and Others Canam Technologies Ltd. Vs Union of India (UOI) and Others	RESPONDENT

Date of Decision : 06-08-2007

Acts Referred:

Constitution of India, 1950 — Article 245
INDIRA GANDHI NATIONAL OPEN UNIVERSITY ACT, 1985 — Section 1, 2, 24, 28, 3

Citation : (2007) 4 MPLJ 54

Hon'ble Judges : S.R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Regard being had to the similitude of questions of law involved in the writ petition as well as in the writ appeal they were heard analogously and are disposed of by this singular order. For the sake of clarity and convenience the facts in the writ petition are adverted to, herein.

The petitioner is a company incorporated under the Companies Act, 1956 having its registered office at Chandigarh. The said company has set up study centres on behalf of Madhya Pradesh Bhoj (Open) University, respondent No. 2 herein, at Ludhiana and Chandigarh. The said study centres commenced their functioning in the year 2003. The said University had come into existence by the Madhya Pradesh Bhoj (Open) University Adhiniyam, 1991 [for brevity `the 1991 Act']. It had set up its various study centres all over India under the Distance Education Programme undertaken by it. The said University authorised only such study centres which met the prescribed norms/parameters for setting up of such study centres and for imparting education/training to the students enrolled therein. The study material was provided by the respondent No. 2. After completion of the study course the University allotted the roll numbers and the eligible candidates were admitted to the examination conducted by the University and were awarded

degree/diploma by it depending upon the course undertaken by the study centres. After following the said procedure the respondent University had approved the setting up of two study centres in the name and style of Canam Academy at Ludhiana and Chandigarh. In this regard an agreement was entered into between the petitioner and the University as per Annexure-P/1, dated 8-8-2003. The agreement was for a period of five years and to remain in force till the year 2008.

It is pleaded that in terms of the aforesaid agreement dated 8-8-2003 two study centres were established at Ludhiana and Chandigarh. The courses authorised at the said centres were M.Sc. (Physics), M.Sc. (Chemistry) (2 years), M.Sc. (Botany) (2 years), M.Sc. (Maths) (2 years), M.Sc. (IT) (2 years), M.Com. (Management) (2 years), M.A. (English) (2 years), M.A. (Political Science) (2 years), M.A. (History) (2 years), M.A. (Sociology) (2 years), B.Sc. (Biology), B.Sc. (Maths), B.Sc. (IT), B.Com, B.A., MBA, BBA, BCA and various other Postgraduate Diplomas and Degrees and the duration of the course was two years.

It is contended that at no point of time there was any grievance against the petitioner and many students have been enrolled since 2003 and the institution has successfully completed the academic sessions for the year 2003-2004, 2004-2005 and 2005-2006. The respondent-University published the admission schedule and as per academic session 2005-2006. The admission commenced in the month of July, 2000 and was scheduled to be concluded in the next July. It is averred that 194 students have already been awarded degrees/diplomas by the respondent-University and the rest of the students are pursuing their studies at the study centres set up by the petitioner. In the year 2005 a doubt emerged in the mind of students as regards recognition and equivalence of the degrees/diplomas being awarded by the respondent-University under its education programme. The matter was taken up by the petitioner and the University and the University vide communication dated 8/9-11-2005, Annexure-P/3 intimated that the degrees/diplomas/certificates awarded by the University were equivalent to the corresponding awards of the other Universities. With the commencement of the new academic session the students desirous of seeking admission in various courses started making queries and were provisionally enrolled.

When the matter stood thus, the petitioner was shocked to receive communication dated 3-7-2006 collectively brought on record as Annexure-P/4 by which the petitioner was intimated that the Board of Management of the University in its meeting held on 3-7-2006 has decided not to invite fresh applications for new admission for the academic session 2006-2007 on its approved study centres. It was also mentioned therein the agreement between the petitioner and the University had expired in the academic session 2005-2006.

It is urged by the writ petitioner that it has not been conveyed a copy of the decision of the Board of Management of the respondent No. 2. A representation dated 22-7-2006 was sent to the Registrar of the University and there has been

refusal to send the same on the ground that it is an internal document.

It is further urged that on a scrutiny of Annexure-P/6 it transpires that the impugned communication dated 3-7-2006 has emanated from the University on the directives issued by the Distance Education Council of the Indira Gandhi National Open University [for short 'the IGNOU']. A reference has been made to various provisions of the Indira Gandhi Open University Act, 1985. It is contended that Distance Education Council is one of the authorities of the University and was set up in the year 1991 and after its formation the distance Education Council attempted to enlarge the jurisdiction by seeking to control the distance education programme being run by other States/Private Universities. The Distance Education Council issued a circular in the year 2004 as per Annexure-P/7 notifying that other universities were required to obtain prior approval from the Distance Education Council of the IGNOU before commencing a course/programme failing which any degree/diploma/certificate awarded would not be recognised for higher education or employment in the Government services. Subsequently the said Council published a circular dated 26-11-2005 notifying that it was incumbent on all the universities/institutions to seek approval of the Distance Education Council. A copy of the circular dated 26-11-2005 would reveal that the said universities were intimated that they could not be permitted to operate beyond the territorial jurisdiction of the State.

It is the case of the writ petitioner that duration and nomenclature of a particular course is laid down by the University Grant Commission Act, 1956 [for short 'the 1956 Act']. It is further put forth that similar controversy arose with regard to Punjab Technical University enacted by the State of Punjab which has been operating its own study centres in the State of Himanchal Pradesh. The directives issued by the IGNOU were challenged before the High Court of Himanchal Pradesh and a Division Bench by way of an interim arrangement had directed stay of the communication dated 501-2006 and 26-11-2005. The said order passed by the High Court was challenged by the IGNOU in the SLP(Civil) No. 7300/06 which came to be dismissed on 5-5-2006. It is contended that the respondent-University has succumbed to the pressure of IGNOU and the Distance Education Council thereof and issued the communication dated 3-7-2006 though it has no sanctity of law inasmuch as it has been issued at the instance of Distance Education Council which has no jurisdiction or authority to control and regulate the functioning of the respondent No. 2 and its study centres.

It is also highlighted that the communication dated 3-7-2006 proceeds on the erroneous assumption that the agreement executed between the parties has expired whereas on a perusal of the agreement dated 8-8-2003 it is vivid that the same is to remain in force for a period of five years and unless extended, is to be automatically terminated. It is also put forth that the respondent-University has issued such directives without affording an opportunity of hearing to the petitioner and that violates the principles of natural justice and hence, the said order is unsustainable. It is also set forth that the academic session for the

year 2006-2007 has already commenced and, therefore, it was not open to the University to have terminated the agreement particularly when the same affects the right of thousands of students who are currently undergoing the study course and also those who have been seeking admission in the current academic session. It is also the case of the writ petitioner that closure of the study centres by the respondent No. 2, University would also affect the credibility of the degree/diploma/certificate obtained by the students for the purposes of their employment and for pursuing higher studies. In this backdrop a prayer has been made for issue of a writ of certiorari for quashment of the communication dated 3-7-2006, Annexure-P/4 and to issue a writ mandamus to the respondents No. 3 and 5, the IGNOU and the Distance Education Council of the said University to restrain itself in the programme carried out by the second respondent and further to issue a command to the second respondent, Bhoj (Open) University to permit fresh admission and to enroll the students for the academic session 2006-2007.

A counter affidavit has been filed by the respondent No. 2 contending, inter alia, that the University had agreed to confer the benefit of recognition to the petitioner as an associated study centre for the courses mentioned in the Schedule I of the agreement between the University and the petitioner. The petitioner was permitted for providing education on the distance learning course in respect of all the courses. The Distance Education Council vide letter dated 3-01-2006 and 5-01-2006 had issued some directions in the light of the judgment of the Supreme Court that the State Open Universities cannot set up study centres out of their respective States and their jurisdiction is within the State and hence, the state open universities should not establish study centres outside their territorial jurisdiction. It is also mentioned in the above communication that as per Govt. of India gazette notification dated 1-03-1995 it was mandatory for all the state open universities and distance education institutions to seek prior approval from the Distance Education Council for establishment of study centres outside the State. The matter was referred to the Board of Management of the respondent No. 2 and the Board of Management in its meeting on 3-6-2006 took the decision that all study centres established/recognised by the University out of M.P. be directed that they shall not invite fresh application for new admission in any course for the academic year 2006-2007. However, admissions given in the earlier session would continue in accordance with the memorandum of understanding till duration of completion of respective course. It is put forth that duration of B.Sc.(Biology), B.Sc. (IT), B.Sc. (Maths), B.Com., B.A., MBA, BBA, BCA courses are three years and the admission given in the earlier session 2005-2006 in the above courses will be completed in the year 2008 and, therefore, no admission would be given to the fresh students. The respondent No. 2 had issued directions well in time to all the study centres situated outside the State of M.P. and by the said correspondence interested students have taken admission in the earlier session have been protected till completion of their respective courses. Emphasis has been laid in the communication made by the

IGNOU as per its letter dated 3-01-2006 and 5-01-2006 which have been brought on record.

A return has been filed by the respondents No. 3 and 5 stating, inter alia, that the main dispute is between the petitioner and the respondent No. 2 and the only controversy that requires to be answered by the respondents No. 3 and 5 is whether they can control the distance education programme being run by the University formed under the State statute. The respondent No. 3, IGNOU, has been established through an Act No. 50 of 1985 enacted by the Parliament under the title of [The] Indira Gandhi National Open University Act, 1985 (hereinafter referred to as 'the IGNOU Act'). The primary purpose of the IGNOU Act as is evident from the Preamble and various provisions to act as a nodal agency for coordination and determination of standards in the open university and distance education system. A reference has been made to the Preamble and sections 4 5 and 24 of the IGNOU Act. It is averred that from the language employed in the statute the respondents are duty-bound for co-ordinated development of the open universities and distant education centres all over the country. The respondent No. 3 created a statute u/s 28 of the IGNOU Act for the purpose of establishing the answering respondent No. 5. Under the said statute the respondent No. 5 is responsible for promotion and coordination of the open universities and distance education centres and for determination of its standard. For the purposes of co-ordination with the open universities and distance education centres it is imperative for the answering respondents to issue guidelines to such open universities and study centres. A reference has been made to Statute 4 which deals with powers and functions of the Distance Education Council. Placing reliance on the said provision it is asseverated that the said authorities have the power to supervise and maintain the standard of education in the distance mode of learning launched by the University inasmuch as the distance education system does not suffer due to commercialisation of the teaching mechanism.

It is further put forth that the respondent No. 5 has framed guidelines viz. DEC-Guidelines, 2006 for regulating the establishment and operation of open and distance learning institutions in India. One of the guidelines provided under the Statute is that a distance education institution should be located within the territorial limits of the university to which it is affiliated. Reference has been made to paragraph 4.12 of the guidelines which deals with 'study centre'. It is set forth that establishment of distance education centre outside the geographical limits of the parent university is not permissible. Reference has been made to the decisions rendered in Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, and Rai University Vs. State of Chhattisgarh and Others, . Relying on the said citations it is manifest that the only recourse open to the petitioner is to seek affiliation with any of the university which has jurisdiction over the area where the petitioners-institutions are functioning. It is contended that the respondent No. 2, University has been established under the Madhya Pradesh Bhoj (Open) University Adhiniyam, 1991 for the purpose of encouraging open

universities and distance education systems within the State and, therefore, the said University falls within the framework of Section 4 of the IGNOU Act for the purposes of coordination of distance education systems and accordingly regulated by answering respondents and further in view of the Apex Court's judgments the said University cannot have any off-campus centre outside the territorial jurisdiction of the State of Madhya Pradesh under its auspices.

We have heard Mr. Kishore Shrivastava, learned Senior Counsel along with Mr. Prem Francis for the petitioner, Mr. Uttam Maheshwari, for the respondents No. 3 and 5 and Mr. Dharmendra Sharma, learned Assistant Solicitor General along with Mr. Mohan Sausarkar for the Union of India. We have heard Mr. Rohit Arya, learned Senior Counsel in the writ appeal.

Mr. Rohit Arya, learned Senior Counsel appearing in the Writ Appeal has raised the following contentions:

- a) The learned Single Judge has fallen into error by coming to hold that after expiry of the duration provided in the agreement, the appellant, study centre, has no right to seek extension.
- b) The prime and paramount object of the 1991 Act is to reach out to the people distantly located who are deprived of education by opening of distance education centres and that is why the concept of open university emerged in the early 1990s and by no stretch of imagination the jurisdiction of the University can be curtailed and restricted.
- c) The Distance Education Council established under the 1991 Act has a role to safeguard the interest of the students and ensure the quality of education as per its guidelines and once the study centres are opened with the guidelines issued by the Distance Education Council and norms are met with there cannot be a denial of affiliation by the University.
- d) The University has no authority to close down the study centres before expiration of the duration stipulated in the agreement that had been entered into between the study centres and the University.
- e) The stand and stance taken by the University that it cannot operate or function beyond its territorial limits is unacceptable once it has entered into an agreement with the study centres.
- f) The respondent No. 2 is recognised by the University Grant Commission and it has the authority to issue degrees/diplomas/certificates as recognised by the Association of Indian Universities and, therefore, it has the authority to open the study centres.

Mr. Kishore Shrivastava, learned senior counsel for the study centres have raised the following contentions:

- i) The action taken by the the second respondent, the University is totally unjust and improper inasmuch as it had acted upon the directives issued by the

Distance Education Council for IGNOU though it is not bound by it.

ii) The Distance Education Council for IGNOU has no authority to control and function the distance education programme of the other State universities.

iii) If sections 4 and 5 of the 1991 Act are studied in proper perspective it is quite patent that there is no prohibition to have study centres and to encourage the distance education system in the educational pattern of the State. The dictionary clause contained in Section 2(f) and 2(r) which defines distance education and the university go a long way to confer jurisdiction on the University to have study centres anywhere in India.

iv) The definition of distance education system as occurs in the IGNOU Act includes broadcasting, telecasting and correspondence courses etc. and if the broad definition is taken into consideration there can be no trace of doubt that any university which has the jurisdiction to impart distance education system can have the study centres.

v) The object of the IGNOU as provided u/s 4 is to advance and disseminate learning and knowledge and with the advancement of communication technology the territorial conception has to melt into insignificance.

vi) Section 5(2) of the 1991 Adhiniyam has to be read in correct perspective to understand and appreciate that the Bhoj (Open) University has to strive for co-operation with the IGNOU and, therefore, it can open study centres at the various study centres.

vii) Section 5(viii), (ix) and (x) have to be given due meaning inasmuch as it authorises the IGNOU to establish, maintain and recognise study centres in the manner laid down by the statutes and the statutes would include a statute enacted by the State Legislature and further it is the obligation of the University to establish and maintain such regional centres as may be determined by the University from time to time.

viii) The law laid down in the case of Rai University (*supra*) and Prof. Yashpal (*supra*) do not prohibit opening of study centres by an Open University at other places beyond its territory as an Open University has a different connotation altogether inasmuch as the concept of distance education system is inherent in it.

To appreciate the submissions raised at the Bar, it is appropriate to reproduce Sections 2(e) 2(m) 2(o) and 2(q) of the IGNOU Act. Section 4 of the said Act deals with the object of the University. The said provisions read as under:

2. (a) xx xx xx

(b) xx xx xx

(e) distance education system means the system of imparting education through any means of communication, such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or the combination of any two or more

of such means; (f) xx xx xx

(m) Statutes and Ordinances mean, respectively, the Statutes and Ordinances of the University for the time being;

(n) xx xx

(o) Study Centre means a centre established maintained or recognised by the University for the purpose of advising, counselling or for rendering any other assistance required by the students;

(p) xx xx xx

(q) University means the Indira Gandhi National Open University established under this Act.

xxxx

The objects of the University.-The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and distance education systems in the educational pattern of the country and to co-ordinate and determine the standards in such systems in the First Schedule.

Section 5 deals with powers of the university. Sections 5(1)(vii),(viii), (ix) and (x) read as under:

5. Powers of the University. (1)-The University shall have the following powers, namely

(i) xx xx xx

(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.

In this context we may refer with profit to the definition occurring in Section 2(f) 2(k) and 2(r) of the 1991 Act. They read as under:

2. Definitions.

(a) xx xx xx

(f) Distance education system means the system of imparting education through any means of communication, such as broadcasting, telecasting, audio visual means, audio methods, correspondence courses, seminars, contact programmes or the combination of any two or more of such means;

(g) xx xx

(k) Regional Centre means a centre established or maintained by the University for the purpose of coordinating and supervising the work of Study Centres in any region and for performing such other functions as may be conferred on such centre by the Board of Management.

(l) xx xx

(r) Indira Gandhi National Open University means the University established u/s of the Indira Gandhi National Open University Act, 1985 (No. 50 of 1985).

Section 4 of the 1991 Act deals with object of the University. Sections 5(vi), (ix) and (xxiv) to which our attention has been invited read as under:

4. The objects of the University. -The objects of the University shall be

(i) to advance and disseminate learning and knowledge by different means, including the use of any communication technology;

(ii) to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally;

(iii) to encourage the open University and distance education systems in the educational pattern of the State.

(5) Powers of the University.

(i) xx xx xx

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

(x) xx xx xx

(xxiv) 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.

Sub-section (ii) of Section 5 of the 1991 Act on which Mr. Shrivastava has laid immense emphasis reads as under:

5. (i) xx xx

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

Be it noted, relying on these provisions a stand has been taken that the action

taken by the Bhoj (Open) University is totally unjustified. At this juncture we would like to refer to Section 6 of the IGNOU Act. It reads as under:

6. Jurisdiction.-The University shall in the exercise of its powers have jurisdiction over the whole of India.

In this regard sections 1 and 2(q) of the 1991 Act are necessary to be referred. Section 1 stipulates that the 1991 Act extends to whole of the Madhya Pradesh. Section 2(q) defines "university" to mean the M.P. Bhoj (Open) University established under the said Act. It is also worth noting that the 1991 Act has been incorporated to establish and incorporate an Open university at state level for introduction and promotion of a university and distance education system in the field of higher education. The question that emerges for consideration is whether the Bhoj (Open) University can have study centres outside the territory of Madhya Pradesh. The Distance Education Council has issued guidelines vide Annexure A/6. There is a mandate that the institutions need approval from the Distance Education Council. In Clause 3 there is a postulate that the undertakings to be given by the ODL institutions seeking approval from the DEC. Clause 3.3 provides that the parent institution shall not establish its Study Centres/Regional Centres outside its jurisdiction as specified in the parent institution Act/MoA. There are guidelines for DEIs for identification of study centre in Clause 9 of the DEC- Guidelines, which read as under:

9. Guidelines for DEIs for identification of Study Centre.:

"Study Centre" means a centre established and maintained or recognised by the parent institution for the purpose of advising counseling or for rendering any other assistance required by the students used in the context of distance of education. The parent institution shall make adequate provisions for Study Centres within its jurisdiction having adequate student support facilities, including Academic staff, coordinators, and counselors/tutors.

In the ODL System, Study Centres play an important role since they act as focal contact points for distance learners. The Study Centres provide academic and administrative support services to the distance learners. In these Study Centres, the learners are provided with collegiate environment through information dissemination, monitoring and academic counseling, vocational guidance, hands-on experience (in case of practical). Multimedia support, student evaluation, library services and peer group interaction.

In Professor Yashpal and Anr. (supra) a three-Judge Bench of the Apex Court were considering constitutional validity of the provision of the Chhattisgarh Niji Kshetra Vishwavidhyalay (Sthapana Aur Viniyaman) Adhiniyam, 2002. In exercise of power conferred on the said enactment the State of Chhattisgarh had issued notifications for establishing various universities. Section 5 of the said Act empowered the State Government to incorporate and establish a university by issuing a notification in the gazette and Section 6 permitted 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. Their Lordships considered the legislative competence of the State Legislature to make an enactment regarding incorporation of a university. Their Lordships dealt with the concept of university, Entry 66 of List II and Entry 32 of List III and after referring to *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, *Osmania University Teachers' Association Vs. State of Andhra Pradesh* and *Another*, *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*, *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, expressed the opinion that it is the responsibility of the 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. Thereafter their Lordships adverted to the provision of the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Sansodhan Adhiniyam, 2002 Act and after referring to various provisions of the said Act in para 60 held as under:

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

In paragraph 63 repelled the contention of the learned Counsel for the State of Chhattisgarh who had submitted that main campus of the University would be situated in the State of Chhattisgarh and Regulatory Commission has been established which will ensure a full proof monitoring of all the private universities. It was also contended by the learned Senior Counsel appearing on behalf of the State of Chhattisgarh that Regulation 3.3.1 of the UGC Regulations which requires that off-campus centres or study centres shall be set up with the prior approval of the UGC and that of the State Government where the centre is proposed to be opened, is ultra vires. The aforesaid submission was held to have no merit and while repelling the same their Lordships have held as under:

63. ...If good institutions are established for providing higher education, they can be conferred the status of a deemed university by the Central Government in accordance with Section 3 of the UGC Act or they can be affiliated to the already existing universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected by the learned Counsel as it enables a proposal alone being notified as a university.

In Rai University (supra) their Lordships clarifying the decision rendered in Professor Yashpal and Anr. (supra) in paragraph 9,10,11 have held as under:

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 centres 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.

It may also be mentioned here that Prof. P.C. Upadhyay, Chairman of Chhattisgarh Niji Kshetra Vishwavidyalaya Regulatory Commission had sent a letter on 23rd March, 2005 to the sponsoring body of an erstwhile university, wherein the following decision of the Government of Chhattisgarh was communicated:

As you are the Chairman of the Sponsoring Body of one of the Universities mentioned above, it is our duty to inform you, that in case you are running any off campus/study centre in or around Delhi in the NCR, you may immediately approach the Guru Gobind Singh Indraprastha University, Delhi for granting affiliation, to such off campus/study centre, so as to ensure that the students are no longer subjected to avoidable anxiety and uncertainty.

Further, please note that for completion of any formalities by UGC, AICTE, etc. you must start action likewise.

Also, for other off campuses or study centres outside Chhattisgarh for grant of affiliation, you may approach the University of the State where they are located, in the light of the Supreme Court judgment as well as the statement of the HRD Minister. In case of any difficulties, please send us the communication for taking up the matter with UGC and related bodies.

The study centres 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 23rd March, 2005 of the Chairman of Chhattisgarh Niji Kshetra Vishwavidyalaya Regulatory Commission.

It is submitted by the learned Counsel for the Study Centres that the Bhoj (Open) University has the authority to open study centres as it has the statutory obligation to promote the distance education system. It is also urged by them that the Distance Education Council of IGNOU has no authority to direct the University not to have study centres outside the State. As has been stated hereinabove in Section 2 of the IGNOU Act. Sub-section (2) of Section 1 clearly lays down that the 1991 Adhiniyam extends to the whole of Madhya Pradesh whereas provision in the IGNOU Act provides to extend the distance education to whole of India. Thus as per the said Statute it can have the study centres through out India but the Bhoj (Open) University cannot have study centres within the whole of the State. The quality of Distance Education system can be controlled. Mode of Distance Education system may be practiced by way of telecast, broadcast and correspondence courses but that does not mean a regional centre or a study centre can be established beyond the territorial jurisdiction of the State as the Act extends only to whole of Madhya Pradesh. Section 3 provides that the headquarters of the University shall be at Bhopal or it may establish or maintain Regional Centres and Study Centres at such places as it may deem fit, but such places have to have the nexus and the connection with the provision of the Statute inasmuch as it cannot go beyond the territorial limits of the State of Madhya Pradesh. As this juncture we may refer with profit that the State Legislature has enacted the Madhya Pradesh Vishwavidyalay Adhiniyam, 1973. Section 7 of the said 1973 Adhiniyam deals with the territorial limits of the state of Madhya Pradesh. The said section stipulates that the University under the said Act shall not extend beyond the limits of territorial jurisdiction specified in Second Schedule from time to time. The first proviso to the said section lays postulate that the State Government may authorise the University to associate or to admit to any of its privileges to colleges situated within the State outside the aforesaid limits in accordance with the provision of the Act and the Statutes made thereunder.

We have referred to the same only to show that the State Legislature has created eight universities under the Second Schedule and has stipulated the territorial jurisdiction apart from the headquarters. According to the 1991 Act the Bhoj (Open) University being an open University has the jurisdiction to extend to the whole of the Madhya Pradesh. It is to be understood in that context because a University in the state cannot have study centres outside the territorial jurisdiction of it.

In view of our preceding analysis the directions issued by the competent authority of the University cannot be found fault with. The agreement which has been pyramided to be in force cannot override the Statute and the law laid down by the Apex Court. However, as there has been a duration fixed by the University, the students who are continuing their studies and the duration is

going to be over in 2008, they shall be allowed to continue, but no other benefit can accrue in their favour because of any agreement.

Resultantly, the writ petition as well as the writ appeal stand dismissed. There shall be no order as to costs.