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STATE OF A.P.

v.

K. PURUSHOTHAM REDDY AND ORS

MARCH 10, 2003

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[V.N. KHARE, CJ., S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.]

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Constitution of India, 1950—Article 246 and Entry 66 of List I and Entry 25 of List III of VII Schedule—Central Government evolving National Education Policy—Recommendations made for constituting State Council of Higher Education—UGC formulating guidelines—Enactment of 1986 Act—Act struck down as ultra vires the Constitution as being not within the competence of legislature having regard to 1956 Act—Review of guidelines—Subsequent enactment of 1988 Act—Constitutional validity of—Held, provisions of 1988 Act show that State Act is an aid of Parliamentary Act and does not encroach upon the legislation enacted by the Parliament, thus a valid piece of legislation—Pith and substance doctrine applicable—Andhra Pradesh Commissionerate of Higher Education Act, 1986—University Grants Commission Act, 1956—Andhra Pradesh State Council of Higher Education Act, 1988

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Doctrines:

Doctrine of pith and substance and doctrine of colourable legislation—Applicability of.

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Constitution of India, 1950—Article 246—Legislative entries—

Interpretation of—Discussed.

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Central Government evolved a National Education Policy for creating a State Level Planning for coordination of higher education through Councils of Higher Education. University Grants Commission constituted a Committee and formulated guidelines for setting up the Councils. Thereafter, Andhra Pradesh Commissionerate of Higher Education Act, 1986 was passed but this Court in Osmania University Teachers Association case struck down the Act as unconstitutional on the ground of lack of legislative competence having regard to the parliamentary Act—University Grants Commission Act, 1956. Commission then reviewed the guidelines and filled the gaps. Consequently, Andhra

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Pradesh State Council of Higher Education Act, 1988 was enacted. Respondent-teacher filed a writ petition challenging the vires of the Act. High Court held that as the State Government lacked the requisite legislative competence, the Act was ultra vires the Constitution. Hence the present appeals. A

Allowing the appeals, the Court B

HELD 1.1. A bare comparison of the provisions of the Andhra Pradesh State Council of Higher Education Act, 1988 with the provisions of the Andhra Pradesh Commissionerate of Higher Education Act, 1986 would clearly demonstrate that the powers and functions of the Council stand curtailed in so far as they are not only to function in accordance with the guidelines issued by the University Grants Commission but its duty is to assist the Commission in respect of determination and maintenance of standards and suggest remedial action of Higher Education in the State. In exercise of the power conferred upon it under the 1988 Act, the Council can now only forward the programmes of Universities and colleges in the State to the University Grants Commission along with its comments and recommendations which necessarily would be subject to the latter's acceptance. Even an Annual Report prepared by the Council although is required to be forwarded to the Government which in turn is enjoined with a duty to place before the Legislative Assembly of the State, but a further requirement has been provided that a copy thereof shall also be sent to the University Grants Commission. Evidently, the Commission on receipt of a copy of the report may give its own suggestions for their implementation by the Council. The submission that the Council also derives its power to coordinate and determine the standards of institutions of higher education or research and technical institutions including planning and coordination to prepare consolidated programmes in the sphere of higher education in the State keeping in view the overall priorities and perspectives of higher education is not correct. The principal duties and functions of the Council is to assist the UGC in respect of determination and maintenance of standards and suggest remedial action; to evolve the developmental programmes of Universities and Colleges in the State to the UGC along with its comments and recommendations to monitor the progress of implementation of such developmental programmes; to promote cooperation and coordination of educational institutions among themselves and to explore the scope for interaction with industry and other related establishments which not only had been done H

A in accordance with the guidelines issued by the UGC from time to time.
[843-G, H; 844-A-E]

1.2. Once it is held that the duties and functions of the Councils are compartmentalised and they have to act in accordance with the guidelines issued by the UGC from time to time, it is preposterous to suggest that
B the Council acts on its own and/or at the instance of the Government in the field of cooperation and determination of standards in institutions of higher education as an independent body. Keeping in view the fact that the Commission itself on the request of the Central Government constituted a committee and laid down the parameters within which the
C Council can function and subjected themselves to the restriction of working within the guidelines issued by the UGC, it cannot be submitted that both the Commissionerate Act as also the Council Act provide for same powers and functions. The modifications made in the 1988 Act *vis-a-vis* the Commissionerate Act cannot be said to be so slight as has been opined by
D from the same vices. Having regard to the provisions of the 1988 Act and particularly Section 11 thereof there is no doubt that the purpose of the said Act, and the powers and functions thereof *vis-a-vis* the Commissionerate Act are absolutely distinct and different. In no way the 1988 Act can be said to have an upper hand over the UGC Act.

[844-F-H; 845-A, B]

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1.3. The 1988 Act seeks to plug the loopholes pointed out by this Court in *Osmania University Teachers Association*. It seeks to bring the State Act in conformity with the constitutional parameters. It expressly states that the same would be subject to the Central Act. It emphasizes that the provisions thereof are for the purpose of filling up of the gaps and to control effectively a large number of universities within which, having regard to their sheer number, the UGC itself would not be in a position to have effectively control over them. If the UGC has an overall control over the State Council, the Central field is not entrenched upon. In a situation of this nature the doctrine of pith and substance must also be
F held to be applicable. The State of Tamil Nadu as also the State of West Bengal in terms of the National Education Policy, 1986 as also the recommendations of the Committee framed by the University Grants Commission enacted similar Acts. The provisions of the impugned Act would clearly show that the State Act is in aid of the Parliamentary Act
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enacted by the Parliament and the same is a valid piece of legislation. **A**
 Therefore, the High Court erred in striking down the entire Act without
 bestowing its consideration to the fact that the State Act deals with not
 only higher education but also intermediate education which in no manner
 deals with the subject matter of Entry 66 of List I of VII Schedule of the
 Constitution. [845-F-H; 846-A; 851-B, C]

Osmania University Teachers Association v. State of Andhra Pradesh,
 (1987) 4 SCC 671; *R. Chitralakha v. State of Mysore*, [1964] 6 SCR 368;
Naga People's Movement of Human Rights v. Union of India, [1998] 2 SCC
 109; *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.*, [1999] 7 SCC
 120; *State of Haryana and Anr. v. Chanan Mal etc.*, [1976] 3 SCR 688; *In re*
Hindu Women's Rights to Property Act (28) AIR (1941) FC 72; **C**
R.M.D. Chamabragwalla v. Union of India, [1957] SCR 930; *Public Service*
Tribunal Bar Association v. State of U.P. and Anr., [2003] AIR SCW 653;
ITC Ltd. v. Agricultural Produce Market Committee and Ors., [2002] 9 SCC
 232; *Assistant Director of Inspection Investigation v. A.B. Shanthy etc.*, [2002]
 6 SCC 259; *Shri Krishna Gyanoday Sugar Ltd. and Anr. v. State of Bihar*, **D**
 [2003] 2 SCALE 226 and *Welfare Association A.R.P. Maharashtra and Anr.*
v. Ranjit P. Gohil and Ors., [2003] 2 SCALE 288, referred to.

State of T.N. and Anr. v. Adhiyaman Educational & Research Institute
and Ors., [1995] 4 SCC 104, distinguished. **E**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3985 of
 2001.

From the Judgment and Order dated 27.4.2001 of the Andhra Pradesh
 High Court in W.P. No. 17222 of 1988. **F**

WITH

C.A. No. 3986 of 2001.

G.L. Sanghi, K.K. Venugopal, L. Nageshwara Rao, T.V. Ratnam, K.
 Subba Rao, G. Ramakrishna Prasad, D. Ramakrishna Reddy, Ms. D. Bharathi **G**
 Reddy, S. Muralidhar, Somiran Sharma, R.N. Poddar and J.K. Bhatia, for the
 appearing parties.

The Judgment of the Court was delivered by

S.B. SINHA, J. Whether the State of Andhra Pradesh had the legislative **H**

A competence to enact Andhra Pradesh State Council of Higher Education Act, 1988 (Act 16 of 1988) (hereinafter called as "the 1988 Act") is the core question involved in these appeals which arise out of a judgment and order passed by the Andhra Pradesh High Court in Writ Petition No. 17222 of 1988.

B The fact leading to filing of the Writ Petition by the respondent herein questioning the vires of the 1988 Act arose in the following circumstances:

C The Central Government evolved a National Education Policy in the year 1986 pursuant where to and in furtherance whereof, recommendations were made for creating a State Level Planning for coordination of the Higher Education through Councils of Higher Education. Such Councils were proposed to be set up as statutory bodies having regard to the fact that there did not exist any effective machinery for planning and coordination of higher education at the State level vis-a-vis implementation of the programmes made by the University Grants Commission (UGC). With a view to give effect to the said policy, UGC constituted a committee to go into the said matter and make recommendations regarding setting up of the said Councils of higher education and programme of action to be taken in that behalf. The pressing need for constituting effective machinery for promotion and coordination of higher education at the State level and coordination of State level programmes with those of the UGC was felt and pursuant thereto and in furtherance thereof, UGC formulated guidelines for setting up of such Councils as recommended by the Committee.

D In the year 1986 the State of Andhra Pradesh passed an Act known as the Andhra Pradesh Commissionerate of Higher Education Act, 1986 (hereinafter called as 'the Commissionerate Act'). The Commissionerate Act was enacted purported to be pursuant to or in furtherance of the recommendations of the Vice-Chancellors' Committee on higher education in the State of Andhra Pradesh. The constitutionality of the said Act inter alia was questioned on the ground of lack of legislative competence having regard to the parliamentary Act known as University Grants Commission Act enacted in terms of Entry 66, List I of the VII Schedule of the Constitution of India.

F The said writ petitions were filed by the respondent herein and four others as also the Osmania University Teachers' Association. The said writ petitions were dismissed by a Full Bench of Andhra Pradesh High Court by a judgment dated 24.03.1987. However, on an appeal there against this Court in *Osmania University Teachers' Association v. State of Andhra Pradesh and Anr.*, [1987] 4 SCC 671 held that the State Legislature had no legislative competence

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therefor.

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As a necessary fallout of the said decision, guidelines were sought to be reviewed wherefor request was made by the Government of India to the Commission.

In the light of the judgment, the Department of Education, Government of India requested the Commission to review the guidelines. Accordingly, the guidelines were reviewed with the help of the law panel of the Commission. The relevant extracts of the revised guidelines as approved by the Commission in January, 1988 are as under:

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“2.0 Setting up of the Council

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In order to achieve the objectives set out above, the Central Government may advise State Governments for enacting legislation for setting up of State Councils of Higher Education in the States. In an Indian state where the number of universities are too few, an advisory body may be set up to fulfil the above objectives.

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8.0 Powers and Functions of the Council

The Council shall function for coordination and determination of standards in institutions for higher education or research and scientific and technical institution in accordance with the guidelines issued by the UGC from time to time.

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8.1 Planning and Coordination

- (i) To prepare consolidated programmes in the sphere of higher education in the State in accordance with the guidelines that may be issued by the UGC from time to time, and to assist in their implementation.
- (ii) To forward the development programmes of universities and colleges in the State to UGC along with its comments and recommendations.
- (iii) To assist UGC in respect of determination and maintenance of standards and suggest remedial action wherever necessary, in accordance with the guidelines.
- (iv) To evolve perspective plans for development of higher education in the State.

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- A (v) To monitor the progress of implementation of such development programmes.

11.0 Annual Report

- B The Council shall prepare an Annual Report giving an account of its activities during the previous year and copies thereof shall be forwarded to the State Government and the Government shall cause the same to be laid before the Legislative Assembly. A copy of the Annual Report should be sent to University Grants Commission."

- C Pursuant to or in furtherance of the said recommendations revised guidelines as approved by the Commission were issued in January, 1988 and relying on or acting on the basis thereof the Government of Andhra Pradesh decided to fill up the gaps by constituting State Council of Higher Education as recommended in the National Education Policy of the Government of India as also in terms of the recommendations made by the Committee constituted by the UGC. Consequently, the Government of Andhra Pradesh
- D enacted Andhra Pradesh State Council of Higher Education Act, 1988.

- E On the same premise which led to the declaration of 1986 Act as ultra vires the Constitution, a Writ Petition came to be filed. It, by reason by the impugned judgment, was allowed by a Division Bench of the Andhra Pradesh High Court.

- F The correctness of the judgment of this Court in *Osmania University Teachers' Association* (supra) was doubted by a two-Judge Bench inter alia on the ground that the Commissionerate Act as also the 1988 Act dealt not only with higher education but also with intermediate education and having regard to the fact that Entry 66, List I of the VII Schedule of the Constitution of India does not deal with intermediate education, the entire Act could not have been struck down. It was further opined that many of the provisions of the 1986 Act as also the impugned Act would be covered by Entry 25, List III of the VII Schedule of the Constitution of India wherefor the State Legislature has the requisite legislative competence.

- G The primal question which, therefore, arises for consideration is as to whether the State of Andhra Pradesh has the requisite legislative competence to enact the 1988 Act.

- H It is not in dispute that after the decision of this Court in *Osmania University Teachers' Association* (supra) the Committee set up by the

Commission went into the matter in great details and opined that the State Act should be in aid of the UGC Act and not in derogation thereof. Sufficient safeguards were provided as regards functioning of the Council so as to make the proposed enactment within the purview of Entry 25 of List III. A

The task before this Court is, therefore, to see as to whether the defects pointed out by this Court in its earlier judgment had sufficiently been remedied so as to bring the same within the parameters of the Constitutional Scheme. B

Before embarking upon a fuller discussion on the matter we may notice that the provisions of the 1988 Act are almost verbatim/ similar as contained in the recommendations made by the Committee set up by the UGC. C

This Court in *Osmania University Teachers' Association* (supra) compared the provisions of University Grants Commission Act as also the Commissionerate Act in details and came to the following conclusion:

"23. We have extracted only such of the provisions similar to those contained in the UGC Act. That is not all. The Commissionerate Act yet contains sweeping provisions encroaching on the autonomy of the Universities. Under Section 11(1)(c) it is for the Commissionerate to decide on the need for, and location of new colleges and courses of study including Engineering Colleges. Section 11(1)(f) provides power to the Commissionerate to establish and develop resources centers for curriculum materials and continuing education of teachers. Section 11(1)(g) confers power on the Commissionerate to co-ordinate the academic activities of various institutions of higher education in the State. It is also the duty of the Commissionerate to undertake examination reforms and assume accreditation functions [Section 11(1)(h) and (i)]. Section 11(1)(j) states that it is the duty of the Commissionerate to organise entrance test for University admission. Section 11(1)(k) states that it shall administer and grant scholarship and organise work study programmes. Section 11(1)(o) provides power to transfer teachers from one aided private college to another such college, subject to the rules made by the government. There is yet a devastating provision on the autonomy of Universities. Section 11(2) states that every University or college including the private college shall obtain the prior approval of the Commissionerate in regard to : (i) certain of new posts; (ii) financial management; and (iii) starting of new higher educational institutions. This 'Super Power' has been preserved to the Commissionerate notwithstanding anything contained H

A *in any law relating to Universities in the State, the Board of Intermediate Education Act, 1971 and the Andhra Pradesh Education Act, 1982.*" (Emphasis supplied)

B This Court found that the Commissionerate Act has practically taken over the academic programmes and activities of the universities as a result whereof the universities have been rendered irrelevant if not non-entities. It was opined that both the UGC Act and the Commissionerate Act deal with the same subject matter, namely, coordination and determination of excellence in the standards of teaching and examination in the universities conveying the same meaning.

C This Court however observed:-

D "28. Before parting with the case we may say a word more. The impugned Act was the result of a report from a High Power Committee constituted by the State Government. The Committee went into the affairs of the higher education in the State. The Committee examined among other things, the curricula and courses of studies. The Committee found as a fact that there is no proper co-ordination and academic planning among the various bodies. It recommended to the State Government the need to pass a proper legislation to streamline the higher education. The State Government accepted the recommendations and passed the Act in question. The Act now disappears for want of legislative competence. What about the need to enact that Act? It will not vanish into thin air. The defects and deficiencies pointed out by the High Power Committee in regard to higher education may continue to remain to the detriment of the interest of the State and the Nation. Such defects in the higher education may not be an isolated future only in the State of Andhra Pradesh. It may be a common feature in some other States as well.

E 29. That apart, we often hear and read in newspapers with disgust about the question papers leakage and mass copying in the University examinations. It has stripped the university degrees of all its credibility. He indeed must be blind who does not see what is all happening in some of the Universities.

F 30. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for

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that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities.”

This exercise on the part of the Central Government and the UGC must have been undertaken in furtherance of the said observations.

The High Court in its impugned judgment compared the provisions of the Commissionerate Act and the impugned Act and came to the conclusion that even if the Act had been enacted in accordance with the guidelines issued by the UGC and pursuant to the recommendations made by the High Level Committee; as the State Government lacks the requisite legislative competence, it must necessarily be held to be *ultra vires* the Constitution.

Entry 66 of List I and Entry 25 of List III of VII Schedule of the Constitution of India read as follows:

“66. Coordination and determination of standards, in institutions, for higher education or research and scientific and technical institutions.

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

The conflict in legislative competence of the Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each Entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot co-exist, the State Act may be declared *ultra vires*. Clause I of Article 246 of the Constitution of India does not provide for the competence of the Parliament or the State Legislatures as is ordinarily understood but merely provide for the respective legislative fields. Furthermore, the Courts should proceed to construe a statute with a view to uphold its

A constitutionality. [See *ITC Ltd. v. Agricultural Produce Market Committee and Ors.*, [2002] 9 SCC 232 : AIR (2002) SC 852, *Asstt. Director of Inspection Investigation v. A.B. Shanthi etc.*, (2002) 6 SCC 259, *Shri Krishna Gyanoday Sugar Ltd. and Anr. v. State of Bihar*, 2003 (2) SCALE 226 and *Welfare Asscn. A.R.P., Maharashtra and Anr. v. Ranjit P. Gohil and Ors.*, (2003) 2 SCALE 288.

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Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover, the same is subject to entry 63, 64, 65 and 66 of List I. Once, thus, it is found that any State Legislation does not entrench upon the legislative field set apart by Entry 66, List I of the VII Schedule of the Constitution of India, the State Act cannot be invalidated.

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Section 11 and Section 16 of the 1988 Act read thus:

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“Sec. 11. Powers and functions of the Council:

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

(2) The functions of the Council shall include:

I. Planning and Co-ordination:

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

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(ii) to assist the University Grants Commission in respect of determination and maintenance of standards and suggest remedial action of Higher Education in the State;

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

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- (iv) to forward the Developmental Programmes of Universities and Colleges in the State to the University Grants Commission along with its comments and recommendations; A
- (v) to monitor the progress of implementation of such developmental programmes;
- (vi) To promote co-operation and co-ordination of educational institutions among themselves and explore the scope for interaction with industry and other related establishments. B
- (vii) To formulate the principles as per the guidelines of the Government and to decide upon, approve and sanction new educational institutions by according permission keeping in view the various norms and requirements to be fulfilled; C
- (viii) To suggest ways and means of meeting additional resources for higher education in the State.

II. Academic functions:- D

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III. Advisory functions:-

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

A bare comparison of the provisions of the 1988 Act with the provisions of the Commissionerate Act would clearly demonstrate that the powers and functions of the Council stand curtailed in so far as they are not only function in accordance with the guidelines issued by the University Grants Commission but its duty is to assist the Commission in respect of determination and maintenance of standards and suggest remedial action of Higher Education in the State. In exercise of the power conferred upon it under the 1988 Act, the Council can now only forward the programmes of universities and colleges in the State to the University Grants Commission along with its comments F

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- A and recommendations which necessarily would be subject to the latter's acceptance. Even an Annual Report prepared by the Council although is required to be forwarded to the Government which in turn is enjoined with a duty to place before the Legislative Assembly of the State, but a further requirement has been provided that a copy thereof shall also be sent to the University Grants Commission; Evidently the Commission on receipt of a copy of the report may give its own suggestions for their implementation by the Council. It is, therefore, not correct to contend as has been done by the High Court in its impugned judgment that the Council also derives its power to coordinate and determine the standards of institutions of higher education or research and technical institutions including planning and coordination to
- C prepare consolidated programmes in the sphere of higher education in the State keeping in view the overall priorities and perspectives of higher education. Although the High Court has noticed that the principal duties and functions of the Council is to assist the UGC in respect of determination and maintenance of standards and suggest remedial action; to evolve the developmental programmes of Universities and Colleges in the State to the
- D UGC along with its comments and recommendations to monitor the progress of implementation of such developmental programmes; to promote cooperation and coordination of educational institutions among themselves and to explore the scope for interaction with industry and other related establishments which not only had been done in accordance with the guidelines issued by the UGC
- E from time to time. Despite the same it was held:

“On a comparative study of the provisions of the Act 26 of 1986 and Act 16 of 1988, the functions of the Commissionerate and the functions of the State Council well nigh are the same except to the extent of stating that the Council should act in accordance with the guidelines issued by the UGC from time to time.”

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- Once it is held that the duties and functions of the Councils are compartmentalised and they have to act in accordance with the guidelines issued by the UGC from time to time, it is preposterous to suggest that the Council acts on its own and /or at the instance of the Government in the field
- G of cooperation and determination of standards in institutions of higher education as an independent body. Keeping in view the fact that the Commission itself on the request of the Central Government constituted a committee and laid down the parameters within which the Council can function and subjected themselves to the restriction of working within the guidelines issued by the UGC, we fail to understand as to how it can be contended that
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both the Commissionerate Act as also the Council Act provide for same powers and functions. The modifications made in the 1988 Act vis-a-vis the Commissionerate Act cannot be said to be so slight as has been opined by the High Court so as to arrive at a conclusion that the 1988 Act still suffers from the same vices. Having regard to the provisions of the 1988 Act and particularly Section 11 thereof we have no doubt in our mind that the purpose of the said Act, and the powers and functions thereof vis-a-vis the Commissionerate Act are absolutely distinct and different. In no way the 1988 Act can be said to have an upper hand over the UGC Act.

It is not a case where the State Council of Higher Education were to act independently irrespective of the standard of education set forth by the University Grants Commission. Its powers and functions, as indicated hereinbefore, are absolutely different from that of 1986 Act.

In *R. Chitralekha v. State of Mysore*, [1964] 6 SCR 368 *Subba Rao, J.* categorically held that the question as regard the impact of the Entry 66, List I and Entry 25, List III must be determined by reading the Central Act as well as the State Act conjointly. A state law providing for such standards having regard to Entry 66 of List I would be struck down as unconstitutional only in the event the same is found so heavy or devastating so as to wipe out or appreciably abridge the central field and not otherwise. Once the powers and functions of the Council is found to be subject to the guidelines issued by the UGC and the perspective plan prepared by it would be subject to its approval, the question of standard of education set up by the State Act cannot be said to be leading to wipe out or appreciably abridge the central field.

The 1988 Act expressly states that the same would be subject to the Central Act. It emphasizes that the provisions thereof are for the purpose of filling up of the gaps and to control effectively a large number of universities within which, having regard to their sheer number, the UGC itself would not be in a position to have effectively control over them. If the UGC has an overall control over the State Council, the Central field is not entrenched upon. In a situation of this nature the doctrine of pith and substance must also be held to be applicable. We must also take notice of the fact that the State of Tamil Nadu as also the State of West Bengal in terms of the National Education Policy, 1986 as also the recommendations of the Committee framed by the University Grants Commission enacted similar Acts.

The provisions of the impugned Act would clearly show that the State Act is in aid of the Parliamentary Act and it does not in any manner whatsoever

A trench thereupon.

A similar question came up for consideration in *Naga People's Movement of Human Rights v. Union of India*, [1998] 2 SCC 109 wherein the law has been laid down in the following terms:

B “65. ... The contention of Shri Goswami that the provisions of Sections 4 and 5 of the State Act are inconsistent with the provisions of Arms Act enacted by Parliament also cannot be accepted because the said provisions only provide for effective enforcement of the provisions of the Arms Act in the disturbed areas and it cannot be said that they, in any way, encroach upon the field covered by the Arms Act. The challenge to the validity of Sections 4 and 5 of the State Act is, therefore, negated.”

Yet again in *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.*, [1999] 7 SCC 120, this Court held thus

D “35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on

E “education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III”.

F Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows :

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

G Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows :

“66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

H Both the Union as well as the States have the power to legislate on

education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.”

[See also *State of Haryana and Anr. v. Chanan Mal etc.*, [1976] 3 SCR 688, *In re Hindu Women's Rights to Property Act.*, 28 AIR (1941) FC 72 and *R.M.D. Chamabraugwalla v. The Union of India*, [1957] SCR 930.

In *Public Service Tribunal Bar Association v. State of U.P. and Anr.*, (2003) AIR SCW 653, a bench of which one of us (Hon'ble CJI) was a member, it has been held:

“28.....Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or State Legislature had assumed to enact a law which is void, either from want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.”

A Submission of Mr. D. Ramakrishna Reddy, the learned counsel appearing on behalf of the respondent to the effect that the 1988 Act is a colourable piece of legislation is stated to be rejected. As noticed hereinbefore the State Act seeks to plug the loopholes pointed out by this Court in *Osmania University Teachers' Association* (supra). It seeks to bring the State Act in conformity with the constitutional parameters. Reliance placed by Mr. Reddy on State of

B *T.N. and Anr. v. Adhiyaman Educational & Research Institute and Ors.*, [1995] 4 SCC 104 is equally misplaced. Therein it was found that the Tamil Nadu Private Colleges (Regulation) Act and Rules framed thereunder as also the Madras University Act entrenches upon provisions of All Indian Council for Technical Education Act, 1987 and in that situation it was held:

C “30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly,

D to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing

E guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and

F types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it.

G Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into

H operation of the Central Act, the provisions of the University Act will

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

The said decision *ex facie* is not applicable in the instant case. The law was laid down therein in the following terms:

“41. What emerges from the above discussion is as follows :

- (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 any 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 Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.
- (iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the

- A Central legislation, the same would be inoperative.
- (iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.
- B (v) When there are more applicants than the available situations/ seats, the State authority is not prevented from laying down high standards or qualifications than those laid down by the Centre or the Central Authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 6 of the Union List or make a law which is repugnant to the Central law.
- C (vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirements laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.”
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- E

Thus, there cannot be any doubt whatsoever that only to the extent of conflict, the State law has to be struck down and not otherwise.

- F Before parting with this case, it is relevant to notice that the respondent herein is merely a teacher of a university. It is true that he was one of the petitioners in the earlier writ petition also questioning the validity of the Commissionerate Act. Both the Central Government as well as the University Grants Commission in no uncertain terms stated before us that the Act is *intra vires*, presumably, because they do not find any conflict between the University Grants Commission Act and the 1988 Act.
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- H At one point of time a question arose as to whether having regard to the observations made by the Division Bench, the matter should be referred to a Constitution Bench. We do not think so to do inasmuch as the question which falls for consideration is not as to whether the decision of this Court in *Osmania University* is correct or not but really is as to whether the impugned

Act in its present form is in any way in conflict with the Central Act having regard to the changes effected therein pursuant to the recommendations of the Committee constituted by the UGC at the instance of the Central Government. A

We are further of the view that the High Court committed a manifest error in striking down the entire Act without bestowing its consideration to the fact that the State Act deals with not only higher education but also intermediate education which in no manner deals with the subject matter of Entry 66 of List I of VII Schedule of the Constitution of India. We are of the view that the impugned enactment does not encroach upon the legislation enacted by the Parliament and the same is a valid piece of legislation. B C

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. These appeals are allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.

N.J.

Appeals allowed. D