

PROF. YASHPAL AND ANR.
v.
STATE OF CHHATTISGARH AND ORS.

FEBRUARY 11, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND
P.K. BALASUBRAMANYAN, JJ.]

Constitution of India—Schedule VII List II Entry 32, List III Entry 25 and Article 246—Incorporation of private university—Pre-requisites for—Discussed.

*Schedule VII List II Entries 32, 66 List III Entry 25 and Article 245—Universities having power to have off-campus centers outside the State—Held, **ultra vires** Article 245 (1)—Primacy of legislative competence of Parliament—Maintenance of high standards—Need for—‘University’—Meaning of—Discussed.*

Schedule VII List II Entry 32, Articles 246, 73 and 162—Incorporation of university—Mode for—May be established only through legislative enactment and not by exercise of executive power—Social impact of incorporation of university—Comparison with incorporation of Company—Distinction between.

*Articles 246, 254 and Schedule VII—Legislative competence—Primacy of Parliament—Held, any State legislation which simplifies or sets at naught an enactment validly made by Parliament would be wholly **ultra vires**.*

Education :

*Universities—Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002—Sections 5,6,3(8) & 9—Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Sansodhan Adhiniyam, 2004—Sections 5,6,3(6),2(7),5(1)(b)—Constitutional validity of—Held, are **ultra vires** the Constitution, being a fraud on the Constitution.*

Universities—Degree—Value of—Held, principal advantage of holding a university degree is in matter of employment, public or private or in self-employment—Interest of society requires that the holder of an academic degree

A possesses the proficiency and expertise in the subject which the degree certifies—Thus, power conferred to specific bodies—UGC Act, 1956—Section 22.

B University Grants Commission Act, 1956—Object of and reasons for creation of—Discussed—Expression 'established or incorporated' to be read as 'established and incorporated' in so far as private universities are concerned.

C Under Section 5 of the Adhiniyam the State has been empowered to incorporate and establish a university by issuing a notification in the Gazette and Section 6 permits 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.

D According to the petitioners, after coming into force of the Adhiniyam, the State Government has been, simply by issuing notifications in the Gazette, establishing universities in an indiscriminate and mechanical manner without having slightest regard to the availability of any infrastructure, teaching facility or their financial resources. In about one year 112 universities were established and many of them had absolutely no buildings or campus and were running from one room tenements. There was absolutely no regulation or supervision over them. The legislation has been enacted in a manner which has completely done away with any kind of control of University Grants Commission ('UGC') over these private universities. The guidelines issued by UGC on the courses being taught and award of academic degrees has been given a complete go-by. The universities issued brochures for award of all kinds of degrees like "Member of the International Institute of Medical Sciences", "Fellow of the International Institute of Medical Sciences" and many other similar degrees. The universities are wholly incapable of imparting any education much less a quality education in absence of basic infrastructure like classrooms, libraries, laboratories or campus. Nevertheless by conferment of a legal status of a university, they have been empowered to award degrees. The private universities are running professional courses without taking prior permission from regulatory bodies such as All India Council of Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), etc. The requirement of obtaining prior permission from the regulatory bodies has not been followed and the universities are not under the control of any authority and are at liberty to grant degrees, diplomas and certificates to

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gullible students. The State Government has not done any verification or checking of universities after issuance of notification in the Gazette, whether they fulfill any norms laid down by the statutory bodies, which is essential for recognition of the degrees, diplomas and certificates awarded by such universities. In absence of requisite permission from the statutory bodies, the degrees and certificates awarded by such universities would not be recognized by the professional organizations, as a result whereof the students studying in such universities and obtaining the degrees therefrom would suffer immense loss, both in terms of money and also the time spent in completing the courses. It is further averred that the University Grants Commission Act is made nugatory as private universities are offering courses without subscribing to the standards laid down by the UGC and there being no homogeneity of the course content, the degree awarded may not be of any value. The private universities are offering unheard of courses and degrees which are not part of schedule to the UGC Act, which is in clear violation of Section 22 of the aforesaid Act and the Schedule appended thereto. The minimum requirement of teaching staff as laid down in the guidelines of UGC had also been given a complete go-by. Young students are being misled in enrolling themselves in courses which do not have any substantive content and the degrees offered by such private universities would affect the standard of education at large which in turn will jeopardize the educational system of the whole country and not that of State of Chhattisgarh alone.

Several legal issues have also been raised in the writ petitions, the principal being that the manner in which these private universities are functioning would result in creating a complete chaos in the system of higher education in the country and the expert bodies created by the Central Government like, University Grants Commission, Medical Council of India, All India Council for Technical Education etc. for coordination and determination of standards in their own respective fields would not be able to perform their statutory duty and would make their functioning not only difficult but almost impossible.

Before this Court, the respondent State claimed that it has the legislative competence to make an enactment regarding incorporation of a University; that the impugned Act had been passed to facilitate establishment of private Universities with a view to create supplementary resources for assisting the State Government in providing quality higher education; that the notifications establishing the Universities were issued

A on the basis of the representations made by the sponsoring bodies as set out in their project reports, that the State Government expected that the Universities would make the requisite infrastructure including campus, building, etc. and recruit qualified staff so as to provide higher education in order to achieve the object for which the Universities were established, that however, the functioning of the Universities post notification was

B dismal and completely belied the expectations which the State Government had in that behalf, raising serious concern about the academic interests of the students seeking admission therein, that the State Legislature, accordingly, enacted the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Sansodhan Adhiniyam, 2004, and that after

C expiry of the time limit fixed in the aforesaid amending Act, 59 Universities were de-notified on account of their failure to comply with the amended provisions. It is further averred that after the Act had been amended in the year 2004, the petitioners' grievance has been completely met and consequently the writ petitions deserve to be dismissed.

D HELD : 1. How the word "Universities" occurring as a legislative head in the Seventh Schedule should be interpreted, one has to look to the legislative practice regarding interpretation of Constitutional entries. [47-E]

E *Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax, Bombay*, AIR (1948) PC 118, referred to.

South Carolina v. United States, (1905) 199 US 437; *Ex parte Grossman*, (1925) 267 US 87 and *Croft v. Dunphy*, (1933) AC 156, referred to.

F *Constitutional Law of India* by Seervai, para 2.12 (3rd ed.) and *Volume 15 Halsbury's Laws of England* (Fourth ed. Reissue), referred to.

G 2.1. Though incorporation of a University as a legislative head is a State subject (Entry 32 List II) but basically University is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions

H of this Court. [53-D-E]

Gujarat University v. Shri Krishna, AIR (1963) SC 703; *State of Tamil Nadu and Anr. v. Adhiyaman Educational and Research Institute*, [1995] 4 SCC 104; *Osmañia University Teachers Association v. State of Andhra Pradesh and Anr.*, [1987] 4 SCC 671; *Kerala State Electricity Board v. Indian Aluminium Co.*, [1976] 1 SCC 466 and *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.*, [1999] 7 SCC 120, referred to.

2.2. The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. 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. [57-A-C]

2.3. In order to achieve the aforesaid purpose, the Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 ("UGC Act") states that it is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new, it is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities and that the need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central Government has also become more urgent on this account.

[57-C-F]

2.4. In the second para of the Statement of Object and Reasons, it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation and that the Commission will act as an expert body to advise the Central

A Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities. [57-G]

3.1. The preamble of the UGC Act says - an Act to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.

B [57-H; 58-A]

3.2. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by University or an institution deemed to be University under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. [59-A]

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Webster's Third New International Dictionary; Wharton's Law Lexicon; Chambers's Twentieth Century Dictionary; P. Ramanatha Aiyar Law Lexicon, (2nd Ed); Encyclopedia Americana and The New Encyclopedia Britannica, referred to.

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3.3. A degree conferred by a University is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a Doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A University degree confers a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a Ph.D., D.Lit., or D.Sc. degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart, the principal advantage of holding a University degree is in the matter of employment, where a minimum qualification like a graduate, post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies. [60-E-H; 61-A]

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3.4. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. [61-B-C]

Azeez Basha v. Union of India, AIR (1968) SC 662, relied on.

4.1. The requirement of Section 4 is submission of an application containing Project Report which will merely indicate availability of land and some proposals and schemes for generation of funds and mobilization of resources and also proposal for development of building etc. and courses of study proposed to be started. It is this Project Report which merely contains some proposals and schemes for future implementation which is accorded sanction by the State Government. [65-D-E]

4.2. Section 5 says that the State Government may by notification in the Gazette establish a University by such name and with such jurisdiction and location of campus, as may be specified therein having regard to the desirability to establish a University. The effect of these provisions is that a Project Report on paper only, which will merely be a proposal or a scheme for doing something in future, will be notified as a University by issuing a notification to that effect in the Gazette. [65-E-F]

5.1. The State Legislature is undoubtedly empowered to legislate and make an enactment for incorporation and establishment of Universities in view of Entry 32 of List II and Entry 25 of List III. The "University" as a topic of legislation has not been introduced for the first time in the Seventh Schedule of the Constitution but was already there in the Government of India Act, where Entry 13 of List I related to Banaras Hindu University and Aligarh Muslim University and Entry 17 of List II was education including Universities other than those specified in Entry 13 of List I. The framers of the Constitution had the same concept of "University" in their mind as was there in the Government of India Act when they made the relevant entries in the Seventh Schedule of the

A Constitution. Keeping in view the principles of legislative practice, the word “University” should be given the same meaning as it was generally understood at the relevant time having due regard to what is ordinarily treated as embraced within that topic or subject. [65-H; 66-A-C]

B 5.2. University is a whole body of teachers and scholars engaged at a particular place in giving and receiving instructions in higher branches of learning; and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, building and other property belonging to such body. Other necessary attributes of **C** University are plurality of teachers teaching more than one higher faculties and other facilities for imparting instructions and research, provision for residence and must have certain standard of instructions providing for graduate and post-graduate levels of study. It pre-supposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides **D** some playgrounds and also sport facility for overall development of personality of the students. However, under the provisions of the impugned Act, a proposal which is on paper and merely gives some kind of a plan or scheme to be done in future is notified as a University. When the **E** Constitution has conferred power on the State to legislate on incorporation of University, any Act providing for establishment of the University must make such provisions that only an institution in the sense of University as it is generally understood with all the infrastructural facilities, where teaching and research on wide range of subjects and of a particular level are actually done, acquires the status of a University. [66-C-G]

F 5.3. The impugned Act does not at all establish a University, yet by issuing a notification conferring the legal status of a University to a Project Report (which is on paper only) bestows upon it a right to confer a degree, which right it gets by virtue of Section 22 of the UGC Act. The manner in which a University is notified by issuance of a Gazette notification under **G** Section 5 and conferment of a juristic personality under Section 6 of the Act is clearly contrary to the constitutional scheme and is not contemplated by Article 246 of the Constitution. [66-G-H; 67-A]

H 5.4. The State Legislature can make an enactment providing for incorporation of Universities under Entry 32 of List II and also generally for Universities under Entry 25 of List III. The subject “University” as a

legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a University so as to take advantage of Section 22 of UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these Entries. Sections 5 and 6 of the impugned enactment are, therefore, wholly *ultra vires* being a fraud on the Constitution. [67-B-D]

6.1. Entry 66 which deals with co-ordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in Union List and the Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66. The Act has been enacted to ensure that there is co-ordination and determination of standards in Universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various Universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite caliber and a proper student-teacher ratio. For this purpose, the Central Government has made a number of Rules in exercise of powers conferred by Section 25 of UGC Act and the Commission has also made Regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, UGC Inspection of Universities Rules, 1960, UGC Regulations 1985 regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc. The UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the Universities. The impugned Act which enables a

- A proposal on paper only to be notified as a University and thereby conferring the power upon such University under Section 22 of the UGC Act to confer degrees has the effect of completely stultifying the functioning of the University Grants Commission in so far as these Universities are concerned. Such incorporation of a University makes it impossible for the UGC to perform its duties and responsibilities of ensuring co-ordination and determination of standards. In absence of any campus and other infrastructural facilities, the UGC cannot take any measures whatsoever to ensure a proper syllabus, level of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them. [67-D-H; 68-A-D]

Prem Chand Jain v. R.K. Chhabra, [1984] 2 SCR 883 and *Osmania University Teachers Association v. State of Andhra Pradesh*, [1987] 4 SCC 671, referred to.

- 6.2. The *inter se* evaluation of merit of candidates is often required to be done while making selection for some higher or specialized course of study or in the matter of employment. One of the important functions to be performed by the UGC is co-ordination and determination of standards in institutions for higher education so that some kind of uniformity is maintained in level of teaching and examination and also award of degrees by various Universities. The impugned enactment, however, enables a sponsoring body, without having any kind of teaching facility to award degrees. In view of clauses (8) and (9) of Section 3 of the Act, a University can be established only to establish examination centres or just to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination or any other method of evaluation anywhere and without any pre-determined standards. The possibility that such Universities which award degrees without having any teaching facility and without imparting any education will do so only for the purpose of making money is writ large. The fact that the amendments made in the Act in 2004 making it mandatory to create an endowment fund of Rs. 2 crores and having provision of 15 acres of land have been challenged by many Universities speaks volumes of their intention. Preparing a Project Report on paper is not a difficult job and any number of sponsoring bodies can be created or formed in order to take advantage of the easy opportunity made available by the impugned Act. Persons with absolutely no knowledge in the subject may be awarded high degrees or other

distinctions like a Ph.D., D.Lit., or D.Sc. This is bound to create havoc with the system of higher education in the country and would result in nullifying the main object for which University Grants Commission has been established and would render many provisions of the UGC Act unworkable and otiose. [68-D-H; 69-A-B] **A**

6.3. Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly *ultra vires*. [69-C] **B**

R. Chitralakha v. State of Mysore, AIR (1964) SC 1823, relied on.

7. The whole scheme of the impugned Act, especially the effect of Sections 4, 5, 6 thereof and the result which it has led to in notifying as many as 112 Universities within a short span of one year on the basis of proposals made on paper with many or most of them having almost zero infrastructural facilities clearly shows that the relevant provisions of the Act have completely stultified the power of the Parliament under Entry 66 to make provision for co-ordination and determination of standards in institutions for higher education like Universities, the provisions of the UGC Act and also the functioning of University Grants Commission. Sections 5 and 6 of the impugned Act are, therefore, wholly *ultra vires* the Constitution of India and are liable to be struck down. [70-A-C] **C**
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8. The amending Act of 2004 does not make any appreciable change in the matter of issuing a notification for establishment of a University. Under the amending Act, Regulatory Commission is to be established by the Visitor (Governor). The application containing the Project Report shall be made to the Regulatory Commission one year before the date from which it intends to start the University along with proof of having established an endowment fund of Rs. 2 crores which shall be used as security deposit to ensure that the University complies with the provisions and functions as per the provisions of the Act. In addition proof of being in possession of 15 acres of land in case the main campus is proposed to be established within the municipal corporation limits of Raipur otherwise 25 acres of land has to be furnished. Where the land has been obtained on lease, the period of lease should be at least 30 years. It further provides that if the sponsoring body does not possess the required land, it shall furnish proof of having deposited an additional sum of Rs. 2 crores in the manner prescribed. The Regulatory Commission on receipt of the Project Report, proof of creation of the endowment fund and possession of land **E**
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A or in lieu thereof proof of deposit of additional fund and if satisfied with the proposal to establish the University, may advise the State Government to issue a notification. Section 5 provides that the State Government on receipt of the advice of the Regulatory Commission may declare by notification in Official Gazette that the University is established. Here again, without any infrastructure and without the teaching facilities having
B been provided, the proposal on paper is notified as a University. Section 4(1)(b)(ii) mentions “possession of land” and not “ownership”. It is not difficult to speculate whether the heavy expenditure involved in making construction of buildings (classrooms, lecture halls, offices and hostels, etc.), libraries and laboratories would at all be undertaken on land which
C has been taken on lease for a short period of 30 years. Thus, the amended Sections 5 and 6 suffer from the same vice as the unamended provisions and are liable to be struck down as being *ultra vires*. [74-B-G]

9. In view of Regulation 3.1, a private University can only be established either by a separate Act or by one compendious Act where
D the legislature specifically provides for establishment of the said University. Though an attempt has been made in Section 5(1)(b) of the amended Act in this regard, but the same does not conform to the Regulations inasmuch as the initial notification notifying in the Official Gazette that the University is established, is done by the executive order and not by any
E Act of legislature. [77-D-E]

10. Sections 3, 3(1)(i), 12, 13, 26, 33 and 34 of the Companies Act relate to incorporation of a Company. It need not have a prior business and a mere statement of a lawful purpose in the Memorandum of Association is enough. If a Company is unable to achieve its objective and
F is unable to carry on business, the shareholders may suffer some financial loss, but there is absolutely no impact on society at large. However, a University once incorporated gets a right to confer degrees. A University having no infrastructure or teaching facility of any kind would still be in a position to confer degrees and thereby create a complete chaos in the matter of co-ordination and maintenance of standards in higher studies
G which would be highly detrimental for the whole nation. A University may, therefore, be established either by the State in exercise of its sovereign power which would obviously be through a legislative enactment. In the case of a private University it is necessary that it should be a pre-established institution for higher education with all the infrastructural
H facilities and qualities which may justify its claim for being conferred with

the status of a University and only such an institution can be conferred the legal status and a juristic personality of a University. [77-F-H; 78-A] A

R. Chitrallekha v. State of Mysore, AIR (1964) SC 1823 and *Gujarat University v. Shri Krishna*, AIR (1963) SC 703, referred to.

11. The word “or” is normally disjunctive and “and” is normally conjunctive but at times they are read *vice-versa* to give effect to the manifest intentions of the legislature, as disclosed from the context. If literal reading of the word produces an unintelligible or absurd result “and” may be read for “or” and “or” may be read for “and”. Having regard to the Constitutional scheme and in order to ensure that the enactment made by the Parliament, namely University Grants Commission Act is able to achieve the objective for which it has been made and the UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression “established or incorporated” as “established and incorporated” insofar as the private Universities are concerned. [78-D-G] B C D

State of Bombay v. RMD Chamarbaugwala, AIR (1957) SC 699 and *Mazagaon Dock v. CIT*, AIR (1958) SC 861, referred to. E

Principles of Statutory Interpretation by G.P. Singh, 7th ed. Page 339, referred to.

12. The amending Act of 2004 came into force on 17.3.2004. Section 4(1-A) which was inserted by this amendment provided that a University already established in the State under the provisions of the Adhiniyam shall comply with the provisions of clauses (b) to (e) of sub-section (1) of Section 4 by 30th June, 2004 or else the notification issued by the Government under sub-section (1) of Section 5 of the Adhiniyam shall be liable to be cancelled on the recommendations of the Regulatory Commission. These provisions related to creation of an endowment fund of Rs. 2 crores and requirement of land. It appears that as many as 59 Universities were denotified as they did not comply with the requirements of the aforesaid provision. [79-C-E] F G

13. In order to establish a University, there must be adequate land on which the campus may be made and necessary infrastructural facilities H

A provided. No University can come into existence without a proper campus which requires land. Similarly, for those who want to establish a University, a sum of Rs. 2 crores is a very small amount. It will be seen that Section 4(1)(c) provides that endowment fund shall be used as security deposit to ensure that the University complies with and functions as per the Act. The history of establishment of Aligarh Muslim University has been given. Though in the year 1877 the Viceroy laid the foundation stone for the establishment of Muhammadan Anglo-Oriental College, Aligarh, which over a period of time became a flourishing institution, yet, when a demand was made to establish a University, the Government of India made a condition that at least Rs. 30 lakhs must be collected and thereafter the University was established by the 1920 Act. It is extremely difficult to visualize the real value and purchasing power of Rs. 30 lakhs of the year 1920 at the present juncture. For those who want to establish a University, a sum of Rs. 2 crores is just a pittance. The fact that many of the private Universities have challenged the provisions of the amending Act itself shows their intention and purpose that they do not want to create any infrastructure but want to have the right of conferring degrees and earn money thereby. However, it is not necessary to examine the challenge raised to the amending Act in detail, it has already held that Sections 5 and 6 are wholly *ultra vires* and all notifications issued thereunder notifying the Universities being invalid are liable to be struck down.

E [79-H; 80-A-D]

Azeez Basha v. Union of India, AIR (1968) SC 662, referred to.

14. The impugned Act which enables only a proposal of a sponsoring body to be notified as a University is not likely to attract private capital and a University so notified cannot provide education of any kind much less of good quality to a large body of students. What is necessary is actual establishment of institutions having all the infrastructural facilities and qualified teachers to teach there. Only such colleges or institutions which impart quality education allure the best students. Until such institutions are established which provide high level of teaching and other facilities like well equipped libraries and laboratories and a good academic atmosphere, good students would not be attracted. In the current scenario, students are prepared to go to any corner of the country for getting good education. What is necessary is a large number of good colleges and institutions and not Universities without any teaching facility but having the authority to confer degrees. If good institutions are established for

providing higher education, they can be conferred the status of a deemed University by the Central Government in accordance with Section 3 of UGC Act or they can be affiliated to the already existing Universities. The impugned Act has neither achieved nor is capable of achieving the object sought to be projected as it enables a proposal alone being notified as a University. [81-B-E]

15. In order to protect the interests of the students who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. This direction is issued keeping in mind the interest of the students and also Sections 33 and 34 of the Act, which contemplate dissolution of the sponsoring body and liquidation of a University whereunder responsibility has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of institution. Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by the All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law.

[81-G-H; 82-A-B]

16. The provisions of Section 5 and 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 are declared to be *ultra vires* and are struck down. Consequently, all notifications issued by the State Government in the Gazette in the purported exercise of power under Section 5 of the aforesaid Act notifying the Universities (including respondent nos.3 to 94) are quashed and such Universities shall cease to exist. If any institutions have been established by such Universities, steps may be taken for their affiliation to already existing State Universities in accordance with the direction issued.

[82-D-E]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 19 of 2004.

(Under Article 32 of the Constitution of India.)

WITH

A W.P. Nos. 295, 299, 346 and 525/2004, 565/2003, C.A. Nos. 5146, 5161, 5171, 5172, 5174, 5175, 5180, 5184, 5185, 5188, 5189, 5190, 5191, 5197 and 5198 of 2004.

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G The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. Professor Yashpal, an eminent Scientist and former Chairman of University Grants Commission, has filed Writ Petition No. 19 of 2004 under Article 32 of the Constitution by way of public interest litigation for declaring certain provisions of The Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 as *ultra vires*

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and for quashing of the notifications issued by State of Chhattisgarh in the purported exercise of power conferred by Section 5 of the said Adhiniyam for establishing various universities.. The other petitioner who has joined in the petition, is a resident of Chhattisgarh and is concerned with the quality of education in his State. The respondent no.1 to the petition is the State of Chhattisgarh, respondent no. 2 is the University Grants Commission and respondent nos. 3 to 94 are the private universities which have been established by the State of Chhattisgarh under the aforesaid Adhiniyam.

2. The Chhattisgarh Legislature enacted the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 (for short 'the Act') which was published in the Gazette on 4.2.2002 to establish self-financed private universities for higher education. Under Section 5 of the Act the State has been empowered to incorporate and establish a university by issuing a notification in the Gazette and Section 6 permits 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. The main averments in the petition are that after coming into force of the Act, the State Government has been, simply by issuing notifications in the Gazette, establishing universities in an indiscriminate and mechanical manner without having slightest regard to the availability of any infrastructure, teaching facility or their financial resources. In a short span of about one year as many as 112 universities were established and many of them had absolutely no buildings or campus and were running from one room tenements. There was absolutely no regulation or supervision over them. The legislation has been enacted in a manner which has completely done away with any kind of control of University Grants Commission (for short 'UGC') over these private universities. The guidelines issued by UGC on the courses being taught and award of academic degrees has been given a complete go-by. The universities issued brochures for award of all kinds of degrees like "Member of the International Institute of Medical Sciences", "Fellow of the International Institute of Medical Sciences" and many other similar degrees. The universities are wholly incapable of imparting any education much less a quality education in absence of basic infrastructure like classrooms, libraries, laboratories or campus. Nevertheless by conferment of a legal status of a university, they have been empowered to award degrees. The private universities are running professional courses without taking prior permission from regulatory bodies such as All India Council of Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), etc. The requirement of obtaining prior permission from the regulatory bodies has not been followed and the universities are not under the

- A control of any authority and are at liberty to grant degrees, diplomas and certificates to gullible students. The State Government has not done any verification or checking of universities after issuance of notification in the Gazette, whether they fulfill any norms laid down by the statutory bodies, which is essential for recognition of the degrees, diplomas and certificates awarded by such universities. In absence of requisite permission from the statutory bodies, the degrees and certificates awarded by such universities would not be recognized by the professional organizations, as a result whereof the students studying in such universities and obtaining the degrees therefrom would suffer immense loss, both in terms of money and also the time spent in completing the courses. It is further averred that the University Grants Commission Act is made nugatory as private universities are offering courses without subscribing to the standards laid down by the UGC and there being no homogeneity of the course content, the degree awarded may not be of any value. The private universities are offering unheard of courses and degrees which are not part of schedule to the UGC Act, which is in clear violation of Section 22 of the aforesaid Act and the Schedule appended thereto. The minimum requirement of teaching staff as laid down in the guidelines of UGC had also been given a complete go-by. Young students are being misled in enrolling themselves in courses which do not have any substantive content and the degrees offered by such private universities would affect the standard of education at large which in turn will jeopardize the educational system of the whole country and not that of State of Chhattisgarh alone.

3. Some photographs have also been filed which show that a signboard mentioning the name of the University is put over small room or shop on first or second floor in some congested market area. That they are functioning from small premises which are sometimes a single small room in a commercial complex or a small tenement on the first or second floor of a building or an ordinary flat or MIG house is evident from their address and a few of them are being reproduced below by way of illustration :

- G Respondent No. 3 : Thamath University, Raipur
Room No. 201, IInd Floor
Raipur Commercial Complex
Jairam Complex, Raipur.
- H Respondent No. 13 : I.I.L.M. University
Mishr Bhawan, 1st Floor
Tatyapara, Raipur.

- Respondent No. 36 : Supreme University
M.I.G. 6, Sector 3
Shankar Nagar, Raipur. A
- Respondent No. 37 : E.M.P.I. University
C-9-12, 1st Floor B
Ekatan Prishar
Rajbandha Maidan, Raipur.
- Respondent No. 42 : Jaipuria University, Raipur
1st Floor, Mishr Bhawan, Raipur.

Several such universities are functioning outside the State of Chhattisgarh, and their addresses as given below demonstrate the said fact : C

- Respondent No. 7 : N.I.I.L.M. University
11/66, Shershah Suri Marg
Mohan Co-operative Industrial Estate,
New Delhi. D
- Respondent No. 9 : Lovely University
Lovely Auto Complex
Dr. Ambedkar Chowk
Jalandhar City.
- Respondent No. 10 : Babu Banarasi Dass University
Babu Banarasi Dass Northern
Indian Foundation
Upper Ground Floor, 338-384,
S-Block New Rajinder Nagar,
New Delhi. E
- Respondent No. 12 : Dr. Zakir Hussain National University
Unopcharik av Anvrat Shikshan
Sansthan Satellite Centre, Balley Road
Patna. F
- Respondent No. 45 : Bio-Informatics, Bio-Tech. and Life
Science University, Raipur Bio-
Informatic Institute of India B-5,
Sector 3 Noida. G
- Respondent No. 46 : Institute of Business Administration
(N.C.D. Office) Ground Floor E-382, H

A Greater Kailash Part II New Delhi.

Respondent No. 53 : Adarsh University of Science &
Technology, Chhattisgarh, N.I.C.I.
Society, 54, Todarmal Road
Bengali Market New Delhi.

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4. Writ Petition (Civil) No. 565 of 2003 has been filed by Gopal Ji Agarwal with the same prayer, namely, that the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam 2002 be declared as *ultra vires* being violative of Constitution of India, and also contrary to the provisions of University Grants Commission Act, 1956, Indian Medical Council Act, 1956, All India Council for Technical Education Act, 1987 and Bar Council of India Act, 1956. A further prayer has been made that a writ of prohibition may be issued restraining the private universities incorporated under the aforesaid Act from imparting any education and conferring any degrees or diplomas. The averments made in the writ petition are substantially

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the same as made in the writ petition filed by Prof. Yash Pal, that a large number of universities have been incorporated by merely issuing gazette notifications though they do not have any kind of infrastructure or teaching facility and are functioning from one room tenement in a second or third floor in a residential or commercial building and without any teaching staff. The universities have been established merely to confer degrees and they

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have on their own created a large number of degrees and diplomas which are totally unheard of. The universities had issued advertisements for opening up study centres in different parts of the country for award of any number of degrees and diplomas. By way of illustration, copies of advertisements issued by some of the universities have been filed. One of such university, namely,

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the Indian University, issued an advertisement inviting applications for Nodal Service Centres/University Centres for awarding the following kind of degrees and diplomas :

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• Master of Biotechnology Administration (MBA) - 2 Yrs.

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• Master of Insurance Management (MIM) - 2 Yrs.

• M. Tech in Bioinformatics - 2 Yrs.

• M. Tech VLSI (Very Large Scale Intg. Circuits) - 2 Yrs.

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• M. Tech Elect. Mechanics & Power Semi
Conductor Drive - 2 Yrs.

- M. Tech Energy Management Systems - 2 Yrs. A
- M.Sc. Cheminformatics (Intg)/Bioinformatics(Intg) - 5 Yrs.
- M.Sc. Biotechnology (Intg.) - 5 Yrs.
- M.Sc. Bioinformatics/Biotechnology - 2 Yrs. B
- B.Sc. with Bioinformatics/Microbiology/
Biotechnology - 3 Yrs.
- B.Sc. with Automobiles Science - 3 Yrs.
- PGD in Biotech Marketing - 1 Yr. C
- PGD in Imaging (CT Scan) & (MRI) - 2 Yrs.
- PGD in Bioinformatics - 1.5 Yrs.
- PG Diploma in Cheminformatics - 1 Yr. D
- PG Diploma in Mobile Technology - 1 Yr.
- PG Diploma in Energy Audit and Conservation - 1 Yr.
- PG Diploma in Acturial/Sciences in Bioinformatics - 1 Yr. E

The writ petitioner, not knowing the correct facts, responded for opening up a study centre and he was asked to deposit Rs. 50,000 which he did by two Demand Drafts. On enquiry regarding prior permission from Medical Council of India, the Registrar of the Indian University issued a certificate which reads as under :

“Certified that following PARA MEDICAL COURSES are approved by INDIAN UNIVERSITY, RAIPUR.

- (1) B P T - 2 Year
- (2) Bachelor of Ophthalmology - 2 Year
- (3) B M L T - 4 Year
- (4) PG Diploma in Imaging (MRI) - 1 Year

It is further certified that for Para Medical Course MCI approval is

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A not required and it is not covered by MCI also.”

B It is further averred that the Indian University, Raipur also issued an advertisement inviting applications for admission to certain types of technical courses in its alleged campus at Graduate School of Business & Administration, Greater Noida, which is in the district of Gautam Budh Nagar, in the State of UP and it was mentioned therein that the candidates may apply to the Registrar by sending a Bank Draft of Rs. 800. A photocopy of the advertisement has been filed. It has thus been submitted that though the private universities have no infrastructure for imparting any kind of education, they were alluring people all over the country to open study centres for which they were charging huge amount and also befooling students to apply for admission to wholly unknown and unheard of technical, medical and other professional courses which are not recognized by any statutory authority, and thereby a substantial amount of money has been collected.

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D 5. In a stereotyped manner Gazette notifications were issued notifying a University and by way of illustration one such notification is being reproduced below :

“Raipur, the 11th October, 2002

E No. F. 679/...../02. - In exercise of the powers conferred by sub-Section (1) of Section 5 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman), Adhiniyam, 2002 (No. 2 of 2002) for extension of Higher/Technical Education in Chhattisgarh, hereby, establishes a University known as “Indian University, Raipur” with effect from the date of publication of this notification in the Chhattisgarh Gazette and the jurisdiction of the University shall extend over whole of Chhattisgarh.

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G 2. The Head Office of the University shall be at Raipur.
3. The State Government, hereby authorizes “Indian University, Raipur” to conduct the syllabus and to grant degree or diplomas for which it shall be recognized or authorized as may be required under any other law for the time being in force.”

H 6. Several legal issues have also been raised in the writ petitions and the principal being that the manner in which these private universities are functioning would result in creating a complete chaos in the system of higher education in the country and the expert bodies created by the Central

Government like, University Grants Commission, Medical Council of India, All India Council for Technical Education etc. for coordination and determination of standards in their own respective fields would not be able to perform their statutory duty and would make their functioning not only difficult but almost impossible. A

7. The State of Chhattisgarh has filed brief but almost identical counter affidavits in both the writ petitions. The main plea taken therein is that in view of Entry 32 List II of Seventh Schedule to the Constitution, the State has the legislative competence to make an enactment regarding incorporation of a University. The impugned Act had been passed to facilitate establishment of private Universities with a view to create supplementary resources for assisting the State Government in providing quality higher education. The notifications establishing the Universities were issued on the basis of the representations made by the sponsoring bodies as set out in their project reports. The State Government expected that the Universities would make the requisite infrastructure including campus, building, etc. and recruit qualified staff so as to provide higher education in order to achieve the object for which the Universities were established. However, the functioning of the Universities post notification was dismal and completely belied the expectations which the State Government had in that behalf, raising serious concern about the academic interests of the students seeking admission therein. The State Legislature, accordingly, enacted the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Vinियaman) Sansodhan Adhiniyam, 2004. After expiry of the time limit fixed in the aforesaid amending Act, 59 Universities were de-notified on account of their failure to comply with the amended provisions. It is further averred that after the Act had been amended in the year 2004, the petitioners' grievance has been completely met and consequently the writ petitions deserve to be dismissed. B C D E F

8. Before we advert to the principal submission of learned counsel for the parties regarding the vires of Section 5 and 6 of the Act, it is necessary to take note of the relevant constitutional provisions dealing with education and Universities, both under Government of India Act, 1935, and the Constitution. G

SEVENTH SCHEDULE OF GOVERNMENT OF INDIA ACT, 1935

LIST 1 - FEDERAL LEGISLATIVE LIST

12. Federal agencies and institutes for the following purposes, that is H

A to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Banaras Hindu University and the Aligarh Muslim University.

LIST II - PROVINCIAL LEGISLATIVE LIST

B 17. Education including Universities other than specified in paragraph 13 of List I.

33. The incorporation, regulation, and winding up corporations (not being Corporations specified in List I or Universities); unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

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SEVENTH SCHEDULE TO THE CONSTITUTION OF INDIA

LIST I - UNION LIST

D 63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E; any other institution declared by Parliament by law to be an institution of national importance.

E 64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for -

(a) professional, vocational or technical training, including the training of police officers; or

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(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

G 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical education.

LIST II - STATE LIST

H 11. Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.

(This Entry was deleted by Forty-second Amendment Act)

32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

LIST III - CONCURRENT LIST

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.

The Constitution (Forty-second Amendment) Act, 1976 which came into force on 3.1.1977 omitted Entry 11 from List II and transferred that subject to be combined with Entry 25 of List III.

9. The foundation for a federal set up for the nation was laid in the Government of India Act, 1935. Though in every respect the distribution of legislative power between the Union and the States as envisaged in the 1935 Act has not been adopted in the Constitution but the basic framework is same. It will be seen that Entry 17 in List II of Seventh Schedule in Government of India Act specifically provided for Universities and the same is now part of Entry 32 in List II of the Seventh Schedule of the Constitution. Entries 17 and 33 of List II of Government of India Act have been combined and made one composite entry (Entry 32) in List II of the Seventh Schedule of the Constitution.

10. How the word "Universities" occurring as a legislative head in the Seventh Schedule should be interpreted, one has to look to the legislative practice regarding interpretation of Constitutional entries. For this purpose, it will be useful to refer to some well-known decisions.

In *South Carolina v. United States*, (1905) 199 US 437, the principle was stated as under :

"To determine the extent of the grants of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

In *Ex parte Grossman*, (1925) 267 US 87, the U.S. Supreme Court

A observed that the language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted. In *Croft v. Dunphy*, (1933) AC 156, it was held as under :

B “When a power is conferred to legislate on a particular topic it is important, in determining the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power. Thus in considering what might be appropriately and legitimately enacted in relation to “bankruptcy and insolvency” it was considered relevant to discuss the usual contents of bankruptcy statutes.”

C Similarly, in *Wallace Brothers and Co. Ltd. v. Commissioner of Income-tax*, Bombay, AIR (1948) PC 118, the Judicial Committee observed that where Parliament has conferred a power to legislate on a particular topic it is permissible and important in determining the scope and meaning of the power to have regard to what is ordinarily treated as embraced within that topic in the legislative practice of the United Kingdom. The object is to ascertain the general conception involved in the words in the enabling Act.

D 11. In *Constitutional Law of India* by Seervai, the learned author has said in para 2.12 (3rd ed.) that the golden rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude. This is subject to certain exceptions and a restricted meaning may be given to words if it is necessary to prevent a conflict between two exclusive entries.

E 12. The framers of the Constitution having adopted (with some modification) the legislative entries on Universities from the Government of India Act, 1935 made by the British Parliament, the full content and amplitude of the entry can be comprehended by examining how a University is understood and what is its concept in U.K. and U.S.A. whose pattern was followed in several matters and which the founding fathers had in their mind.

F 13. In Volume 15 Halsbury’s *Laws of England* (Fourth ed. Reissue) what is a University and how it is incorporated is described as under :

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Para 256. *General.* A university is the whole body of teachers and scholars engaged, at a particular place, in giving and receiving instruction in the higher branches of learning; such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges (especially that of conferring degrees), and forming an institution for the promotion of education in the higher or more important branches of learning; also, the colleges, buildings and other property belonging to such a body. Although the institutions to which it refers are readily identifiable, precise and accurate definition is difficult. The essential feature of a university seems to be that it was incorporated as such by the sovereign power.

Other attributes of a university appear to be the admission of students from all parts of the world, a plurality of masters, the teaching of one at least of the higher faculties, namely theology, law or philosophy (which in some definitions are regarded as identical) and medicine, provision for residence and the right to confer degrees, but possession of these attributes will not make an institution a university in the absence of any express intention of the sovereign power to make it one. A university involves the relation of tutor and pupil; it is charged with the supervision and upbringing of the pupil under tuition. Incorporation was anciently effected by papal grant or charter, and later by royal charter or Act of Parliament.

The practice adopted in the case of the most recent foundations is to incorporate the university by royal charter, to which there is annexed a schedule containing the original statutes of the university, and thereafter to obtain the passing of a local Act of Parliament vesting in the university the property and liabilities of any institution which it replaces and making other necessary provisions.

A copy of any application for a charter for the foundation of any college or university which is referred by the Queen in Council for the report of a committee of the Privy Council must be laid before Parliament, together with a copy of the draft charter, for not less than 30 days before the committee reports upon it.

In 15A American Jurisprudence 2d "University" has been defined as under :

A **Para 1. Definitions.**

B Properly speaking, a “university” is an aggregation or union of colleges. It is an institution in which the education imparted is universal, embracing many branches, such as the arts, sciences, and all manner of higher learning, and which possesses the power to confer degrees indicating proficiency in the branches taught.

C The word “college” has been said to be employed in the United States to indicate an institution of learning, having corporate powers, and possessing the right to confer degrees, and which, with reference to its educational work, consists of the trustees, teachers, and scholars, all of whom make up the membership of the college and represent its active work. The term “college” may also be used to indicate a building, or group of buildings, in which scholars are housed, fed, instructed, and governed while qualifying for university degrees, whether the university includes a number of colleges or a single college. In a broad sense, the terms “college” and “university” convey the same idea, differing only in grade, with each indicating an institution of learning consisting of trustees, teachers, and scholars as making up its membership and representing its active work, or an institution engaged in imparting knowledge to resident students and possessing the right to confer degrees.

E In the footnote to this paragraph reference is made to a decision which has some kind of similarity with the case in hand and the footnote reads as under :

F A school offering correspondence courses in professional and other educational subjects, sending students textbooks and lessons to study, giving examinations based thereon, and awarding diplomas or degrees, but having no entrance requirements, resident students, library, laboratory, or faculty, is not a university. *Branch v. Federal Trade Com.*, (CA7) 141 F2d 31.

G In the New Encyclopedia Britannica (15th ed) “University” has been described as under :

H (Page 165) University, institution of higher education, usually comprising a liberal arts and sciences college and graduate and professional

schools and having the authority to confer degrees in various fields of study.

(Page 186) Universities and students looked toward ways of creating opportunities for a satisfying career outside traditional roles for graduates in scholarship, teaching, and the professions. The university's basic traditional functions remain unchanged - enabling students to learn from their cultural heritage, helping them to realize their intellectual and creative abilities, and encouraging them to become humane and responsible people. The university expands knowledge across the entire spectrum of disciplines, and it can add to the understanding and enjoyment of life. It continues to be needed for imaginative solutions to the problems of society.

14. Shortly after independence on 4.11.1948 the Government of India constituted a Commission known as "University Education Commission" of which Dr. S. Radhakrishnan was the Chairman. Dr. Tara Chand, former Vice-Chancellor, Allahabad University, Dr. Zakir Hussain, Vice-Chancellor, Aligarh Muslim University, Dr. A. Lakshmanaswami Mudaliar, Vice-Chancellor, Madras University, Dr. Meghnad Saha, Dean, Faculty of Science, Calcutta University and 5 other eminent personalities in the field of education were its members. The Commission gave a very long and exhaustive report. Chapter II of the report deals with the aims of University education and Para 2 of Part I is illustrative and the same is being reproduced below :

"2. *Universities as the Organs of Civilization*—He indeed must be blind who does not see that, mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities. Everything is being brought to the test of reason, venerable theologies, ancient political institutions, time-honoured social arrangements, a thousand things which a generation ago looked as fixed as the hills. If India is to confront the confusion of our time, she must turn for guidance, not to those who are lost in the mere exigencies of the passing hour, but to her men of letters, and men of science, to her poets and artists, to her discoverers and inventors. These intellectual pioneers of civilization are to be found and trained in the universities, which are the sanctuaries of the inner life of the nation."

A In the introductory paragraph of Chapter IV dealing with standards of teaching, the Commission recorded its views in the following words :

The need for High Standards.

B *Introduction* - It is the primary duty of a university to maintain the highest standards of its teaching and examinations. A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduate it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognized that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterruptedly only if there is a regular supply of graduates well prepared by general education for specialized research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates.

F The Commission noted that many of the Universities did not compare favourably with the best of British and American universities in respect of their teaching and examination standards. Unless highest standards of teaching in the Universities are ensured, the degree given by them will not command recognition and respect. The Commission observed :

G “.....Our universities should maintain the academic character of their work on a level recognized as adequate by the universities of other countries. Universities are our national institutions, and to keep up our national prestige, our degrees must be such as to command international recognition.....”

H 15. The Government of India constituted a Committee in December,

1961 to consider broadly the organizational structure of the Universities in India and to prepare the outline of a "Model Act" suited to their role and functions of which Dr. D.S. Kothari, Chairman, UGC was the Chairman and several other persons who were either Vice-Chancellors of Universities or were connected with the field of education were members. In the concluding part of the First Chapter, the Committee noted as under :

".....The function of the university is not only to preserve, disseminate and advance knowledge but also to furnish intellectual leadership and moral tone to society. No less important is the role of universities in promoting national integration and a common culture, and in bringing about the social transformation that is desired. Finally, universities have also to provide trained personnel to advance the country's prosperity by making full use of modern knowledge. The organizational pattern must enable the universities to achieve these objectives."

These reports prepared by most learned and eminent educationists in post independence era highlight the primary function of the Universities viz, teaching and research and to provide trained and qualified personnel for the progress of the nation.

16. Though incorporation of a University as a legislative head is a State subject (Entry 32 List II) but basically University is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions of this Court. In *Gujarat University v. Shri Krishna*, AIR (1963) SC 703, a decision by a Constitution Bench rendered prior to Forty-second Amendment when Entry 11 of List II was in existence, it was held that Item No. 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. The use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In para 23, the Court held as under :

".....Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union

- A Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of “education including Universities” power to legislate on that subject must lie with the Parliament.....
- BItem 11 of List II and item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap; but to the extent of overlapping, the power conferred by item 66 List I must prevail over the power of the State under item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour.
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The following observations in paras 24 and 25 highlight the supremacy of legislation made by the Parliament with reference to Entry 66 :

- D “24.The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Ar. 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.
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- G 25..... Item No. 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in item 66 or elsewhere in the Constitution which supports the submission ‘that the expression “co-ordination” must mean in the context in which it is used merely evaluation, co-ordination in its normal connotation means harmonising or bringing
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into proper relation in which all the things co-ordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power.”

17. The same question was also examined in considerable detail in *State of Tamil Nadu and Anr. v. Adhiyaman Educational and Research Institute*, [1995] 4 SCC 104 and the conclusions drawn were summarized in para 41 of the reports and sub-paras (i) and (ii) thereof are being reproduced below:

- (i) The expression ‘coordination’ used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make ‘coordination’ either impossible or difficult. This power is absolute and unconditional and in the absence of the valid compelling reasons, it must be given its full effect according to its plain and express intention.
- (ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the 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.

18. In *Osmania University Teachers Association v. State of Andhra Pradesh and Anr.*, [1987] 4 SCC 671, the Court reiterated that it was the exclusive responsibility of the Central Government to determine the standards for higher education and the same should not be lowered at the hands of any particular State as it was of great importance to national progress. After referring to the Constitution Bench decision in *Kerala State Electricity Board v. Indian Aluminium Co.*, [1976] 1 SCC 466, where it was held that when an

A entry is in general terms in List II and part of that entry is in specific terms in List I, the entry in List I takes effect notwithstanding the entry in List II, the Court held as under in para 14 of the reports :

B “14. Entry 25 List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to coordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to ‘education’ has been distributed between List I and List III of the Seventh Schedule.”

E 19. The interplay of Entry 66 List I and Entry 25 List III was again examined by a Constitution Bench in *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.*, [1999] 7 SCC 120 in the context of lowering of standards by the State for admission to a Post Graduate course in a Medical College and it was held that 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. While considering the question whether norms for admission have any connection with the standards of education and that they are only covered by Entry 25 of List III, it was observed that any lowering of the norms of admission does have an adverse effect on the standards of education in the institutions of higher education. The standard of education in an institution depends on various factors like, (i) the caliber of teaching staff; (ii) a proper syllabus designed to achieve high level of education in a given span of time; (iii) the student-teacher ratio; (iv) equipment and laboratory facilities; (v) caliber of the students admitted; (vi) adequate accommodation in the institution; (vii) the standard of examinations held including the manner in which the papers are set and examined; and (viii) the evaluation of practical examinations done. It was pointed out that education involves a continuous interaction between the

teachers and the students. The base of teaching, the level to which teaching can rise and the benefit which the students ultimately receive depends as much on the caliber of the students as on the caliber of the teachers and the availability of adequate infrastructural facilities.

20. The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. 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.

21. In order to achieve the aforesaid purpose, the Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "UGC Act") is illustrative and consequently it is being reproduced below :

"The Constitution of India vests Parliament with exclusive authority in regard to 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions'. It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new. It is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities. The need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central Government has also become more urgent on this account.

In the second para it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such

A recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities.

22. The preamble of the UGC Act says - an Act to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission. Section 2(f) of this Act defines a University and it means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. Clause 12 provides that it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of its functions under the Act, the Commission may do all such acts enumerated in sub-sections (a) to (j) thereof. Sections 22 and 23 are important and are being reproduced below :

22. *Right to confer degrees* - (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant any degree.

(3) For the purpose of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette."

23. *Prohibition of the use of the word "University" in certain cases.* No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word "University" associated with its name in any manner whatsoever:

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which immediately before such commencement, had the word "University" associated with its name. A

23. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by University or an institution deemed to be University under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a "degree" and what it connotes is not given in the UGC Act but the meaning of the word as given in dictionaries and standard books is as under : B

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| Webster's Third New International Dictionary | : | A title conferred upon students by a college, university, or professional school upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project. D |
| | | 2. A grade or class of membership attained in a ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination. E |
| Wharton's Law Lexicon | : | The state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University. |
| Chambers's Twentieth Century Dictionary | : | A mark of distinction conferred by universities, whether earned by examination or granted as a mark of honour. F |
| P. Ramanatha Aiyar | : | A mark of distinction conferred upon a student. G |
| | | Law Lexicon (2nd Ed) for proficiency in some art or science; University diploma of specified proficiency. |

A *Encyclopedia Americana*

"DEGREE" - the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work - the M.D. (doctor of medicine) for example.

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C In the 20th century, however, the M.A. is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the B.A. and the presentation (usually) of a thesis. An exception is Scotland, where the M.A. has been the first degree conferred in all six universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the M.A.

D *The New Encyclopedia Britannica*

E "Degree" in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of degrees, dating from the 13th century, once resembled the medieval guild system. In the United States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate), master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe.

F A degree conferred by a University is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a Doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A University degree confers

G a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a Ph.D., D.Lit., or D.Sc. degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a University degree is in the matter of employment, where a minimum qualification like a graduate,

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post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

24. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in *Azeez Basha v. Union of India*, AIR (1968) SC 662.

25. Having seen what is the concept of a University and what is the value of a degree awarded by it, the Scheme and the provisions of the impugned Act may now be examined. The Preamble of the Act says that it is an Act to provide for establishment of self financed private Universities for imparting Higher Education and to regulate their functions and for matters connected therewith or incidental thereto. Some of the provisions of the Act which have a bearing on the controversy involved are being reproduced below :

Section 2. In this Adhiniyam, unless the context otherwise requires -

- (a) "Ordinance" means an Ordinance of the University;
- (b) "Sponsoring Body" in relation to a University means-
 - (i) a Society registered under the Madhya Pradesh Societies Registrickaran Adhiniyam, 1973 (No. 44 of 1973)
 - (ii) any Public Trust; or

- A (iii) a Company registered under Section 25 of the Companies Act, 1956 (No. 1 of 1956);
- (c) "Statute" means a Statute of the University;
- (d) "University" means a University established under sub-section (1) of Section 5.
- B 3. The objects of the University shall be-
- C 1. to provide instructions, teaching and training in Higher Education and make provisions for research, advancement and dissemination of knowledge;
- D 2. to create higher levels of intellectual abilities;
- E 3. to establish state of the art facilities for education and training;
- F 4. to carry out teaching and research and offer continuing education programmes;
- G 5. to create centres of excellence for research and development and for sharing knowledge and its application;
- H 6. to provide consultancy to the industry and public organizations;
7. to establish main campus in Chhattisgarh and to have study centres at different places in India and other countries;
8. to establish examination centres;
9. to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination, or any other method of evaluation;
10. to pursue any other objective as may be approved by the State Government;
11. to ensure that the standard of the degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE/NCTE/UGC/MCI and Pharmacy Council etc;
4. (1) An application containing the Project Report to establish A University for carrying out any or all of the objects enumerated in section 3 of this Adhinyam shall be made to the State Government by the Sponsoring Body along with such fee as may be prescribed.

- (2) The Project Report shall contain the following particulars, namely- **A**
- (a) the objects of the University along with the details of the Sponsoring Body;
 - (b) the extent and the status of the University and the availability of land; **B**
 - (c) the nature and the type of programmes of study and research to be undertaken in the University during a period not less than the next five years;
 - (d) the nature of faculties, courses of study and research proposed to be started; **C**
 - (e) the campus development such as building, equipment and structural amenities;
 - (f) the phased outlays of capital expenditure for a period not less than the next five years; **D**
 - (g) the item-wise recurring expenditure, sources of finance and estimated expenditure for each student;
 - (h) the scheme for mobilizing resources and the cost of capital thereto and the manner of repayments to the Sponsoring Body and other sources; **E**
 - (i) the scheme for the generation of funds internally through the recovery of fee from students, revenues anticipated from consultancy and other activities relating to the objects of the University, and other anticipated incomes; **F**
 - (j) the details of expenditure on unit cost and the extent of concessions or rebates in fee or freeship and scholarship for students belonging to the Scheduled Tribes and Scheduled Castes, belonging to economically weaker sections, in lieu of land grants if any, from the State Government, subject to the condition that the number of students getting concessions and freeships or scholarships shall not be less than twenty two and one half percent of the total number of seats. The proposed fee structure shall also indicate the rationale for the varying rates of fee that would be levied on non resident **G**
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- A Indians and students of other nationalities;
- (k) the years of experience and expertise in the concerned disciplines at the command of the Sponsoring Body as well as the financial resources;
- B (l) the system to select students for admission to the courses of study at the University;
- (m) such other details as may be prescribed by rules framed under this Adhiniyam.
- C (3) The State Government, on receipt of the Project Report shall make such enquiry as it may deem necessary within forty five days from the date of submission of the Project Report.
- (4) If the State Government is satisfied with the proposal to establish the University, it may, subject to such conditions as may be specified, accord the sanction for the same.
- D 5. (1) The State Government may by notification in the Gazette establish a University by such name and with such jurisdiction and location of campus as may be specified therein having regard to -
- E (a) the desirability to establish a University;
- (b) recognition or authorization as may be required under any other law for the time being in force to conduct the syllabus and to grant degrees or diplomas or awards.
- F (2) Every notification issued under sub-section (1) shall be laid on the table of the Legislative Assembly.
6. (1) Every University established under sub-section (1) of section 5 shall be a body corporate by the name notified under the said section having perpetual succession and a common seal, and may sue and be sued by the said name.
- G (2) the University established under sub-section (1) of section 5 may, with the prior approval of the State Government, affiliate any College or other institution or set up more than one campus."

H Section 9 provides that the University shall not be entitled to receive any grant or other financial assistance from the Central Government, State

Government or any other authority except for meeting any amount towards the fee payable by students belonging to socially disadvantaged or weaker sections of society or for conducting any study for research purposes, etc.

26. Section 3 of the Act enumerates the objects of the University. Sub-section (1) of Section 4 provides that an application containing the Project Report to establish a University for carrying out any or all of the objects enumerated in Section 3 of the Act shall be made to the State Government by the sponsoring body. Sub-section (2) of Section 4 provides that the Project Report shall contain the particulars which have been enumerated from clauses (a) to (m) in the said Sub-section. The Project Report is to merely indicate the availability of the land and also the details of the Scheme for mobilization of resources and generation of funds. The Project Report is in the nature of a proposal where some details have to be furnished regarding the type of courses of study and research to be undertaken in the University during the period not less than next five years, the nature of faculty and courses of study proposed to be started, the campus development such as building, equipment and structural amenities proposed to be made and phased outlays of the capital expenditure for a period not less than next five years. Sub-section (3) says that the State Government on receipt of the Project Report shall make such enquiry as it may deem necessary within 45 days from the date of submission of the Project Report. Sub-section (4) says that if the State Government is satisfied with the proposal to establish the University, it may, subject to such conditions as may be specified, accord sanction for the same. Therefore, the requirement of Section 4 is submission of an application containing Project Report which will merely indicate availability of land and some proposals and schemes for generation of funds and mobilization of resources and also proposal for development of building etc. and courses of study proposed to be started. It is this Project Report which merely contains some proposals and schemes for future implementation which is accorded sanction by the State Government. Thereafter comes Section 5 which says that the State Government may by notification in the Gazette establish a University by such name and with such jurisdiction and location of campus, as may be specified therein having regard to the desirability to establish a University. The effect of these provisions is that a Project Report on paper only, which will merely be a proposal or a scheme for doing something in future, will be notified as a University by issuing a notification to that effect in the Gazette. Sub-section (1) of Section 6 confers some kind of a juristic personality on the University so created by notification in the Gazette which in substance and reality is a Project Report by saying that the University so

A established shall be a body corporate by the name notified having perpetual succession and a common seal and may sue and be sued by the said name. Sub-section (2) of Section 6 confers a very wide power on the University so created to affiliate any college or other institutions or set up more than one campus with the approval of the State Government.

B 27. The State Legislature is undoubtedly empowered to legislate and make an enactment for incorporation and establishment of Universities in view of Entry 32. of List II and Entry 25 of List III. The "University" as a topic of legislation has not been introduced for the first time in the Seventh Schedule of the Constitution but was already there in the Government of India Act, where Entry 13 of List I related to Banaras Hindu University and Aligarh Muslim University and Entry 17 of List II was education including Universities other than those specified in Entry 13 of List I. The framers of the Constitution had the same concept of "University" in their mind as was there in the Government of India Act when they made the relevant entries in the Seventh Schedule of the Constitution. Keeping in view the principles of legislative practice, the word "University" should be given the same meaning as it was generally understood at the relevant time having due regard to what is ordinarily treated as embraced within that topic or subject.

E 28. As shown earlier, University is a whole body of teachers and scholars engaged at a particular place in giving and receiving instructions in higher branches of learning; and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, building and other property belonging to such body. Other necessary attributes of University are F plurality of teachers teaching more than one higher faculties and other facilities for imparting instructions and research, provision for residence and must have certain standard of instructions providing for graduate and post-graduate levels of study. It pre-supposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides some playgrounds and also sport facility for overall development of personality of the students. However, G under the provisions of the impugned Act, a proposal which is on paper and merely gives some kind of a plan or scheme to be done in future is notified as a University. When the Constitution has conferred power on the State to legislate on incorporation of University, any Act providing for establishment of the University must make such provisions that only an institution in the H sense of University as it is generally understood with all the infrastructural

facilities, where teaching and research on wide range of subjects and of a particular level are actually done, acquires the status of a University. The impugned Act does not at all establish a University, yet by issuing a notification conferring the legal status of a University to a Project Report (which is on paper only) bestows upon it a right to confer a degree, which right it gets by virtue of Section 22 of the UGC Act. The manner in which a University is notified by issuance of a Gazette notification under Section 5 and conferment of a juristic personality under Section 6 of the Act is clearly contrary to the constitutional scheme and is not contemplated by Article 246 of the Constitution.

29. The State Legislature can make an enactment providing for incorporation of Universities under Entry 32 of List II and also generally for Universities under Entry 25 of List III. The subject "University" as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a University so as to take advantage of Section 22 of UGC Act and thereby acquires the right of conferring or granting academic degrees but without having any infrastructure or teaching facility for higher studies or facility for research is not contemplated by either of these Entries. Sections 5 and 6 of the impugned enactment are, therefore, wholly *ultra vires* being a fraud on the Constitution.

30. Entry 66 which deals with co-ordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in Union List and the Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (See *Prem Chand Jain v. R.K. Chhabra*, [1984] 2 SCR 883 and *Osmania University Teachers Association v. State of Andhra Pradesh*, [1987] 4 SCC 671). The Act has been enacted to ensure that there is co-ordination and determination of standards in Universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various Universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined

- A before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite caliber and a proper student-teacher ratio. For this purpose, the Central Government has made a number of Rules in exercise of powers conferred by Section 25 of UGC Act and the Commission has also made
- B Regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, UGC Inspection of Universities Rules, 1960, UGC Regulations 1985 regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc.
- C The UGC with the approval of the Central Government and exercising power under Section 22(3) of the UGC Act has issued a schedule of degrees which may be awarded by the Universities. The impugned Act which enables a proposal on paper only to be notified as a University and thereby conferring the power upon such University under Section 22 of the UGC Act to confer
- D degrees has the effect of completely stultifying the functioning of the University Grants Commission in so far as these Universities are concerned. Such incorporation of a University makes it impossible for the UGC to perform its duties and responsibilities of ensuring co-ordination and determination of standards. In absence of any campus and other infrastructural facilities, the UGC cannot take any measures whatsoever to ensure a proper syllabus, level
- E of teaching, standard of examination and evaluation of academic achievement of the students or even to ensure that the students have undergone the course of study for the prescribed period before the degree is awarded to them.

31. The inter se evaluation of merit of candidates is often required to be done while making selection for some higher or specialized course of
- F study or in the matter of employment. One of the important functions to be performed by the UGC is co-ordination and determination of standards in institutions for higher education so that some kind of uniformity is maintained in level of teaching and examination and also award of degrees by various Universities. The impugned enactment, however, enables a sponsoring body,
- G without having any kind of teaching facility to award degrees. In view of clauses (8) and (9) of Section 3 of the Act, a University can be established only to establish examination centres or just to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination or any other method of evaluation anywhere and without any pre-determined
- H standards. The possibility that such Universities which award degrees without having any teaching facility and without imparting any education will do so

only for the purpose of making money is writ large. The fact that the amendments made in the Act in 2004 (referred to later in paragraph 34 of the judgment) making it mandatory to create an endowment fund of Rs. 2 crores and having provision of 15 acres of land have been challenged by many Universities speaks volumes of their intention. Preparing a Project Report on paper is not a difficult job and any number of sponsoring bodies can be created or formed in order to take advantage of the easy opportunity made available by the impugned Act. Persons with absolutely no knowledge in the subject may be awarded high degrees or other distinctions like a Ph.D., D.Lit., or D.Sc. This is bound to create havoc with the system of higher education in the country and would result in nullifying the main object for which University Grants Commission has been established and would render many provisions of the UGC Act unworkable and otiose.

32. Any State legislation which stultifies or sets at naught an enactment validly made by Parliament would be wholly *ultra vires*. We are fortified in our view by a Constitution Bench decision in *R. Chitrallekha v. State of Mysore*, AIR (1964) SC 1823 where power of the State under Entry 11 List II (as it then existed), and Entry 25 List III qua Entry 66 List I came up for consideration. Subba Rao, J. after quoting the following passage from *Gujarat University v. Shri Krishna*, AIR (1963) SC 703 :

“The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an All India or other basis impossible or even difficult”

enunciated the following principle defining the contours of the legislative powers of States *vis-a-vis* Union so as to steer clear of any overlap or collision:

“This and similar other passages indicate that if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry “Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions” reserved to the Union,

A the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the import of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case....”

B The whole scheme of the impugned Act, especially the effect of Sections 4, 5, 6 thereof and the result which it has led to in notifying as many as 112 Universities within a short span of one year on the basis of proposals made on paper with many or most of them having almost zero infrastructural facilities clearly shows that the relevant provisions of the Act have completely stultified the power of the Parliament under Entry 66 to make provision for co-ordination and determination of standards in institutions for higher education like Universities, the provisions of the UGC Act and also the functioning of University Grants Commission. Sections 5 and 6 of the impugned Act are, therefore, wholly *ultra vires* the Constitution of India and are liable to be struck down.

33. Dr. Dhawan, learned senior counsel for the petitioners in Writ Petition No. 19 of 2004, has also pointed out certain other infirmities in the impugned Act. Section 4 provides that a University may be established for carrying out “any or all” of the objectives enumerated in Section 3 of the Adhiniyam. The objectives mentioned in clauses (1) to (5) are the normal objectives of a University. However, a University cannot be established only to provide consultancy to the industry and public organizations [clause (6)] or to establish examination centres [clause (8)] or to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination or any other method of evaluation [clause (9)]. Since sub-section (1) of Section 4 uses the expression “for carrying out any or all of the objects”, it is obvious that a University can be established only for any one of the aforesaid objectives. This is clearly a colourable piece of legislation being beyond the legislative competence of the State legislature as the relevant entries in List II and List III of Seventh Schedule of the Constitution do not contemplate creation or establishment of such kind of a University.

34. The Act was amended by the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Sansodhan Adhiniyam, 2004 (hereinafter called “the amending Act”), which was published in the Gazette on 17.3.2004. By this amending Act some provisions were substituted and

some new provisions were added. Clauses (e) and (j) inserted in Section 2 read as under : A

(e) "main campus" means the campus of the university where main office of the university is situated and where the Vice-Chancellor and Registrar reside and where not less than three University Teaching Departments/Schools of studies are located. B

(j) "Regulatory Commission" means the Regulatory Commission established under the Adhiniyam." B

Sections 4, 5, 9 and 10 of the amending Act read as under :

"4. For Sub-sections (10) and (11) of Section 3 of the Principal Adhiniyam, the following Sub-sections shall be substituted; namely :- C

"(10) To ensure that the standard of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE, NCTE, UGC, MCI, Pharmacy Council, and such agency/agencies established by the Central Government for regulation of education and the Regulatory Commission; and D

(11) To pursue any other objective as may be approved by the Regulatory Commission." E

5. For Sub-section (1) of Section 4 of the Principal Adhiniyam, the following Sub-sections shall be substituted; namely :- E

"(1) (a) An application containing the Project Report to establish a university for carrying out any or all the objectives enumerated in Section 3 of the Adhiniyam shall be made to the Regulatory Commission by Sponsoring Body alongwith fee and such form as may be prescribed , at least one year before the date from which it intends to start the university. F

(b) The Sponsoring Body shall submit alongwith its application as per (a) above, G

(i) Proof of having established an Endowment Fund of Rs. 2 crore; H

(ii) Proof of being in possession of 15 acres of land, in case the main campus is proposed to be established within the Municipal Corporation Limits of Raipur; or 25 acres of land H

A in case the main campus is proposed to be established elsewhere in the State and in addition, if the land has been obtained on lease, the period of lease should be at least 30 years. In case, the Sponsoring Body does not possess the required land, it shall furnish proof of having deposited an additional sum of Rs. 2 crore in the manner prescribed.

B Withdrawals out of this additional fund shall be permitted by the Regulatory Commission for the purchase of land for the use of the University.

C Provided that where the main campus of the University is proposed to be established in a Scheduled Area of the State, only fifty percent of the amounts in (i) and (ii) above need to be deposited.

(c) The Endowment Fund shall be used as security deposit to ensure that the University complies with the provisions of the Adhinyam and functions as per the provision of the Adhinyam, the Statues and the Act. The Regulatory Commission shall have the power to forfeit a part of whole of the Endowment Fund, in case of non-compliance in the manner as may be prescribed.

D

(d) The Endowment Fund shall be invested in the manner as may be prescribed.

E

(e) The Sponsoring Body shall be permitted to use income from the Endowment Fund for the development of the University.

(1-A) A University already established in the State under the provisions of the Adhinyam, shall comply with the provisions of clauses (b) to (e) of Sub-section (1) of Section 4 above by 30th June, 2004 or else the Notification issued by the Government under Sub-section (1) of Section 5 of the Adhinyam shall be liable to be cancelled on the recommendations of the Regulatory Commission. In the event of such de-notification of the University, completion of courses, conduct of examinations, award of the degrees to the students of the University may be assigned to another University in such a manner that the interests of the students are not affected. Expenditure made in this behalf shall be made good from the General Fund of the University concerned.”

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9. For Sub-section (1) of Section 5 of the Principal Adhiniyam, the following shall be substituted; namely **A**

- (1) (a) The State Government on receipt of the advice of the Regulatory Commission under Sub-section (4) of Section 4 of the Adhiniyam, may declare, by notification in official gazette, that the university is established by such name and with such jurisdiction and location of main campus, from such date as may be mentioned in the notification. **B**
- (b) All such notification issued under Sub-section (1) of Section 5 of the Adhiniyam prior to coming into force of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Vinnyaman) Sansodhan Adhiniyam 2004, shall be included as Schedule - I of the Adhiniyam and hereafter, notification issued regarding establishment of a University under the provisions of this Adhiniyam, shall form part of the said Schedule - I in chronological order. **C**
- (c) All the provisions of the Adhiniyam shall apply to Universities included in Schedule - I. **D**

10. After Sub-section (2) of Section 6 of the Principal Adhiniyam, the following shall be substituted; namely :-

- “(2) On its notification under Sub-section (1) of Section 5, the University shall establish its main campus in the State of Chhattisgarh on the land referred to in Sub-section (1) of Section 4 and for that purpose shall create a built up area of at least 25,000 Sq.ft. in the form of buildings and ancillary structures within a period of 2 years from the date of such notification. In the case of Universities which have already been notified before this Sansodhan Adhiniyam, the period of 2 years shall be reckoned from the date of coming in force of this Sansodhan Adhiniyam. **E**
- (3) All disputes arising as a result of the provisions made in this Adhiniyam shall be settled by a court of law located in the State of Chhattisgarh.” **F**

Section 24 of the principal Act was also substituted by a new provision which provides for setting up of a Regulatory Commission for the purpose of ensuring appropriate standards of teaching, examinations, research, **G**

- A protection of the interests of the students and ensuring reasonable service conditions of employees while University has full freedom to function. The Regulatory Commission shall function under the general control of the Visitor and shall consist of a Chairman, two full time, and not exceeding two part-time members to be appointed by the Visitor. Sub-section (9) of Section 24
- B provides that it shall be the duty of the Regulatory Commission to take in consultation with the University and other bodies concerned with regulatory functions of the higher education system in the country such as UGC, AICTE, NCTE, MCI, Pharmacy Council and such agency/agencies established by the Central Government for regulation of education, or such steps, as it considers necessary for determination and maintenance of standards of teaching,
- C examination and research in the University.

35. The amending Act of 2004 does not make any appreciable change in the matter of issuing a notification for establishment of a University. Under the amending Act, Regulatory Commission is to be established by the Visitor (Governor). The application containing the Project Report shall be
- D made to the Regulatory Commission one year before the date from which it intends to start the University along with proof of having established an endowment fund of Rs. 2 crores which shall be used as security deposit to ensure that the University complies with the provisions and functions as per the provisions of the Act. In addition proof of being in possession of 15 acres
- E of land in case the main campus is proposed to be established within the municipal corporation limits of Raipur otherwise 25 acres of land has to be furnished. Where the land has been obtained on lease, the period of lease should be at least 30 years. It further provides that if the sponsoring body does not possess the required land, it shall furnish proof of having deposited an additional sum of Rs. 2 crores in the manner prescribed. The Regulatory
- F Commission on receipt of the Project Report, proof of creation of the endowment fund and possession of land or in lieu thereof proof of deposit of additional fund and if satisfied with the proposal to establish the University, may advise the State Government to issue a notification. Section 5 provides that the State Government on receipt of the advice of the Regulatory
- G Commission may declare by notification in Official Gazette that the University is established. Here again, without any infrastructure and without the teaching facilities having been provided, the proposal on paper is notified as a University. Section 4(1)(b)(ii) mentions "possession of land" and not "ownership". It is not difficult to speculate whether the heavy expenditure involved in making construction of buildings (classrooms, lecture halls, offices
- H and hostels, etc.), libraries and laboratories would at all be undertaken on

land which has been taken on lease for a short period of 30 years. Thus, the amended Sections 5 and 6 suffer from the same vice as the unamended provisions and are liable to be struck down as being *ultra vires*. A

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

- 3.1. Each private University shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956, as amended from time to time. E
- 3.2. A private university shall be a unitary university having adequate facilities for teaching, research, examination and extension services. F
- 3.6. The programmes of study leading to a degree and/or a post-graduate degree/diploma offered by a private university shall conform to the relevant regulations/norms of the UGC or the concerned statutory body as amended from time to time. G
- 3.7. A private university shall provide all the relevant information relating to the first degree and post-graduate degree/diploma programme(s) including the curriculum structure, contents, teaching and learning process, examination and evaluation system and the eligibility criteria for admission of students, to the UGC on a proforma prescribed by the UGC prior to starting of these H

A programmes.

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

38. Shri Amarendra Sharan, learned Additional Solicitor General appearing for UGC, has submitted that Section 5(1) of the impugned Act which permits establishment of a University merely by an executive action of issuing a notification in the Gazette is illegal. The University Grants Commission Act, a law made by Parliament with reference to Entry 66 List I, having empowered the UGC to make Regulations, any provision of an enactment made by the State Legislature concerning higher education which is in conflict with the Regulations, would be ultra vires, as held in sub-para (ii) of para 41 of *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* (supra). He has referred to Regulation 3.1 of University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulation, 2003 which lays down that each private University shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956 as amended from time to time. He has also submitted that this Court had clearly ruled in *Prem Chand Jain v. R.K. Chhabra*, [1984] 2 SCR 883, that a University established by special legislation alone can have the right to confer degrees, where while referring to Section 2(f) and 23 of the UGC Act it was said as under :

G ".....The word "established" or "incorporated" referred to Acts under which universities are established or incorporated. Several universities in this country have been either established or incorporated under special statutes, such as the Delhi University Act, the Banaras Hindu University Act, the Allahabad University Act etc. In these cases, there is a special Act either of the Central or the Provincial or the State legislature establishing and incorporating the particular

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universities. There is also another pattern - where under one compendious Act several universities are either established or incorporated - for instance, the Madhya Pradesh Universities Act, 1973. The definition of university and provisions in S.23 of the Act refer to Acts of the Central, Provincial or the State legislatures by which one or more universities are established or incorporated and not to institutions incorporated under a general statute providing for incorporation.....

.....'Education including universities' was a State subject until by the 42nd Amendment of the Constitution in 1976, that entry was omitted from the State list and, was taken into entry 25 of the concurrent list. But as already pointed out the Act essentially intended to make provisions for the coordination and determination of standards in universities and that, as already indicated, is squarely covered under entry 66 of list I. While legislating for a purpose germane to the subject covered by that entry and establishing a University Grants Commission, Parliament considered it necessary, as a regulatory measure, to prohibit unauthorized conferment of degrees and diplomas as also use of the word 'university' by institution which had not been either established or incorporated by special legislation.....”

In view of Regulation 3.1, a private University can only be established either by a separate Act or by one compendious Act where the legislature specifically provides for establishment of the said University. Though an attempt has been made in Section 5(1)(b) of the amended Act in this regard, but the same does not conform to the Regulations inasmuch as the initial notification notifying in the Official Gazette that the University is established, is done by the executive order and not by any Act of legislature.

39. Shri Rakesh Dwivedi, learned senior counsel, who appeared amicus curiae, has rightly submitted that though Entry 32 in List II is in general terms dealing with “incorporation, regulation and winding up of corporations other than those specified in List I and Universities”, but incorporation of a company is entirely different from incorporation of a University and they are conceptually different. Sections 3, 3(1)(i), 12, 13, 26, 33 and 34 of the Companies Act relate to incorporation of a Company. It need not have a prior business and a mere statement of a lawful purpose in the Memorandum of Association is enough. If a Company is unable to achieve its objective and is unable to carry on business, the shareholders may suffer some financial loss, but there is absolutely no impact on society at large. However, a

A University once incorporated gets a right to confer degrees. A University having no infrastructure or teaching facility of any kind would still be in a position to confer degrees and thereby create a complete chaos in the matter of co-ordination and maintenance of standards in higher studies which would be highly detrimental for the whole nation. A University may, therefore, be established either by the State in exercise of its sovereign power which would obviously be through a legislative enactment. In the case of a private University it is necessary that it should be a pre-established institution for higher education with all the infrastructural facilities and qualities which may justify its claim for being conferred with the status of a University and only such an institution can be conferred the legal status and a juristic personality of a University.

C 40. Shri Rakesh Dwivedi has also submitted that insofar as private Universities are concerned, the word "or" occurring in the expression "established or incorporated" in Sections 2 (f), 22 and 23 of the UGC Act should be read as "and". He has submitted that the normal meaning of the word "established" is to bring into existence and in order to avoid the situation which has been created by the impugned enactment where over 112 Universities have come into existence within a short period of one year of which many do not have any kind of infrastructure or teaching facility, it will be in consonance with the constitutional scheme that only after establishment of the basic requisites of a University (classrooms, library, laboratory, offices and hostel facility etc.) that it should be incorporated and conferred a juristic personality. The word "or" is normally disjunctive and "and" is normally conjunctive but at times they are read *vice-versa* to give effect to the manifest intentions of the legislature, as disclosed from the context. If literal reading of the word produces an unintelligible or absurd result "and" may be read for "or" and "or" may be read for "and". (See Principles of Statutory Interpretation by G.P. Singh 7th ed. Page 339, and also *State of Bombay v. RMD Chamarbaugwala*, AIR (1957) SC 699 at 709 and *Mazagaon Dock v. CIT* AIR (1958) SC 861). We are of the opinion that having regard to the Constitutional scheme and in order to ensure that the enactment made by the Parliament, namely University Grants Commission Act is able to achieve the objective for which it has been made and the UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the central legislation and create any hindrance or obstacle in the working of the later, it is necessary to read the expression "established or incorporated" as "established and incorporated" insofar as the private Universities are concerned.

41. 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.

42. The amending Act of 2004 came into force on 17.3.2004. Section 4(1-A) which was inserted by this amendment provided that a University already established in the State under the provisions of the Adhiniyam shall comply with the provisions of clauses (b) to (e) of sub-section (1) of Section 4 by 30th June, 2004 or else the notification issued by the Government under sub-section (1) of Section 5 of the Adhiniyam shall be liable to be cancelled on the recommendations of the Regulatory Commission. These provisions related to creation of an endowment fund of Rs. 2 crores and requirement of land. It appears that as many as 59 Universities were denotified as they did not comply with the requirements of the aforesaid provision. Learned State counsel made a statement that one more University was proposed to be denotified but the same could not be done on account of an interim order of Court. Many of the private Universities have filed writ petitions in this Court and also in the High Court of Chhattisgarh (which were later on transferred to this Court) challenging the provisions of the amending Act. The main challenge is regarding proof of being in possession of 15 acres of land in case the main campus is proposed to be established within the municipal corporation limits of Raipur or otherwise 25 acres of land and to the establishment of an endowment fund of Rs. 2 crores. The principal ground raised by Shri Ravindra Srivastava and other learned counsel for the Universities is that the provisions are arbitrary, the conditions imposed therein are very onerous and further

A such conditions could not be imposed on already existing Universities. It is also urged that the amending Act has a retrospective operation. In our opinion, the challenge raised has hardly any substance. In order to establish a University, there must be adequate land on which the campus may be made and necessary infrastructural facilities provided. No University can come into existence without a proper campus which requires land. Similarly, for those who want to establish a University, a sum of Rs. 2 crores is a very small amount. It will be seen that Section 4(1)(c) provides that endowment fund shall be used as security deposit to ensure that the University complies with and functions as per the Act. In *Azeez Basha v. Union of India* (supra), the history of establishment of Aligarh Muslim University has been given. Though in the year 1877 the Viceroy laid the foundation stone for the establishment of Muhammadan Anglo-Oriental College, Aligarh, which over a period of time became a flourishing institution, yet, when a demand was made to establish a University, the Government of India made a condition that at least Rs. 30 lakhs must be collected and thereafter the University was established by the 1920 Act. It is extremely difficult to visualize the real value and purchasing power of Rs. 30 lakhs of the year 1920 at the present juncture. For those who want to establish a University, a sum of Rs. 2 crores is just a pittance. The fact that many of the private Universities have challenged the provisions of the amending Act itself shows their intention and purpose that they do not want to create any infrastructure but want to have the right of conferring degrees and earn money thereby. However, it is not necessary to examine the challenge raised to the amending Act in detail, as we have already held that Sections 5 and 6 are wholly *ultra vires* and all notifications issued thereunder notifying the Universities being invalid are liable to be struck down.

F 43. Shri Ravi Shankar Prashad, learned senior counsel for the State of Chhattisgarh, has submitted that the impugned Act was passed in order to attract private capital as the State does not have enough funds to establish educational institutions and Universities. The Policy of Government of India has undergone a change since 1991 and emphasis is on privatization. The Act was enacted so that facility for higher education in the State of Chhattisgarh may be improved and a large volume of students may get opportunity to pursue higher studies. He has also submitted that the UGC itself has made regulations governing admission and fee in private non-aided professional institutions which makes reference to joint venture between a private trust or society and the State Government. The enactment, it has been urged, is an experiment in the changing world scenario where the trend is towards globalization. Learned counsel has further submitted that the amending Act

makes it mandatory that the main campus of the University should be situated in the State of Chhattisgarh and the Regulatory Commission has been established which will ensure a foolproof monitoring of all the private Universities. He has urged 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 UGC and that of the State Government where the centre is proposed to be opened, is *ultra vires*.

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

45. As a consequence of the discussion made and the findings recorded that the provisions of Sections 5 and 6 of the Act are *ultra vires* and the Gazette Notifications notifying the Universities are liable to be quashed, all such Universities shall cease to exist. Shri Amarendra Sharan, learned Additional Solicitor General has submitted that the UGC had conducted an inquiry and it was found that most of the Universities were non-existent, but the report was not placed before the Court as the complete exercise had not been done. Learned counsel for the Universities have seriously disputed this fact and have submitted that the Universities are functioning. We have not gone into this question as it is purely factual. In order to protect the interests of the students who may be actually studying in the institutions established

- A by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students and also Sections 33 and 34 of the Act, which contemplate dissolution of the sponsoring body and liquidation of a University whereunder responsibility has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of institution. Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the prescribed criteria laid down by the
- C All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law.

46. In view of the discussions made above, Writ Petition (C) No. 19 of 2004 (*Prof. Yashpal and Ors. v. State of Chhattisgarh and Ors.*) and Writ
- D Petition (C) No. 565 of 2003 (*Gopalji Agarwal v. Union of India and Ors.*) are allowed and provisions of Section 5 and 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 are declared to be *ultra vires* and are struck down. As a consequence of such declaration, all notifications issued by the State Government in the Gazette in the purported
- E exercise of power under Section 5 of the aforesaid Act notifying the Universities (including respondent nos.3 to 94) are quashed and such Universities shall cease to exist. If any institutions have been established by such Universities, steps may be taken for their affiliation to already existing State Universities in accordance with the direction contained in paragraph 45 above. Parties would be at liberty to approach the High Court if any dispute
- F arises in implementation of this direction. All Writ Petitions, Civil Appeals and Transferred Cases filed by the private Universities are dismissed.

47. Before parting with the case, we would like to place on record our appreciation of the valuable assistance rendered by Shri Rakesh Dwivedi, who appeared on the Court's request as an amicus curiae.

G.N.

Petitions Appeals dismissed.