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OPINION

September 26, 2008

Querists : The Singhania University, Pachheri Bari (Jhunjhunu).

My Opinion has been sought on the following legal questions by the querists University established by the Govt. of Rajasthan under section 2(f) of the UGC Act vide Act No. 6 of 2008.

- (i) To what extent the querist University is/can be regulated by regulatory bodies as mentioned in section 2(r) of the University Act.
- (ii) Whether UGC regulations of 2003 titled -UGC (establishment and maintenance of standards in Private Universities) Regulations, 2003 are applicable to the querist University.



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(iii) Can there be any limitation/restriction on the right of the University to provide instructions in the courses covered by the degrees notified under section 22 of the UGC Act.

(iv) Whether the provisions of the UGC Act shall have overriding effect over the provisions of the University Act and of all other Acts under or vide which regulatory bodies have been created as mentioned in Section 2 (r) of the University Act.

A University established or incorporated within the meaning of section 2f of the UGC Act i.e. under a State or Central Act, under Indian Legal System relating to education is a self regulated statutory body having full autonomy in its functioning and also vested with statutory rules/regulations making power vide its Statutes/Ordinances to achieve its objectives. UGC and a University, both are established under the provisions of UGC Act which is enacted by Parliament in exercise of its legislative power under Entry-66 of the Union list I of the schedule VII of the Constitution i.e. "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

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Subject of Education and Universities are in Concurrent List of Schedule VII of the Constitution. As such, provision of any law made by the Parliament on these subjects shall have overriding effect over the provisions of the State Law as held by Supreme Court of India in Bharathidasan University v/s AICTE case.

A combined reading of the provisions of UGC Act and the judgment of the Supreme Court of India in famous Dr. TMA Pai Foundation's case, it becomes clear that a University established u/s 2f of the UGC Act is a self regulated statutory body having full autonomy in its functioning vested with power of making statutory rules/regulations through its Statute and Ordinances to achieve its objectives. UGC Act which is enacted as a special law to establish UGC and Universities in the country and to make them autonomous statutory bodies. Under section 12A every University is empowered to affiliate a college according to its own rules and regulations and this power is not subjected to any regulatory control of any other authority.

Section 22 of the UGC Act empowers all the Universities to grant/confer the degrees notified under that section without any condition or qualification.



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UGC Act provides for only one type of University for the purposes of University's powers and functions or in the matter of University's autonomy.

Role assigned to UGC under the UGC Act is to coordinate and maintain the standards of higher education in the Universities by giving grants to them. For that purposes, it is vested with some limited and qualified regulations making power under Section 26 consistent with the provisions of the UGC Act to regulate the functioning of grant receiving Universities and not non grant receiving University and this power seem to have been given for the object of ensuring proper utilization of the grant by the University receiving the grant. Section 14, which reads as under, makes it very clear that if any University does not comply with its recommendation given to it and/or contravenes any regulation made by UGC under section 26, it can only withhold the grant if any proposed to be given to the defaulting University. From this it clearly follows that even a University receiving the grant from UGC has got the option not to comply with the recommendations or regulations made by UGC if it is prepared to forgo the grant. As such, the nature of the regulations made by UGC is not mandatory.

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**"Section 14 : Consequences of failure of Universities to comply with recommendations of the commission :-** If any University [grants affiliation in respect of any course of study to any college referred to in subsection (5) of section 12A in contravention of the provisions of that sub-section, or] fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, [or contravenes the provision of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26,] the Commission, after taking into consideration the cause, if any, shown by the University [for Such failure or contraventions may withhold from the University the grants proposed to be made out of the Fund of the Commission."

From a bare reading of section 14, it becomes quite clear that the regulations made by UGC are not made binding/applicable to a University not receiving any grant from the UGC. Essence of the UGC Act is that Universities should remain self regulated autonomous statutory bodies subject to no mandatory regulatory control of UGC or any other authority in carrying out of its functions. It seems that UGC Act is framed on the basis of Dr. Radha

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Krishnan committee's report on University Education in India. Relevant paragraph of which are reproduced in the famous Dr. TMA Pai Foundation case with approval regarding autonomy of University.

Philosophy of Indian law regarding the nature and extent of autonomy of University is further fortified in paras 46-73 of the Dr. TMA Pai Foundation case in which Hon'ble Supreme Court of India has thoroughly discussed under the topic "In case of Private Institution, can there be Govt. regulations if so, to what extent". Supreme Court, in sum and substance has held that so far as Universities are concerned they should remain autonomous but the unaided affiliated colleges/institutions can be regulated to a limited extent either by affiliating Universities or state as mentioned therein. As such, a clear distinction exists between a University which is an autonomous statutory body and a college and this is the reason colleges are subjected to rules and regulations of regulatory bodies like UGC, AICTE, NCTE etc. and not a University.

Nature and extent of autonomy a university enjoys presently under the UGC Act, which is a special law relating to Universities, it shall have overriding effect over all other central and state laws.



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UGC has framed some regulations titled UGC (establishment and maintenance of standards in Private Universities) Regulations, 2003 purporting to be in exercise of its regulations making power under sub section (f) and (g) of section 26, making it applicable to "Private University". Clause 3(1) of these regulations gives definition of a Private University. As such, it has created a new class of University designated as 'Private University'. Section 26 does not vest any authority in UGC to create a "New category University" to be regulated/ governed by the regulations made by it (and not by the provisions of UGC Act).

It seems UGC has assumed Parliament's power to legislate to amend UGC Act. In any case, these regulations would not apply to a University established or incorporated within the meaning of section 2(f). Regulations, 2003 themselves provide that these apply to a 'Private University'. These regulations provide for the powers and functions, limitations of a Private University, which are patently different or inconsistent with the provisions of the UGC Act. These regulations seem ultra virus to the UGC Act and therefore of no effect. In any case, it cannot be said that these regulations can have any overriding effect over the provisions of UGC Act. Section 14 of the UGC Act is clearly to the effect

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that any regulations made by UGC under section 26, are applicable/binding upon grant getting Universities and not to non grant getting University.

Net outcome of above discussion can be summed up as under:

1. Universities can be governed by the provisions of UGC Act only, which will have overriding effect over any other Central/State Law.
2. University's autonomy in its functioning or powers vested in a University under section 12 and 22 of the UGC Act cannot be whittled down or taken away by any other law.
3. Regulatory mechanism created under NCTE, AICTE etc. Acts are meant or applicable to affiliated colleges and they do not have binding effect upon the University.
4. Universities established in Rajasthan vide Act No. 5 to 9 of 2008 are not Private Universities and the 2003 regulations are, therefore, not applicable to them. These regulations are ultra virus and also not consistent with the provisions of UGC Act, and therefore of no effect or void for the Universities falling within the meaning of section 2f of



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the UGC Act. These regulations are not applicable because the University is a non grant receiving university.

Querist University is entitled to run all the courses/ disciplines covered by degrees notified under section 22 of the UGC Act. Under section 2(f) Universities established by State Act or Central Act are treated equal in all respects in the matter of powers and privileges vested under UGC Act i.e. under section 12 and 22 i.e. to award all the degrees. These powers are unqualified and, therefore, Querist University can run all the courses/disciplines including Education. Otherwise also scheduled II of the University Act provides 'Discipline' of Humanities which is an expression of very wide amplitude. Humanities would cover all disciplines/subjects/courses which are concerned with the needs of human beings/human society. Education is one of the most important disciplines for a civilized human society. I find that many Universities in the country having the department of Education fall under the discipline of humanities. UGC has not classified various disciplines and also has nowhere made any provisions providing for what course would fall under which discipline. Universities are therefore free to decide about

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classification of various disciplines/faculties and also which subjects/courses would fall under which discipline. Universities being autonomous statutory body with rule making power are also autonomous in deciding about classifying and naming different disciplines of teaching/training and also take their own decision that which subject/course would fall under which discipline/department/faculty. One of the constituent college of the University has been running B.Ed course since 2005 with the approval/no objection of Rajasthan Government and recently also vide its letter No. P 10 (7) Edu.-I/2007 dated 04.08.2008 Govt. has confirmed that the querist University can continue to do so. Otherwise also, right of a University to award all the degrees notified under section 22 can not be taken away and to provide instructions of the subject covered by those degrees. This seems to be the only reason that HRD Ministry vide its notification no. OM No E18-27/70 T-2 dated 20.11.1970 has notified that all the degrees/diplomas/certificates granted by a University shall be automatically recognized for Central/State Govt. employment.



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My specific and precise opinion to the queries is as under:

1. The University being an autonomous statutory body with rule making powers is a self-regulating special organization of its own type. Regulatory bodies mentioned in section 2(r) of the Act and the regulations framed by them are meant for Colleges/Institutions. UGC Act separately defines a college and a University. Whereas University is vested with the power of granting/conferring all the degrees but college is not. University is an affiliating body for colleges/Institutions and a college requires affiliation to obtain a degree for its students from the University.
2. UGC regulation of 2003 are not at all applicable to the University for the simple reason that the University falls within the meaning of section 2(f) of the UGC Act and therefore is not a Private University and these regulations are also not even consistent with the provisions of UGC Act. It seems UGC has assumed the powers of Parliament to Legislate to regulate another class of University classified as Private University created by these regulations. All regulations framed by UGC under Section 26 are meant/applicable to grant receiving



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universities and not to non grant receiving universities and the querist university is a non grant receiving university.

3. Universities falling in the category of University as defined under section 2(f) i.e. established by State/Central Act have got unqualified right to award all the degrees notified under section 22 and consequently to provide instructions in all the courses/subjects including education covered by those degrees. Section 5 (b) of the University Act also does not put any restriction or limitation on the right of University in the matter of award of degrees. Provisions of sections 29 and 30 provide for the University to make its own Statutes and Ordinances, vide which it can create new departments and abolish or restructure existing departments (Section 29(p)) and lay down the courses of study for degrees, diplomas and certificates of the University (Section 30(b)).
4. UGC Act being a special law enacted by Parliament in exercise of Centre's Legislative powers under Entry 66 of the Union List I of Schedule VII of the Constitution and its main objectives are to

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coordinate and establish standards of higher education by giving grants to universities and for creating a legal framework making the Universities autonomous, self regulated statutory bodies. This philosophy of law is seemingly based on the report of Dr. Radha Krishanan Committee on University Education, which very strongly recommended to keep Universities free from any outside control i.e. Political/Governmental. Universities are equated with State to regulate affiliated colleges to a limited extent as mentioned in the judgment. As such, the provisions of the UGC Act shall have overriding effect over the provisions of the University Act and of all other Acts under or vide which regulatory bodies have been created as mentioned in Section 2 (r) of the University Act.

Advocate

Supreme Court of India

Opined accordingly.



(H.L. Agrawal)