



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 3rd January, 2020

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.65 of 2016

Petitioner : Sikkim Manipal University

versus

Respondents : Union of India and Others

Petition under Article 226
of the Constitution of India

Appearance

Mr. Gopal Subramaniam and Mr. Nikhil Nayyar, Senior Advocates with Mr. T. R. Barfungpa, Mr. Pawan Bhushan, Mr. Dhananjay Baijal and Mr. Ugang Lepcha, Advocates for the Petitioner.

Mr. Karma Thinlay, Central Government Counsel for Respondent No.1.

Mr. A. Mariarputham, Senior Advocate with Mr. Thinlay Dorjee Bhutia, Advocate for Respondent No.2.

Dr. Doma T. Bhutia, Additional Advocate General with Mr. Thupden Youngda, Government Advocate and Ms. Pollin Rai, Assistant Government Advocate, for Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. This Writ Petition pivots around the *vires* of the impugned Public Notice dated 19.07.2016, issued by the Respondent No.2, *inter alia* prohibiting Universities/Institutions from conducting examinations for their Open and Distance Learning Programmes outside the territorial jurisdiction of the University's location, followed by communications dated 07.10.2016 and 01.11.2016 reiterating the aforesaid prohibition including setting up of Examination Centres. Claiming



that the Notices are *ultra vires* the powers of the Respondent No.2 under the parent Statute and have no force of law besides being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India, the Petitioner University seeks the following reliefs;

- "a) *Issue a Writ of Certiorari, or any other appropriate Writ, Order or Direction to declare and quash the Public Notice dated 19.07.2016 as violative of Articles 14, 19(1)(g) and 21 of the Constitution;*
- b) *Issue a Writ of Certiorari, or any appropriate Writ, Order or Direction to quash the communications dated 7.10.2016 and 01.11.2016 issued pursuant to Public Notice dated 19.07.2016 to the extent that they seek to prohibit examination centres/conduct examination outside the State where the University is situated; [sic]*
- [b1] *Issue a Writ of Declaration, or any other appropriate Writ, Order or Direction to declare and quash the requirement to establish 'Examination Centres' within territorial jurisdiction of the Petitioner University as provided under sub-clause (7) of Regulation 13 of the UGC (Open and Distance Learning) Regulations, 2017 as unconstitutional and violative of Articles 14, 19(1)(g) and 21 of the Constitution; [sic]*
- [b2] *Issue a Writ of Declaration, or any other appropriate Writ, Order or Direction to declare and quash the applicability of Policy on Territorial Jurisdiction of Universities provided as under sub-clause (ii) of Regulation 3(1) read with Annexure IV of the UGC (Open and Distance Learning) Regulations, 2017 with reference to establishment of Examination Centres as under sub-clause (7) of Regulation 13 of the UGC (Open and Distance Learning) Regulations, 2017 as unconstitutional and violative of Articles 14, 19(1)(g) and 21 of the Constitution;*
- c) *pass any such other order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case;"*

2. The Petitioner University was established in 1995 by an Act of the State legislature of Sikkim. The Petitioner's case is that their University began offering distance education programs with permission from the Respondent No.2 from the year 2001, and was subsequently granted recognition by the Distance



Education Council ("DEC"), Indira Gandhi National Open University ("IGNOU") in October, 2009. That, the University Grants Commission (Open and Distance Learning) Regulations, 2017 ("2017 ODL Regulations") in exercise of powers conferred under Section 26 of the University Grants Commission Act, 1956 ("UGC Act, 1956") has incorporated and codified the restrictions spelt out in the Public Notice and communications *supra* vide Regulation 13 of the 2017 ODL Regulations which have assumed a statutory character from 23.06.2017. The Policy of the Respondent No.2 pertaining to territorial jurisdiction was challenged by the Petitioner University in Writ Petition No.4 of 2013 and by its decision dated 26.06.2015 a Division Bench of this Court upheld the said Policy. By a Judgment dated 29.06.2015 in WP(C) No.08 of 2015 this Court while reiterating the Judgment dated 26.06.2015, protected certain categories of the Petitioner students who had pursued the distance education program. Pursuant to the decision of this Court in WP(C) No.04 of 2013, the Petitioner University closed down its Study Centres that were operating outside the State of Sikkim duly informing the Respondent No.2, but no undertaking was sought in relation to conducting of examinations within the State of Sikkim only and previously no such bar was contemplated by the Respondent No.2 or the DEC (IGNOU), thus allowing examinations at multiple venues for the convenience of out station students. The regulatory bodies permitted Universities to organize counselling and conduct examinations where there was reasonable concentration of students, hence there is no reason why now



such students should be put to inconvenience by travelling to the Headquarters of the Petitioner University only for the purpose of examinations, which militates against the very nature of distance education, besides imposing constraints on the University to arrange logistics. Following approval granted by the Respondent No.2 for certain specified programs for the academic years 2016-17 and 2017-18, the Petitioner University has admitted about 1,21,000 students. Regulation 13(7) of the 2017 ODL Regulations limits the location of Examination Centres to venues within the territorial limits of the State where the University has been incorporated. That, the examinations are conducted at various locations including Colleges and Universities across the country for the term end examinations, the venues are temporary in nature, varying on a yearly basis, contingent upon the need and convenience of the enrolled students. The Petitioner University thereupon set out a brief summary of the Regulations of distance education program and the Policy on territorial jurisdiction adopted from time to time dividing it into four phases and averring that the DEC at different points adopted varying policies on territorial jurisdiction. That, in Phase III, the DEC as per its 35th meeting held on 10.03.2010 determined that the territorial jurisdiction of State University would be as per their parent Statute, but in its 40th meeting dated 08.06.2012 it took the view that a State University could not have Study Centres located outside its geographical limits, as opposed to Examination Centres or venues, being motivated by the concern that there was franchising of Study Centres



across the country which would function as independent units. In Phase IV in August, 2010, a high level Committee was appointed by the Central Government under the chairmanship of Prof. (Dr.) N. R. Madhava Menon for suggesting measures to regulate standards of education being imparted through distance mode. The Committee found that franchising of Study Centres needed to be addressed and recommended setting up of a dedicated statutory body for regulation of distance education but did not advise that Study Centres ought not to be permitted outside the limits of the State. That, in the interim such regulation could be taken over by the Respondent No.2. Pursuant to the Committee Report, on 29.12.2012, the Respondent No.1 issued a policy direction to the Respondent No.2 to frame regulations for the purposes of distance education and indicated that the Report of the Madhava Menon Committee may be adopted. The Respondent No.2 after assuming regulatory control issued Public Notices dated 24.06.2013 and 27.06.2013, prohibiting Study Centres outside the State as also communication dated 23.08.2013 to the Vice Chancellors of Universities stating the Policy on territorial jurisdiction of Study Centres. A communication in August, 2014 also referred amongst others to examinations being operated by the University and that it could not be conducted independently by the Study Centre. That, the position pertaining to Study Centres is now settled by the decision of this Court in WP(C) No.04 of 2013, dated 26.06.2015, but the scope of that Policy is now sought to be enlarged by the Respondent No.2 to include conduct of



examinations out of the State. The Petitioner University preferred a fresh application on 10.08.2015 before the Respondent No.2 seeking continuation of recognition for offering ODL programs for the academic year 2015-16 which was accordingly granted, but the Petitioner University was to comply with mandatory terms and conditions set out therein, which are being duly complied. The recognition accorded to the Petitioner University for the academic year 2017-18 on 21.03.2017, reiterated the terms and conditions as set out for the academic year 2016-17, by letter dated 21.03.2016. However the letter did not make any reference to territorial restrictions for Examination Centres. That, the Respondent No.3 vide its letter dated 13.05.2016 directed the Petitioner University to confirm their adherence to guidelines issued by the Respondent No.2 on territorial restrictions, franchisees and Study Centres outside the jurisdiction of Sikkim without extending the restrictions to Examination Centres. The Petitioner in its reply affirmed the same.

3. That, the territorial jurisdiction policy set out in the public notice of 27.06.2013 applies to study centres, while conduct of examinations at hired venues outside the State by the Petitioner University does not dilute the standards of education. Pursuant to the Public Notice dated 19.07.2016, a complaint lodged by one Mr. Dibyendhu Pradhan, dated 25.07.2016, was forwarded to the Petitioner University for comments, by the Respondent No.2, which contained the allegation that the Petitioner University continued to run Examination Centres



outside the State of Sikkim and sought cancellation of the recognition granted for the academic year 2016-17. Vide communication dated 18.08.2016, a confirmation was sought pertaining to closure of all its Centres outside its territorial jurisdiction which was responded to by the Petitioner University on 29.08.2016, affirming the same. A further letter dated 06.10.2016 of the Respondent No.2 directed the Petitioner University not to conduct online examinations till formulation of UGC Guidelines. The Respondent No.2 issued impugned communication dated 07.10.2016 reiterating the requirement of strict adherence to territorial jurisdiction policy including setting up of Examination Centres. This was followed by communication dated 01.11.2016 stating that, some Universities were found to be operating in violation of the directions of the Respondent No.2 pertaining to territorial jurisdiction on Study Centres and conduct of examinations. The Petitioner University then came across news reports suggesting that Respondent No.1 has issued directions to the Respondent No.2 to register First Information Reports against errant State and private Universities flouting norms on territorial restrictions, purportedly issued in exercise extraordinary powers of the Respondent No.2 under Section 20 of the UGC Act, 1956. That, it is unclear whether the purported direction extends to Examination Centres as well. If it has been issued under Section 20 of the UGC Act, 1956 it clearly contradicts the earlier directions dated 29.12.2012 issued under the same provision. The Petitioner University approached the Respondent No.2 and the Ministry of Human Resource



Development, vide letter dated 19.01.2017, requesting them to reconsider the impugned restrictions imposed on examination venues to which no response was received from either. On 23.06.2017, the Respondent No.2 published the ODL Regulations in the official Gazette and brought it into force with immediate effect. Vide Notification dated 29.06.2017, the Respondent No.2 exempted all Universities holding valid recognition prior to 23.06.2017 and allowed them to continue their ODL programs for the academic year 2017-18. On 17.07.2017 another Public Notice was issued by the Respondent No.2 stating that the 2017 ODL Regulations would be operationalised from the year 2018-19, consequently the requirement to apply afresh for continuation of recognition under the ODL Regulations would commence from 2018-19. The Petitioner submitted its application seeking approval for the academic year 2018-19 on 17.10.2017 as per the ODL Regulations besides being in the process of obtaining accreditation from the National Assessment and Accreditation Council ("NAAC"). That, the Respondent No.2 failed to ensure wide consultation or give prior notice to universities and students before finalization of the ODL Regulations although it covers a wide array of activities on distance education. That, presently the Petitioner is concerned with Regulations 2(a) [*sic*], 3(1)(ii), 13(7) read with Annexures III and IV of the 2017 ODL Regulations affecting Examination Centres. Regulation 2(g) and Regulation 2(k) maintain a distinction between "Examination Centres" and "Learner Support Centres", respectively, wherein the activities of the examination



centre are restricted to conduct of examinations. That, the definition of 'study centre' as provided in the UGC (Establishment of and Maintenance of Private Universities) Regulations, 2003 ("2003 UGC Regulations") and 'learner support centre' in the 2017 ODL Regulations are more or less identical. That, Regulation 3(1)(ii) requires the Universities to adhere to the policy of territorial jurisdiction as a necessary pre-condition for grant of recognition, being a verbatim reproduction of Public Notices dated 24.06.2013, 27.06.2013 and 23.08.2013. That, the Respondent No.2 vide its Public Notice dated 18.07.2017 published and sought feedback on the draft UGC (Online Education) Regulations, 2017 which incorporated the recommendations of the Madhava Menon Committee Report and allowed the conduct of examinations through technologically supervised mode or at campuses of Universities through internet, resulting in dichotomy on territorial policy between the 2017 ODL Regulations and draft UGC (Online Education) Regulations, 2017. The Respondent No.2 is revisiting the 2017 ODL Regulations to resolve the issues flagged *inter alia* by the Petitioner University, who has also reminded the Hon'ble Minister to re-examine the issue on Examination Centres but the provisions remain unattended, despite amendments on two occasions. That, the bar on the conduct of examinations outside the State of Sikkim is arbitrary, irrational, unreasonable, discriminatory and plainly opposed to the very concept of distance education and the objective of reaching out to students in remote areas, hence, the prayers in the Writ Petition.



By an additional affidavit dated 15.02.2017 the Petitioner sought to file additional documents being a copy of the University Undertaking, dated 15.02.2017 and copy of the information supplied by the UGC on information sought under the RTI Act. The Petitioner University vide the first document stated that no study centres will be established outside the State and all examinations centres may notwithstanding be located in various parts of the country provided that they remain under the direct supervision and oversight of the University. The information under the RTI Act which dated 12.04.2016 states on the query of the applicant that as per public notice of the Respondent No.2 dated 27.06.2013 there are no restrictions on "Examination Centres" outside the State.

4. Respondents No.1 and 3 had no Counter Affidavit to file.

5. Disputing the averments put forth by the Petitioner, the Respondent No.2 in its Counter Affidavit stated that the challenge to the Notice dated 19.07.2016 on grounds that it is violative of Article 14 of the Constitution of India (for short, the "Constitution") is misconceived and without merit as no exceptions have been made in it in favour of any State. That, the impugned Notice, dated 19.07.2016, neither infringes nor violates the protection to life and personal liberty, besides, Article 21 of the Constitution is not applicable to an artificial person like a University. The Notification does not violate Article 19(1)(g) of the Constitution as it does not interfere with the



right of the Petitioner to run an educational institution or activities related to it within the State of Sikkim and to claim violation of the right is wholly misconceived . That, no right accrues to the Petitioner under the provision to operate outside the State of Sikkim by virtue of it having been incorporated as a University by a legislation of the State of Sikkim. That, this stands concluded by the Judgment of the Hon'ble Supreme Court in ***Prof. Yashpal and Another vs. State of Chhattisgarh and Others***¹ as well as by the Judgment of this Court in WP(C) No.4 of 2013 dated 26.06.2015. That, the prohibition of Study Centres outside the territorial limits necessarily implies and includes any Centre for conducting examinations as evident from the fact that the Study Centres were undertaking activities such as processing admission of candidates, conducting classes and holding examinations. The Examination Regulations of the Petitioner University which deals with Examiners provides that Learning Centres are required to generate a list of external examiners from among the institutions near the Learning Centres affiliated to the local University and internal examiners possessing the required qualification and to send the details for University approval. That, in Regulation 2.3 of the Examination Regulations of the Directorate of Distance Education, it has been provided that the Learning Centres must conduct the examinations as per the Rules and Guidelines issued by the University. Further, Regulation 2.4 provides that Learning Centres or its faculty will not be paid any remuneration since conduct of examinations is

¹ (2005) 5 SCC 420



the responsibility of the Learning Centres. That, Regulation 2.6 provides that Learning Centres must provide the relevant/necessary facilities for the proper conduct of the examinations. When Study Centres outside the territorial limits of the State have been prohibited and upheld by the Hon'ble Supreme Court, it is not open to the Petitioner to establish Centres for one aspect of the activities i.e. conducting examinations. The distinction sought to be made between "Study Centres" and "Examination Centres" is without merit and deserves to be rejected. That, the Madhava Menon Committee took into consideration the activities that may be carried out in such Centres which included the conduct of term end examinations and held that examinations can be held at the premises of the University within the State or at such Study Centres which have been established by the University within the State for the purposes of imparting distance education. That, the policy directives dated 29.12.2012 also emphatically prohibits Centres, by whatever name, outside the territorial limits of the State. That, the Notice dated 19.07.2016 is clarificatory in nature and not a fresh prohibition, besides, there is no legal or other infirmity in the same and is binding on the Petitioner University. That, the Respondent No.2 in its 520th meeting held on 14.12.2016 decided that the UGC norms of territorial jurisdiction should be applicable for all academic activities including examinations for distance education. The confinement to the territorial limits was contained in the Notice dated 19.07.2016 and also of 24.06.2013 and 27.06.2013 and accepted by the Petitioner University who

Sikkim Manipal University v. Union of India and Others

cannot now plead that it was not in existence when permission was granted and admissions made. In a communication addressed to all Secretaries of Education Department of States dated 28.04.2016, the Respondent No.2 reiterated the decision which was brought to the notice of the Petitioner University, vide letter dated 13.05.2016 of the Principal Secretary to the Government of Sikkim, Human Resource Development Department. The Petitioner University responded confirming compliance. On 25.07.2016, the Respondent No.1 brought to the attention of the Chairman, UGC violation of territorial limits by different Universities, including the Petitioner University and that the University had not indicated its jurisdiction for admissions to the proposed courses. There can be no plea that only those directives which were in existence when permission was granted i.e. 21.03.2016 are only applicable. The Respondent No.2 by virtue of powers given to it under Section 12 of the UGC Act is entitled to lay down policies and issue directives from time to time which is binding on the Universities. Further, no right accrues to the students that examinations should be conducted near their home or at places of their choice. The alleged hardship of the students is also without merit. That, the University is required to indicate in its website and prospectus its territorial limits and jurisdiction so that students taking admissions are aware of this but has not complied within this request. That, in ***University of Mysore and Another vs. C.D. Govinda Rao and Another***² the Hon'ble Supreme Court held that it would normally be wise

² (1964) 4 SCR 575



and safe for the courts to leave the decisions of academic matters to experts familiar with the problems they face. It was averred that distance education cannot be viewed differently from conventional form of education as the former is a supplementary to the latter and no legal infirmity arises in requiring a State established University to confine its educational activities within the territorial limits of the State. That, the challenge to the constitutional validity of the 2017 ODL Regulations is wholly misconceived and without any merit. That, this Court in WP(C) No.04 of 2013 *inter alia* upheld the policy of the UGC on territorial jurisdiction holding that the provisions of any enactment made by the State legislature concerning higher education which is in conflict with UGC Regulations would be *ultra vires*. Hence, even if the Act by which the State University was incorporated permits Study Centres/Examination Centres outside the State, it will be *ultra vires* and ineffective as the UGC Act enacted by the Parliament under Entry 66 of List-I of the Seventh Schedule of the Constitution empowers the UGC to maintain minimum standards of education in the country. That, the Respondent No.2 is a statutory authority and is competent and empowered to regulate all aspects of ODL education. That, merely granting of approval for certain programs for the academic years 2016-17 and 2017-18 cannot be construed as permitting the Petitioner to have Examination Centres outside the territorial limitations of the State. No permission has been given to have Examination Centres outside the State in respect of students admitted in the academic years 2016-17 and 2017-



18. The Vice Chancellors were requested to ensure that no Off Campus Centres/Study Centres or franchisee is opened by the Universities outside the territorial jurisdiction of the State pursuant to the Judgment of the Hon'ble Supreme Court in **Prof. Yashpal** (*supra*) and the State Governments were to amend the Acts in conformity with the Judgment. Another Notification was issued by the Director, DEC on 31.01.2012 informing that territorial jurisdiction in case of private institutions will be as decided by the Joint Committee which has decided that the territorial jurisdiction for the institutions (both private and Government funded) shall be the Headquarters and in no case outside the State. The word 'operate' in Public Notice dated 27.06.2013 encompasses all aspects/procedures relating to educational institutions and includes the holding of examinations and the award of the Degrees. That, sanctity of examinations cannot be maintained in commercial venues and locations which are being hired by the Petitioner University for the said purpose. Besides, the Petitioner University has not given particulars of the number of Examination Centres being operated and how direct supervision is being exercised by the Petitioner University officials in so many Centres as they are limited in number. The Petitioner University has to abide by the entirety of the 2017 ODL Regulations in regard to its ODL education and while they may be in the process of obtaining accreditation from the NAAC, it does not entitle them to set up Examination Centres outside the State. That, there is no conflict between the 2003 UGC Regulations and the 2017 ODL Regulations as averred by the



Petitioner University and the specific restriction in the 2017 ODL Regulations will apply and operate after being brought into force. That, the facilities to be provided in the Examination Centres are not to be confused with location of Examination Centres. It is denied that Regulation 13(7) read with Regulation 3(ii) are violative of Article 19(1)(g) of the Constitution. While referring to the additional Affidavit dated 15.02.2017 of the Petitioner University, it was submitted that based on the undertaking therein the Petitioner University cannot seek to override the policy directives of the UGC and the Government of India and seek to hold examinations outside the territorial limits of the State. While referring to a reply under the RTI dated 12.04.2016 it is stated that it is incorrect and not based on a correct understanding of the earlier Public Notice of the Respondent No.2 dated 27.06.2013. In any event, the said reply has no relevance or effect after the formal Public Notice dated 19.07.2016. That, the submissions in the Writ Petition do not merit consideration by this Court and hence be dismissed.

6. The Petitioner filed Rejoinder to the Counter Affidavit of the Respondent No.2 reiterating in sum and substance its stand as given in the Writ Petition. The averments in the Rejoinder also sought to emphasise the rights guaranteed under Articles 14, 19(1)(g) and 21 of the Constitution.

7. Advancing arguments for the Petitioner Learned Senior Counsel submitted that the adjudication in the present case requires this Court to assess and determine the *lis* that was



actually determined and adjudicated in the previous round of litigation. That, in the previous dispute before this Court being WP(C) No.4 of 2013, the matter concerned "Study Centres" alone and the submissions made therein pertained to territorial policy as it applied to Study Centres which was for the prevention of commercialization of education, franchising etc. The only reason advanced by the Respondent No.2 for restricting examinations to territorial limits was that as the territorial policy applied to Study Centres it would necessarily apply to every aspect or activity being conducted by the erstwhile Study Centres. That, since some examinations could be conducted at Study Centres, the territorial policy would necessarily be seen as interdicting examinations outside the State even though this has not been stated in the territorial policy and has nothing to do with the purport, intent and objective underlying the framing of that policy. That, the Examination Centres were separate and distinct from Study Centres even prior to the Judgment of this Court in WP(C) No.04 of 2013 dated 26.06.2015 and only matters such as internal assessment and some aspects of practicals were being conducted at study centres. The end of term examinations continue to be conducted at venues near the places where students are located and are temporarily arranged for the purpose of writing the examinations. In the event the Regulations are upheld by this Court, the relief ought to be moulded in a manner to protect the interests of students enrolled in distance education programs with certain expectations. That, the examination restriction for students who



sought admission prior in time to the said Regulations restrictions as to *situs* may not be enforced, provided that all safeguards and standards in Regulation 13(7) are complied with.

8. It was next contended that the Madhava Menon Committee Report did not advocate for any territorial restrictions nor did it believe that the location of an Examination Centre would in any way violate the territorial jurisdiction of the University or its parent Statute. That, examinations conducted by the Petitioner University is computer based and the answer scripts directly transferred from the concerned Centre to the University Headquarters in Gangtok enabling a fully secure examination process and allowing students to write examinations from convenient venues. The Regulations made by Respondent No.2 under Section 26 of the UGC Act, 1956 pursuant to acceptance of the Madhava Menon Report and direction of the Ministry of Human Resource Development must conform to the directions issued under Section 20 of the Act and in any event its powers thereof are constrained by the need to obtain either the prior or subsequent approval of the Central Government. Contending that the steps taken by the Respondent No.2 are manifestly arbitrary, it was submitted that the impugned restrictions are beyond the scope of the policy decision dated 29.12.2012 and entirely contrary to the very essence of distance education, which is to expand access to higher education besides having no rational basis. That, evaluation of students enrolled in DEC comprises of formative as well as summative aspects, and the formative portion of its assessment was being held in the



erstwhile Study Centres. The summative end term examinations are held in independent test centres and are not linked to the Study Centres which have since been closed down. That, the examinations are conducted in centres approved by the Respondent No.2 and is computer based using local area network. Relying on the observation of the Hon'ble Supreme Court in ***Transport Corporation of India vs. Employees' State Insurance Corpn. and Another***³ it was submitted that the Petitioner University satisfies the test of functional integrity. That, in ***State of Bihar and Others vs. Smt. Charusila Dasi and Others***⁴ it was clarified that a State law cannot be bad on account of extra territoriality. That, regulatory regimes preceding the 2017 ODL Regulations did not impose any territoriality restrictions on the conduct of any examination *per se*. The DEC/IGNOU in its 40th meeting resolved to limit the jurisdiction of State Universities to the boundaries of their respective States and not beyond, it is in this context that the Madhava Menon Committee Report was commissioned which recommended that examinations should be held at Study Centres or any Centre identified by the University having necessary facilities and support environments.

9. That, on 27.06.2013, the Respondent No.1 vide a Notification for the first time spelt out the territorial policy and it was reiterated that the 2003 UGC Regulations will apply insofar as setting up of Study Centres or Off Campus Centres. The Respondent No.2 issued express clarifications in RTI queries

³ (2000) 1 SCC 332

⁴ (1959) Supp (2) SCR 601



stating no restrictions existed on the holding of examinations outside the territoriality of the State where the University is located. That, the Respondent No.2 wrote letters to the State Governments including the State of Sikkim asking them to seek confirmation from Universities operating within their States on their adherence to the applicable UGC guidelines, the letter did not suggest prohibition on holding of examinations beyond the State's territoriality. Thereafter the impugned Notice dated 19.07.2016 came to be issued followed by the communications dated 07.10.2016 and 01.11.2016 which emphasized the prohibition *supra* besides directing the Petitioner University to upload information regarding its Examination Centres. Relying on the decision of ***P. Suseela and Others vs. University Grants Commission and Others***⁵ it was contended by the Petitioner University that the scheme of the UGC Act makes it wholly clear that the power to determine and take policy decisions is squarely within the ambit of the Central Government which has powers under Section 20(1) to direct the Respondent No.2 to discharge its functions in terms of a policy that relates to national purpose. That, the Hon'ble Supreme Court in the ratio *supra* has *inter alia* held that the Central Government is empowered to direct the Respondent No.2 to modify a regulation if it fails to fall in line with the policy framework. Thus, Respondent No.2 has no authority to issue Notifications and Public Notices which whittle away the ability of the Petitioner University to conduct examinations outside the State of Sikkim, the impugned

⁵ (2015) 8 SCC 129



Notifications being non-statutory are *ultra vires* passed without legislative backing.

10. The approval letter of the Respondent No.2 granting permission to the University for the academic year 2017-18 stated that the territorial jurisdiction in respect of University for offering programs through distance mode will be as per the policy of UGC on territorial jurisdiction and opening of Off campuses/Centres/Study Centres as mentioned in the UGC Notification dated 27.06.2013. As the approval was traced to the Notification dated 27.06.2013 the approval of the Petitioner University for the year 2017-18 was not subject to any restriction on the territoriality of Examination Centres. Since the Respondent No.2 did not refer to its subsequent Notifications in the approval *supra* it cannot now impose conditions that were waived. The territorial restriction on Examination Centres in Regulation 13(7) of the ODL Regulations is mutually inconsistent with the entire scheme of the 2017 ODL Regulations which emphasises continuous evaluation of students, which would necessarily have to happen at the home of the students situated in their home States. The 2017 ODL Regulations puts an obligation upon the Petitioner University to upload on its website the feedback mechanism for the design delivery and development of continuous evaluation of learner performance and has to form an integral part of the design of the program. That, Regulation 13(6) of the 2017 ODL Regulations mandates that the weightage for the term end examination should not be less than 70%. In these circumstances, the Respondent No.2's



assertion that the Petitioner University can conduct 30% of the evaluation in terms of Regulation 13(2) through home assignments and response sheets while simultaneously debarring the University from holding term end examination of 70% component in secure centres, in terms of Regulations 13(7)(i) to 13(7)(v), is manifestly arbitrary. Hence, Regulation 13(7) which provides for establishment of Examination Centre within the territorial jurisdiction of the Higher Educational Institutions, being arbitrary sans intelligible differentia is required to be severed to ensure that the scheme of distance education is not made redundant. That, the doctrine of severability mandates that when a part of a provision is not inextricably bound with the part declared invalid, then only the part that is declared invalid is required to be excised. On this aspect, submissions were augmented with reliance on ***State of Bombay vs. F. N. Balsara***⁶. Reference was also made to the ratio in ***D. S. Nakarav vs. Union of India***⁷. That, the 2017 ODL Regulations contemplate two different academic activities and purposes for Examination Centres and Learner Support Centres hence, the contention of the Respondent No.2 that Examination Centres include Study Centres is incorrect. In fact, the 2017 ODL Regulations provide for Minimum Standards to be Maintained at Examination Centres and contemplates that the Centres are to be situated in States or Cities depending on the proportion of the Student enrolment. The administrative, technical and logistical challenges of holding examinations for almost 50,000 students in the State of Sikkim

⁶ 1951 SCR 682

⁷ (1983) 1 SCC 305



has been recognized by the Government of Sikkim which has made a representation to the Respondent No.2 in this context. That, the insistence on holding examinations within the State of incorporation discriminates against the economically weaker students who would be required to expend on travel arrangements and board, as also working professionals who may not always get leave. That, the Hon'ble Supreme Court has held that internal contradictions in a legislation would be evidence of manifest arbitrariness. Reliance on this count was placed in **Navtej Singh Johar vs. Union of India**⁸. That, in **Shayara Bano vs. Union of India**⁹ the Hon'ble Supreme Court observed that manifest arbitrariness of a provision of law can also be a ground for declaring a law as unconstitutional. That, the Hon'ble Supreme Court in **State of Tamil Nadu vs. P. Krishnamurthy**¹⁰ laid down the parameters of judicial review of subordinate legislation. That, in **Khoday Distilleries vs. State of Karnataka & Ors.**¹¹ the Hon'ble Supreme Court has laid down the parameters of judicial review of subordinate legislation on account of it being manifestly arbitrary and the same are now well settled. Reference on this count was also made to the ratio in **Sharma Transport vs. State of A.P.**¹² and **Cellular Operators Association of India vs. TRAI**¹³. That, the Notice dated 19.07.2016 and communications dated 07.10.2016 and 01.11.2016 were issued without any study or application of mind and were wholly

⁸ (2018) 10 SCC 1

⁹ (2017) 9 SCC 1

¹⁰ (2006) 4 SCC 517

¹¹ (1996) 10 SCC 304

¹² (2002) 2 SCC 188

¹³ (2016) 7 SCC 703



unreasoned. The subsequent 2017 ODL Regulations were also drafted without any intelligent care and deliberation. That the Notifications and Regulations framed by the Respondent No.2 are not at all proportionate to the object sought to be achieved, for which the submissions were buttressed with the ratio in ***Modern Dental College and Research Centre vs. State of Madhya Pradesh***¹⁴. Besides, the Respondent No.2 has by asking the Petitioner University not to hold examinations outside the State of Sikkim after the issuance of the Notifications and thereafter the promulgation of the 2017 ODL Regulations, overstepped the express decision of this Court in WP(C) No.08 of 2015 dated 29.06.2015 where the Court had expressly protected the Degrees of all students who had been admitted prior to the final Judgment in WP(C) No.04 of 2013. That, should this Court be of the opinion that the Regulations of the Respondent No.2 are valid, the reliefs may be moulded to protect the existing students with permission to the Petitioner University as a onetime measure to hold examinations in 10-12 State capitals and the NCR Region. To this end, reliance was placed on ***U.P. State Brassware Corporation Ltd. vs. Uday Narain Pandey***¹⁵. Hence, in view of the said submissions, the Writ Petition be allowed.

11. Learned Senior Counsel for the Respondent No.2 refuting the arguments contended that other issues argued by learned Senior Counsel for the Petitioner University besides the prayers in the Writ Petition cannot be considered. That, there is

¹⁴ (2016) 7 SCC 353

¹⁵ (2006) 1 SCC 479



no challenge to the powers of the Respondent No.2 to frame the Regulations but only the validity of the 2017 ODL Regulations. It is contended that Article 19(1)(g) of the Constitution is available only to a citizen and not to an Institution as held in ***State Trading Corporation vs. Commercial Tax Officer***¹⁶. That, this Judgment was followed and reiterated in ***Telco vs. State of Bihar***¹⁷. Similarly, Article 21 of the Constitution does not apply to an artificial or juristic person like a University and while Article 21A deals with right to education of children up to the age of 14 hence, inapplicable to the instant matters. It was next contended that the assailed Public Notices and Regulations are consistent with the constitutional provisions and the limitations contained therein as also the provisions of the UGC Act, 1956, Prof. Madhava Menon Committee Report, Presidential Directive dated 29.12.2012 issued under Section 20 of the UGC Act 1956 and the Judgment of this Court in WP(C) No.04 of 2013 dated 26.06.2015. That, the Petitioner University has been established for improving education activities in the State, therefore the requirement for the University to conduct examinations within the State consistent with Article 245 of the Constitution. On this count reliance was placed on ***Kurmanchal Institute of Degree and Diploma and Others vs. Chancellor, M.J.P. Rohilkhand University and Others***¹⁸. Reference was also made to Section 12 of the UGC Act, 1956 as also Section 20, Section 26 and Section 28 of the Act and it was canvassed that not only was the prior approval of the

¹⁶ AIR 1963 SC 1811

¹⁷ AIR 1965 SC 40

¹⁸ (2007) 6 SCC 35



Government of India taken before notifying the Regulations in question, it was also laid before both Houses of the Parliament and no modifications made to Regulation 13(7) by the Parliament. The Madhava Menon Committee Report observed that the Study Centres are to be identified within the State and for the purposes of the Report such a Centre is a place where a number of activities were/are carried on, one of them being the conduct of term end examinations. That, while testing the validity of the Regulations, it has to be borne in mind that the 2017 ODL Regulations is to regulate distance education in all conventional Universities which should be encouraged and should endeavour to provide distance education. Peculiar aspects relating to a single University is not to be the deciding factor or the test as laid down by the Hon'ble Supreme Court in ***Avishek Goenka vs. Union of India and Another***¹⁹. That, the Directives of the Government of India as contained in the Order dated 29.12.2012 has been found to be a Directive under Section 20 of the UGC Act and binding on all parties including State Government Universities and includes keeping in view the territorial restrictions. Paragraph 9 of the Madhava Menon Committee Report provides that Study Centres for ODL programs are to be located within territorial limits of the State and not beyond. It prohibits establishing Centres outside the State for imparting instructions and also for holding examinations, malpractices in such Centres being a relevant factor. That, the Petitioner University was holding examinations in Study Centres at the

¹⁹ 2012 (8) SCC 441



relevant time. The provisions of the Examination Regulations of the Directorate of Distance Education of the Petitioner University have not been denied by the Petitioner but has been sought to be explained away as limited to certain subjects. It was next contended that the Policy Directive of the Government of India dated 29.12.2012 has not been challenged. The only challenge is to the steps taken by the Respondent No.2 to implement the Policy laid down in the said directive, hence in the absence of any challenge to the Policy, implementation of the same is not open to challenge and for this reason alone, the Writ Petition deserves to be dismissed.

12. That, prior to the impugned Notifications and Regulations as early as 23.08.2013, the Respondent No.2 had sent a communication to the Vice Chancellors of all the Universities that the State established Universities should operate only within the territorial limits of the State. That, the plea of the Petitioner University is that holding examinations within the State will cause hardship to the students is not substantiated by any student claims. There cannot be hardship on the part of the University if it follows the Regulations and Acts in accordance with Article 245 of the Constitution. In any event, hardship cannot be a test for deciding the validity of a statutory provision for which reliance was placed on ***N. Vasundara vs. State of Mysore and Another***²⁰ and ***Saurabh Chaudri and Others vs. Union of India and Others***²¹. That, the Judgment of ***N. Vasundara*** (*supra*)

²⁰ (1971) 2 SCC 22

²¹ (2003) 11 SCC 146



was affirmed in ***Avishek Goenka (supra)*** and ***Namit Sharma vs. Union of India***²².

13. That, the Division Bench Judgment of this Court in WP(C) No.04 of 2013 dated 26.06.2015 in categorical terms held that a State established University could not carry out any activity outside the territorial limits of the State in view of the Policy decision of the Central Government and the Notification and Orders following thereafter. In the light of this decision, it was contended that the word 'operations' encompasses all activities including holding of any examination. The Judgment was not appealed against by the Petitioner University thus attaining finality, hence the plea of the Petitioner University that the Division Bench Judgment of this Court dealt with Study Centres only and not with Examination Centres is incorrect and misconceived. The expression Study Centre in the Judgment is to be understood as it was projected at that point of time where among other things, examinations were also being conducted. The Public Notices under challenge are subsequent to the Division Bench Judgment of this Court in WP(C) No.04 of 2013 dated 26.06.2015 and are consistent with and following the same and therefore protected and not open to challenge. The only difference between education in the regular mode and distance mode is the manner in which students are taught, not that examination is to be held at the place of the choice of the student or a place of their convenience. The Hon'ble Supreme Court in ***Annamalai University represented by Registrar vs. Secretary***

²² (2013) 1 SCC 745



to the Government, Information and Tourism Department and Others²³ held that the distinction between a formal system and an informal system is in the mode and manner in which education is imparted. That, the Government of Sikkim vide its letter dated 13.05.2016 instructed the Petitioner University that it should not operate outside the territorial limits of the State in any manner. Vide its response dated 25.05.2016, the Petitioner University informed that the University is compliant with the guidelines of the Respondent No.2 on Open and Distance Learning Programs. There is nothing unreasonable or arbitrary in requiring a University to hold examinations within the territorial limits of the State of its incorporation and is consistent with the constitutional scheme. That, the Hon'ble Supreme Court has laid down that in education matters, ordinarily the Courts would not interfere with policy decisions of academic bodies, this argument was augmented by the ratio in **University of Mysore vs. Govindrao**²⁴, **UGC vs. Neha Anil Bobde**²⁵, **Census Commissioner & Ors. vs. R. Krishnamurthy**²⁶ and **Narmada Bachao Andolan vs. Union of India and Others**²⁷. That, the plea that the final Regulation is different from the draft Regulations, is without merit as the draft Regulations is for circulation and discussions and what is relevant is the final Regulation which is notified. The plea that the Petitioner University wrote to the Respondent No.2 that it was holding examinations outside the territorial limits but did not

²³ (2009) 4 SCC 590

²⁴ AIR 1965 SC 491

²⁵ (2013) 1 SCC 519

²⁶ 2015 (2) SCC 796

²⁷ (2000) 10 SCC 664



receive any reply and by inaction this lapse has been condoned, is without any merit. This plea was rejected in the Division Bench Judgment.

14. That, the issues relating to examinations held outside the territorial limits after the impugned notifications and the 2017 ODL Regulations without any order or permission from this Court are not the subject matter of the present Writ Petition although arguments are advanced on this count by the Petitioner University. The validity of the impugned Notifications and Regulations are only to be considered by this Court, hence on the grounds mentioned hereinabove, the Writ Petition be dismissed.

15. I have heard the rival submissions put forth by the learned Counsel at length, carefully perused the pleadings, documents and citations made at the Bar.

16. The question that falls for determination is;

Whether the impugned Public Notice dated 19.07.2016 and the communications dated 07.10.2016 and 01.11.2016 to the extent that they seek to prohibit Examination Centres/conduct examinations outside the State where the University is situated is violative of Article 14, Article 19(1)(g) and Article 21 of the Constitution and whether the requirement under Regulation 13(7) of the University Grants Commission (Open and Distance Learning) Regulations, 2017, pertaining to establishment of "Examination Centre" within the territorial jurisdiction of the concerned institution also violates of the same provisions of the Constitution?



17. While proceeding to determine the question *supra* it is apposite to refer to the Division Bench Judgment of this Court in WP(C) No.04 of 2013 dated 26.06.2015. The Petitioner University while challenging the decision of the IGNOU (Respondent No.1 therein) at its 40th Meeting, dated 08.06.2012, by which it was decided that State University could not have Study Centres outside the geographical limits of the State, even if the State legislation permitted it to do so, had in the Writ Petition sought the following reliefs;

- “(a) issue an appropriate writ, order or direction directing Respondent No.1 to expeditiously dispose of the Petitioner’s application for continuation of recognition dated 10-07-2012;
- (b) issue an appropriate writ, order or direction quashing the decision taken by the Respondent No.1 at its 40th meeting on 08-06-2002 by which it was decided that a State University could not have Study Centres outside the geographical limits of the State, even if the State Legislation permitted it to do so;
- (bb) issue an appropriate writ, order or direction quashing the communication dated 28-06-2013 issued by the Respondent No.3; and
- (bbb) issue an appropriate writ, order or direction quashing the Public Notice dated 27-06-2013 (sic) insofar as it prejudicially affects the Petitioner from continuing to conduct its DEP through the existing Study Centres.”

The Court framed four questions to consider the issues raised in the Writ Petition;

- “(a) Does the UGC have supervening position upon the IGNOU, DEC and the Universities, both Private and Government funded, created under the State Acts?
- (b) Can it be said that Regulations 2003 was never applied after it was framed and that UGC Regulation, 1985 continued to be in force?
- (c) Would the letters issued to the Petitioner-University by the IGNOU and DEC in



contravention to letter dated 29-12-2012, Annexure P29, of the Ministry of Human Resource Development, Respondent No.2, amount to abandonment of Regulations 2003?

- (d) **Can it, therefore, be said that it was permissible for the Universities of all categories to run DEP outside the territorial limits of the State?"** [emphasis supplied]

18. While considering "(d)" *supra*, reference was made by the Court to the ratio in *Prof. Yashpal and Another (supra)*, *Rai University vs. State of Chhattisgarh and Others*²⁸, *Kurmanchal Institute of Degree and Diploma (supra)*, *Annamalai University represented by Registrar (supra)* and *Kalyani Mathivaran vs. K. V. Jeyaraj and Others*²⁹. Reference was also made to letters dated 15.10.2009 (issued by the Respondent No.1 (IGNOU), 09.09.2009 and 17.09.2009 [in WP(C) No.4 of 2013]. Admittedly, the letter dated 15.10.2009 of the Respondent No.1 therein, (IGNOU), conveyed that the territorial jurisdiction for offering programmes through distance mode would be governed by the latest UGC Notifications which prevailed over all previous Notifications, Circulars and as per the UGC Notification, the State Universities (Private and Government funded) could offer programmes only within the State and in any case not outside the State. The Court while arriving at the finding that the Study Centre of the Petitioner University was to be confined to the State of its incorporation held as follows;

"15(i). *However, we are unable to accept these contentions as it does not appear to be correct in view of the subsequent letter dated 15-10-2009, Annexure P17, issued by the Respondent No.1 as also the preceding letters of the IGNOU dated 09-*

²⁸ (2005) 7 SCC 330

²⁹ AIR 2015 SC 1875



09-2009, Annexure P16 and 17-09-2009, Annexure P16A, as would appear from Clauses 6 and 7 of the conditions of the recognition mentioned therein which provided as follows:-

- "6. Regarding territorial jurisdiction for offering programmes through distance mode the latest UGC notifications will prevail over all previous notifications and circulars. As per the UGC notification, State Universities (both private as well as Govt. funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in no case outside the state. However, Deemed Universities may seek the permission to open off campus centres in other states and offer distance education programmes through the approved off campuses only after approval of UGC and DEC. Central Universities will also adhere to the UGC norms. The territorial jurisdiction for the institutions (both private as well as Govt. funded) shall be the Headquarters, and in no case outside the State.
7. The Distance Education Council prohibits franchising of Study Centres. Thus, your University will not franchise any Study Centre."

(ii) This was followed by another letter of the Respondent No.1 dated 06-11-2009, Annexure P18, issued in continuation of the letter dated 15-10-2009, Annexure P17, which re-emphasised the terms and conditions conveyed earlier as would appear from the following:-

".....
The terms & conditions which have been communicated to you vide our letter no. F.No.DEC/Recog/2009/3947 dated 15/10/2009 will remain in force and subject to the compliance of the same.
....."

(iii) Quite evidently these letters, apart from emphasising on the pre-eminence of the latest UGC Notifications over all previous Notifications and Circulars, in no uncertain terms conveyed the jurisdiction of the Universities, be it Private or Government funded or Deemed Universities or Private Universities, being confined within the territory of the State.

.....
18(i) It was no doubt contended that, at the time of seeking approval, the Petitioner-University



had given a clear disclosure of each Study Centre, its locations and other details and, on that basis the DEC and UGC had granted the approvals and, therefore, it was not now open for the UGC to take a different position, especially since it has adopted and applied the DEC Guidelines which were the very norm that were applicable at the time the approvals were granted. We are, however, not convinced by this argument. As held by the Hon'ble Supreme Court in Annamalai University (supra), only because no action was taken by UGC on such disclosure, it would not mean that the illegality had been cured or the Regulations abandoned."

[emphasis supplied]

It was also observed that "the DEC for the first time imposed restrictions on the territorial jurisdiction of the Petitioner-University as would appear from paragraph 6 of letter dated 15-10-2009". While considering the Order dated 29.12.2012 the Court held as follows;

"19(i).

(ii) *The Order dated 29-12-2012, Annexure P29, obviously does not appear merely to be an Executive Order of the Central Government as the Petitioner-University would want us to believe. To the contrary, we find that it has been passed in exercise of its powers under Sub-Section (1) of Section 20 of UGC Act, 1956 and the AICTE Act, 1987 thereby giving it a statutory character. The Order undoubtedly reflects the policy adopted by the Central Government in respect of the programmes/courses in the ODL Mode and made it a requirement to get such courses recognised by the UGC, AICTE and DEC and other regulatory bodies of the conventional mode of education in those areas of study.*

(iii) *Incidents of significance preceding the aforesaid Order were – (a) the recommendations of the Madhava Menon Committee was accepted under actionable Point 9 of which it was proposed that the Study Centres for ODL programmes were to be located within the statutory territorial jurisdiction of the relevant Acts/Statutes governing the Institution irrespective of whether a State Act mentions territorial jurisdiction beyond its State limits; (c) Even in the letter dated 15-10-2009, Annexure P17, of the Respondent No.1 to the Petitioner-University, it is found to have categorically mentioned that regarding territorial jurisdiction for offering programmes through Distance Education Mode the latest UGC*



Notifications will prevail over all previous Notifications and Circulars which was again found to have been repeated in the Notification of the Respondent No.1 dated 29-03-2010, Annexure P20. What followed thereafter was in the culmination of the Order dated 29-12-2012, Annexure P29, setting out the policy of the Central Government.

(iv) We are of the considered opinion that since it has been held that the UGC Act being an Act of Parliament passed under Entry 66 List I of the Seventh Schedule to the Constitution of India, it will prevail over the Open University Act and all other Universities and, that as the function of the UGC is all-pervasive in respect of matters provided, inter alia, under Sections 12A, 22 and 26, the Order of the Central Government dated 29-12-2012 assumes a statutory character. Similarly, the Regulations framed under Section 26 of the UGC Act being Subordinate Legislations would also become part of the Act and, therefore, binding.

22.

(iii) The validity of Regulations 2003 has been upheld in **Prof. Yashpal case (supra)** and, therefore, there can be no doubt that the Universities offering DEP would mandatorily require to follow the same. Even if it is accepted that the Petitioner-University had earlier been granted recognition for its ODL programmes without following Regulations 2003 or other Notifications of the UGC, the situation now stands altered in view of the policy decision of the Central Government and the Notifications and Orders following thereafter under which it is mandatory for the ODL programmes of the Universities to be recognised by the UGC, AICTE and IGNOU and, that these Universities shall be subject to its operations within geographical territorial limits of the State under the Statute of which the Universities are created."
[emphasis supplied]

It was concluded as follows;

"29. For the aforesaid reasons, we hold that the Order of the Central Government dated 29-12-2012, Annexure P29, is valid and binding upon all Universities in the country, be it State or Private or Central Universities, being a policy decision of the Government. Notifications/Orders issued consequential thereto and also preceding those to the same effect or consistent therewith, are also held to be valid and binding.

(i) Consequently, all prayers except prayer (a) alluded to above shall stand rejected.

....."
[emphasis supplied]



19. Following the above Judgment, Student Petitioners in WP(C) No.08 of 2015 approached the Court as the degrees issued by the Petitioner University was not recognised by the Governments of Denmark and Australia where they intended to pursue higher studies. The Single Bench of this Court observed that “..... *factual and legal aspects of this case are the very ones involved in WP(C) No.04 of 2013, in the matter of Sikkim Manipal University vs. Indira Gandhi National Open University and Others,*” The Petitioners had undergone the courses during the period when the DEP of the Respondent No.4 University was being run under valid recognition of the UGC and the DEC. The case of the Petitioners, it was observed, would be fully covered by the decision in WP(C) No.4 of 2013. It was further observed in WP(C) No.08 of 2015 as follows;

"7. As regards the status and legal position of the UGC, it was held that UGC Act, 1956, under which it has been created, has a supervening influence over all other Legislations on the subject of education for maintenance of minimum standards in the country and indisputably governs Open University also. Thus, the resolution adopted in the 40th Meeting of the DEC dated 08-06-2012, Annexure P34, to confine the territorial jurisdiction of the Private Universities within the geographical limits of the States of its locations, having been taken as a consequence of a policy decision of the Government of India, it cannot be held to be unauthorised and invalid. The policy decision ultimately crystallised in the form of Order dated 29- 12-2012, Annexure R4. This Order having been issued by the Ministry of Human Resource Development, Department of Higher Education, Government of India, Respondent No.1, in exercise of its powers under Sub-Section (1) of Section 20 of the UGC Act, 1956, assumes a statutory character and would be considered as part of the main Statute, i.e., UGC Act, 1956, and binding upon all Universities irrespective of whether the other Statutes including the ones under State Legislations provide otherwise. This is so far as the questions of law are concerned.



8.
"24(i)
(ii)
25(i)

(ii) By order dated 13-04-2015 of this Court in CM Appl No. 33 of 2015 had further confirmed the aforesaid two orders, the relevant portion of which is as follows:-

"6. At this stage, Mr. Misra submits that by making an observation of de-recognition of the degrees of the intervenors, their job prospects are being jeopardized and they are being deprived of prosecuting their further studies, therefore, some protection may be granted to them.

7. There is no occasion for this Court to deliberate on this point in an application filed for permission to intervene in the main writ petition. However, it is observed that by interim order dated 22.02.2013 passed in W.P. (C) No.04/2013, it has clearly been held by this Court that during the pendency of the Writ Petition, the operation of the condition "but not beyond the boundary of their respective States", which clearly relates to the territorial jurisdiction of the Petitioner University, contained in the Minutes of 40th Meeting of the Distance Education Council of Indira Gandhi National Open University held on 08.06.2012, and any consequential direction in this regard shall remain stayed and the same order by a subsequent order dated 07.11.2013 has also been held to be binding on all the parties including the University Grants Commission (UGC). We are of the view that the earlier two interim orders would make the situation very clear and it is expected that all the parties concerned, including the UGC, would implement the said orders in their letter and spirit.

-
10. *It is relevant to note that there are 3 (three) categories of students who stand thus protected. They are (i) those who had commenced and completed their DEP anytime prior to the academic session 2011-12; (ii) those who had commenced with their DEP prior to the academic session 2011-12 but, completed after that; and (iii) those who were admitted to the DEP any day after the interim*



order of this Court dated 22-02- 2013 passed during the proceedings of Sikkim Manipal University (supra) by which operation of the condition "**but not beyond the boundary of their respective States**" stipulated in the decision of the DEC in its 40th Meeting dated 08-06-2012, Annexure P34, was stayed and the Respondent No.4-University was permitted to continue to act in accordance with the communication dated 15-10-2009, Annexure P27, subject to compliance of the terms thereof. The case of the Petitioners would certainly fall within the purview of the judgment in Sikkim Manipal University (supra) extracted above.

11. Apart from the above, the interim order of stay dated 22-02-2013 that was directed to be continued by a subsequent order dated 07-11-2013, was later confirmed by order dated 13-04-2015 in CM Appl No.33 of 2015 arising out of WP(C) No.04 of 2013 in Sikkim Manipal University (supra). Therefore, as a natural corollary and by necessary implication, the degrees in respect of the students, who were admitted to the DEP of the Respondent No.4-University after the order of stay, one of whom appears to be the Petitioner No.4, shall also be protected.

12. The information conveyed in letter dated 11-05-2011, Annexure P32, issued by the Respondent No.1 to the Royal Danish Embassy, being in conflict with the decision of the DEC, firstly, in ratifying the decision of its Chairman granting recognition to the DEP of the Respondent No.4-University for the academic years 2009-10 to 2011-12 and, secondly, its own grant of recognition, be it provisional or regular, for the preceding years, would be rendered a nullity, non est and, therefore, unenforceable and is accordingly, ordered so."

.....
14. It is needless to state that this order would also apply to all the students who are similarly placed as the Petitioners although they are not before us."
[emphasis supplied]

20. It is now apposite to refer to the contents of the impugned Notification and communications. The Public Notice dated 19.07.2016 bearing F.No.12-9/2016(DEB-III) reads as follows;

"It has come to the notice of the UGC that some Institutions/Universities/Institutions Deemed to be Universities are conducting examinations for their Open and Distance Learning (ODL) programmes outside the State of their location or beyond their territorial jurisdiction, which is wholly illegal. The



Sikkim Manipal University v. Union of India and Others

Policy of the UGC with regard to territorial jurisdiction and off-campus/ study centres has been clearly articulated in its Public Notice dated 27.06.2013, which is also available on the UGC website at www.ugc.ac.in.

All the Institutions are hereby directed to follow the UGC policy on ODL norms and territorial jurisdiction which are applicable for all academic activities including setting up of examination centres for distance education.

The students and parents are requested to ascertain the territorial jurisdiction of the institution before seeking admission in the same and refrain from studying in these institutions which violate the norms of the University Grants Commission.

.....”

This Public Notice is self-explanatory. This Notification as pointed out by Learned Senior Counsel for the Respondent No.2 is infact a clarificatory Notification pertaining to the conducting of examinations by Universities for their Open and Distance Learning Programmes outside the State of their location or beyond their territorial jurisdiction. It was elucidated therein that such acts were wholly illegal. The Public Notice also explained that the Institutions were to follow the UGC Policy on ODL norms and territorial jurisdiction including setting up of Examination Centres for Distance Education. The Public Notice dated 27.06.2013 mentioned in the said notice *supra* pertains to Courses/Study Centres/Off Campuses and Territorial Jurisdiction of Universities. This Public Notice requires *inter alia* that a University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location. Learned Senior Counsel for the Petitioner University argued that in Paragraph 2(b) of the Public Notice which provides that, a University established or incorporated by or



under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location, is to be read with *Clause A – UGC Regulations on Private Universities* of the same Notice and is concerned only with permission to open Off Campus Centres/Off Shore Campuses and Study Centre after five years of its coming into existence subject to fulfillment of necessary conditions laid down by the Respondent No.2 and does not pertain to establishment of Examination Centres. The attention of this Court had been drawn to the information sought under the RTI Act by one Maninder Singh Aujla from the Respondent No.2 and the response of the Respondent No.2 to the said person dated 12.04.2016 where it specified that there is no restriction on Examination Centres outside the State. On this count, we may notice that in WP(C) No.8 of 2015, the Judgment of the Court at paragraph 6 notes that "*Public Notice dated 27-06-2013, Annexure P39, impugned in the present case, was also assailed in the said Writ Petition.*" and the fate of this Notice was sealed in Paragraph 29 of the said Judgment which lays down that;

"29. For the aforesaid reasons, we hold that the Order of the Central Government dated 29-12-2012, Annexure P29, is valid and binding upon all Universities in the country, be it State or **Private or Central Universities, being a policy decision of the Government. Notifications/Orders issued consequential thereto and also preceding those to the same effect or consistent therewith, are also held to be valid and binding.**

....." [emphasis supplied]

Thus, no further discussions need emanate with regard to the Notification dated 27.06.2013 the observation *supra* having obtained finality.



21. The assailed communication dated 07.10.2016 is a letter issued by the Respondent No.2 to the Registrar, MATS University, Raipur, Chhattisgarh. The details required to be furnished on the websites of the Universities offering ODL programs *inter alia* included list of Study Centres and list of Examination Centres. The last Paragraph of the Public Notice reiterates "*..... Territorial Jurisdiction in respect of all activities has to be followed strictly. This also includes setting up of examination centres. UGC has already issued a Public Notice on 19.07.2016, which may be accessed at UGC website www.ugc.ac.in."* Needless to add that at no point of time the Petitioner University has deemed it necessary despite direction to furnish the list of Examination Centres before the Respondent No.2 nor has it been admitted that it indicated the territorial limits of its operations on its website.

22. The impugned communication dated 01.11.2016 is addressed by the Respondent No.2 to the Petitioner University reiterating the contents of the letter dated 19.07.2016. It was emphasized therein that the Respondent No.2 vide its letter dated 06.10.2016 has also clarified that no University/Institution is allowed to conduct Online Examination until such time that the UGC Guidelines are formulated and are mandatory. The Public Notice at Paragraph 4 reads as follows;

"4. However, it has come to the notice of UGC that some institutions are offering programmes in violation of the policy of UGC and erstwhile DEC on territorial jurisdiction. Some Institutions are still operating beyond their territorial jurisdiction in terms of opening of Study Centres, conducting examinations outside the territorial jurisdiction and



conducting 'Online Examination' as well as giving misleading advertisements in newspapers and other public media including their respective websites. The same is not permissible by UGC as per its norms.

Therefore, all the Institutions are hereby strictly instructed that there should not be any Study Centre/Examination Centre beyond its territorial jurisdiction, apart from adhering to the norms of not conducting 'Online Examination.' Franchising of ODL academic programmes is violation of UGC norms, and all ODL institutions need to have strict compliance of the same.

All ODL institutions are also directed to notify their territorial jurisdiction as per UGC norms on the main page of their official website along with a clear public notice that they do not possess a study centre/examination centre beyond their jurisdiction and do not possess Study Centre in franchisee mode even within the territorial jurisdiction. On similar lines, Universities are instructed to include this information also in the prospectus/forms/ other documents issued to all stakeholders and students for distance education from time to time."

It may be pertinently be noticed here that these impugned Notifications/communications are issued consequential to the order of the Central Government dated 29.12.2012 and would therefore, in my considered, opinion meet the same fate as the Notification dated 27.06.2013 in view of the conclusion of this Court in WP(C) No.04 of 2013.

23. The UGC Regulations 1985 pertains to Minimum Standards of Instruction for the Grant of the First Degree through Non-Formal/Distance Education and is dated 25.11.1985. Admittedly, no restrictions were mandated on territoriality in the said Regulations. The UGC (Establishment of and Maintenance of Private Universities) Regulations, 2003 encompasses all Degrees, Diplomas and Certificates offered under formal, non-formal or distance education mode by the private Universities. Regulation 2.4 defines "Study Centres".



Regulation 3.1 provides 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. It may relevantly be pointed out that this Court in WP(C) No.4 of 2013 has unequivocally declared that the Petitioner University has been established by the Manipal Pai Foundation, a registered Trust thereby falling squarely within the meaning of a private University in Clause 2.1 of the 2003 UGC Regulations. In Para 17(iii) it was held as follows;

*"(iii) The validity of Regulations 2003 having been upheld by the Hon'ble Supreme Court in **Prof. Yashpal case (supra)** and, Regulations framed under Clauses (e), (f), (g) and (h) of Sub-Section (1) of Section 26 of the UGC Act, 1956, held to be binding on all Universities in **Annamalai University (supra)**, there can be no doubt of its applicability on the Petitioner University. Of course, Mr. Gopal Subramaniam, would argue that the Petitioner-University cannot be treated as 'Private University' considering its structure where the Chancellor is the Governor of the State and the Governing Council represented substantially State Government nominees but, in our opinion, such features or the fact that it had been recognised under Section 2(f) of the UGC Act, would not confer upon the Petitioner-University, the legal statutes of a 'State University'. We are rather convinced that the Petitioner-University is a 'Private University' as will be revealed from what will follow hereafter."*

Regulation 26(1)(e), (f), (g) and (h) of the UGC Act, 1956 referred to *supra* read as follows;

"26. (1) The Commission may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder—

.....

- (e) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction;



Sikkim Manipal University v. Union of India and Others

- (f) defining the minimum standards of instruction for the grant of any degree by any University;
- (g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.
- (h) regulating the establishment of institutions referred to in clause (ccc) of section 12 and other matters relating to such institutions;

.....”

Regulation 3.3 of the 2003 UGC Regulations provides as follows;

“3.3. A private university established under a State Act shall operate ordinarily within the boundary of the State concerned. However, after the development of main campus, in exceptional circumstances, the university may be permitted to open off-campus centres, off-shore campuses and study centres after five years of its coming into existence,”

24. On the anvil of these Regulations, the Madhava Menon Committee Report may briefly be perused. Reference in this context is made to the Guidelines on DEC Minimum Requirements for Recognition of ODL Institutions (Handbook 2009) at Page 7 of the Report, DEC Requirements, which *inter alia* provides that DEIs (Distance Education Institutions) that are part of the dual (offering education through regular mode and OLD mode) institutions that can be Central Universities, State Universities, Deemed to be Universities, Institutions of National Importance or any other institutions of higher learning recognized by Central/State Governments. The Petitioner University thus stands encompassed in the definition of DEI. 4.2.2 of the Report deals with Organizational Structure of the DEIs which requires that the activities of the DEIs can be classified on the pattern of Open Universities system such as



academic activities and administrative activities. In “administrative activities” it is elucidated as follows;

“4.2.2 of the Report deals with Organizational Structure of the DEIs :

.....
Administrative Activities: These include the following:-

- Registration of students
- Administration and Management of Finances
- Management of Study Centres /Student Counseling
- **Examination related activities**
- Declaration of results and award of certificates/degrees”
[emphasis supplied]

The Organizational Structure described hereinabove is necessarily to be read with “Learner Support Services” described at “4.7” of the Report which provides *inter alia* as follows;

“• Organized learner support through Study Centres established and maintained by University/ Institution at existing recognized educational institutions having the required infrastructure and programme requirement

• Study Centres to provide both academic and administrative support services, such as dissemination of information, academic counseling (for both theory and practical courses), vocational guidance, hands-on experience, multimedia support, library services, evaluation of assignments, feedback, guidance of project work, organization of seminars, field trips, **conduct of term end exams, monitoring, etc.**

- Study Centres to be identified within the state or outside as per the jurisdiction of the University
- Study Centres to maintain records pertaining to:

- Academic Counsellors and Staff
- Students Registered
- Counselling Sessions
- Assignments Received, Evaluated and Returned
- Student Queries
- Administration and Finance
- Student feedback about the course, delivery, counselor/teacher, facilities, environments, etc.” [emphasis supplied]

In the light of the above recommendations it is clear that the administrative activities and examination related activities described as “administrative support” in “4.7” extracted *supra*



would thereby include examinations to be held at the Study Centres. In WP(C) No.4 of 2013, it has already been decided that the Order dated 29.12.2012 is not merely an executive Order of the Central Government but has been issued in exercise of the powers of the Central Government under Sub-Section (1) of Section 20 of the UGC Act, 1956 and the AICTE Act, 1987 thereby giving it a statutory character. Paragraph 9 of the report reads as hereunder;

“9. Study centers for ODL programmes to be located within the statutory territorial jurisdiction of the relevant Act/statute governing the institution. **In case a state Act mentions territorial jurisdiction beyond its State limits, the same will be limited to the territorial jurisdiction of the State in which it is located and under no condition will study centers be located beyond it.”**

[emphasis supplied]

The point on territorial jurisdiction having been laid down so succinctly *supra* it requires no further elaboration, thus the argument of the Petitioner University that the Madhava Menon Committee did not recommend any confinement to territorial jurisdiction is belied by the Paragraph 9. On consideration of both the Order dated 29.12.2012 and the recommendations of the Madhava Menon Committee Report, it is clear that Study Centres are to conduct the term end examinations. The Report also recommends that examinations should be held at Study Centres or any other Centre identified by the University having necessary facilities and support environments and emphasizes that under no condition was a study centre to be located beyond the territorial jurisdiction of the State. The requirements in the Examination Centres as per the 2017 Regulations are as follows;

**"Annexure III****Minimum Standards to be Maintained at Examination Centres**

1. The examination centre must be centrally located in the city, with good connectivity from railway station or bus stand, for the convenience of the students.
2. The number of examination centres in a city or State must be proportionate to the student enrollment from the region.
3. Building and grounds of the examination centre must be clean and in good condition.
4. The examination centre must have an examination hall with adequate seating capacity and basic amenities.
5. Fire extinguishers must be in working order, locations well marked and easily accessible. Emergency exits must be clearly identified and clear of obstructions.
6. The examination centre must provide adequate lighting, ventilation and comfortable seating. Safety and security of the examination centre must be ensured.
7. Restrooms must be located in the same building as the examination centre, and restrooms must be clean, supplied with necessary items, and in working order.
8. Provision of drinking water must be made for learners.
9. Adequate parking must be available near the examination centre.
10. Facilities for Persons with Disabilities should be available."

The requirements do not at any point envisage location of the examination centre beyond the territorial jurisdiction of the State. The Public Notice dated 24.06.2013 reiterates that a University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location. In the Public Notice dated 27.06.2013, this provision is reiterated and as already stated has already been discussed in



the Judgment in WP(C) Nos.04 of 2013 and 08 of 2015. The communication by the Respondent No.2 dated 23.08.2013 to Vice Chancellors/Directors, Directorate SOUs/DEIs/DDEs bearing F.No.DEB/QMC/2013 also states that "*ii) a University established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the state of its location.*" Besides, the said letter also *inter alia* specifies that;

"4. Therefore, all Universities/Institutions are hereby requested to offer only those programmes which are approved by UGC/erstwhile DEC and follow the policy of UGC on territorial jurisdiction, Study centres, and non-franchising of Study centres for offering programmes through distance mode. The activities at the Study centre such as admission, examination, conduct of Personal Conduct Programmes (PCPs) etc should be operated by the concerned University. Study centres can not conduct examinations on their own nor can they award degree/diploma etc. No sub-letting of study centres should be allowed and any such centre opened by any University/Institution would be in violation of the UGC policy."

[emphasis supplied]

In the face of such clarity with regard to the activities of the Study Centre it is indeed startling that the Petitioner University remains in a state of conundrum. An Affidavit submitted by the Petitioner University to the Respondent No.2 dated 01.04.2016 declares on oath that the territorial jurisdiction in respect of University for offering programs through distance mode will be as per the Policy of UGC on territorial jurisdiction and opening of Off Campuses/Centres/Study Centres as mentioned in the UGC Notification No.F.27-1/2012 (CPP-II), dated 27.06.2013. This provision is necessarily to be read in the context of inclusion of conduct of examinations. As the

Sikkim Manipal University v. Union of India and Others

Petitioner University has sworn on Affidavit that the territorial jurisdiction is being complied with, the question of Examination Centres being allowed outside the territorial jurisdiction in the wake of the clarity in the correspondence dated 23.08.2013 cannot be countenanced. Besides, in its communication dated 21.03.2017, the Respondent No.2 while considering "Continuation of recognition to Sikkim Manipal University, Gangtok Sikkim for offering programmes through Open & Distance Learning (ODL) mode for academic year 2017-18," had specified that the territorial jurisdiction in respect of University for offering programs through distance mode will be as per the Policy of UGC on territorial jurisdiction and opening Off Campuses/Centres/Study Centres as mentioned in the UGC Notification No.F.27-1/2012 (CPP-II), dated 27.06.2013, a copy of which was also posted on the UGC website. The State Principal Secretary, Human Resource Development Department, Government of Sikkim had also brought to the notice of the Vice Chancellor of the Petitioner University vide its letter dated 13.05.2016 that under no circumstances, any Education Centre of the Petitioner should be operating beyond the territorial jurisdiction of the State of Sikkim in any manner and it was also to be ensured that no other Campus Centre/Study Centre/Affiliating College and Centres operating through franchise is opened outside the territorial jurisdiction of the State of Sikkim. A communication in confirmation was sent by the Petitioner University on 25.05.2016. It is clear that the communications with regard to prohibiting holding of



examinations outside the State did not emerge suddenly in the year 2016 but the Respondent No.2 has been consistently stating it from 2010.

25. Besides all of the above, the averments of the Respondents No.2 in its Counter-Affidavit dated 08.05.2019 has drawn attention to the examination Regulations of the Directorate of Distance Education of the Petitioner University which reads as follows;

“VIII. In Regulations 2.2 dealing with Examiners, it has been provided that “learning centres are required to generate a list of external examiners from among the institutions near to LC(within a radius of 15 kms) affiliated to local university and internal examiners possessing the required qualification and send the details for university approval”. In Regulation 2.3 dealing with conduct of examination, it has been provided that “final semester internship examination is a university examination. The learning centres must conduct this examination as per the rules and guidelines issued in this regard by the university”. In Regulation 2.4 dealing with remuneration, it was provided as under:

“2.4 REMUNERATION

The honorarium payable to the external examiners must be borne by the learning centres which will be reimbursed by them after the receipt of marks, original cash vouchers signed by the receiver (Form I) and other required details.

The learning Centre or its faculty will not be paid any remuneration since conduct of these examinations is the responsibility of the LC”

“2.6 ACTION BY THE LC

The learning centre must provide the relevant/necessary facilities for the proper conduct of the examinations”

.....” [emphasis supplied]

These Regulations were not disputed by the Petitioner University save to the extent that the Regulations were in vogue



prior to the Judgment of this Court dated 26.06.2015 and is no longer relevant. I find that such declaration of irrelevance cannot wish away the contents thereof which at Regulations 2.4 and 2.6 indicate that the Petitioner University was conducting the examinations in the Learning Centres and therefore well-aware that when the Notifications confining territorial jurisdiction were issued they ought to have confined all activities of the Study Centres/Learning Centres to the jurisdiction of the State. The insistence of the Petitioner University that prohibition on Examination Centres was being introduced for the first time on 27.06.2013 appears to be incorrect in view of the fact that it was well within the knowledge of the Petitioner University prior in time as can be deducted from their own Regulations that the Learning Centers conducted the examinations.

26. The Petitioner had also contended that the Madhava Menon Committee Report stated that there had to be provision for despatch of sealed scripts immediately to Headquarters, indicating that Study Centres were envisaged as being outside the territorial limits appears to be based on assumptions favourable to itself but belied by the Report itself.

27. The argument that the Respondent No.2 has not been able to advance any reason why restricting examinations to the limits of the State is necessary to maintain standards is also answered by the Judgment of this Court in WP(C) No.4 of 2013 besides which in ***Modern Dental College and Research Centre***



(supra) the Hon’ble Supreme Court would observe *inter alia* as follows;

“69. Apart from the material placed before the High Court, our attention has also been drawn to a recent report of the Parliamentary Committee to which we will refer in later part of this judgment. The Report notes the dismal picture of exploitation in making admissions by charging huge capitation fee and compromising merit. This may not apply to all institutions but if the legislature which represents the people has come out with a legislation to curb the menace which is generally prevalent, it cannot be held that there is no need for any regulatory measure. “An enactment is an organism in its environment” [Justice Frankfurter, “A Symposium of Statutory Construction: Forward”, (1950) 3 Vand L Rev 365, 367]. It is rightly said that the law is not an Eden of concepts but rather an everyday life of needs, interests and the values that a given society seeks to realise in a given time. The law is a tool which is intended to provide solutions for the problems of human being in a society.” [emphasis supplied]

If the concerned authority is of the view that regulatory measures are imperative then legislation cannot be questioned because of inconvenience. The question of moulding the reliefs to protect the interests of students enrolled in distance education programs on a certain basis and with a certain expectation cuts no ice in the light of the foregoing discussions. Nevertheless, the protection granted by the Judgment in WP(C) No.08 of 2015 to the Petitioners therein and those similarly situated stands maintained and unchanged.

28. While tracing the history pertaining to examinations it may relevantly be noted that the UGC Regulations of 1985 dated 25.11.1985 lays down under “3. Programme of Study” as follows;

“3. Programme of Study:
.....



Sikkim Manipal University v. Union of India and Others

2. The University shall set up study centres (outside the headquarters) in areas where there is a reasonable concentration of students. Each study centre shall have adequate library facilities (text books, reference materials and lessons and supporting materials). They shall also have qualified part time instruction/counselling staff to advise and assist the students in the studies and remove individual difficulties.
.....”

However, so far as examination is concerned it was laid down at “4” that “The University shall adopt the guidelines issued by the University Grants Commission from time to time in regard to the conduct of examinations.” Thus, even the Regulations of 1985 specify that the University is bound by the guidelines issued by the Respondent No.2 so far as conduct of examinations is concerned. When the Regulations of 1985 were in vogue admittedly the Study Centres were mandated to be in areas outside the Headquarters. Consequently there was no bar on conduct of examinations even at such Centres. In 1991, the Distance Education Council was constituted as an authority under the IGNOU. Even at that time, there was no territorial restrictions. The UGC (Establishment of and Maintenance of Private Universities) Regulations, 2003 however envisaged that Study Centres could be established outside the State provided permission was taken of the State where the Centre was to be located and that of the UGC as well Regulations 3.3 and 3.3.1. The said Regulations required the private Universities which had started functioning before commencement of the 2003 UGC Regulations, to ensure adherence with the said Regulations in which at “2.4” a “Study Centre” and its meaning was prescribed.



It is evident that the 2003 UGC Regulations were silent on the manner in which examinations were to be conducted. In February, 2004 vide a Public Notice, the DEC (IGNOU) sought applications for recognition/approval of the distance education programs. The DEC in its 35th Meeting held on 10.03.2010 held that territorial jurisdiction of State Universities would be as per their parent Statutes but in its 40th Meeting dated 08.06.2012 took the view that a State University could not have Study Centres outside the geographical limits of the State. Pertinently, it may be stated that in WP(C) No.4 of 2013, the Judgment has taken all these matters into consideration and arrived at its finding *supra*. Hence, the submissions of the Petitioner University that regulatory bodies permitted conduct of examinations outside the territorial jurisdiction is to be considered on the anvil of the Regulations governing the relevant period.

29. The additional affidavit of the Petitioner dated 15.02.2017 unequivocally states that the Petitioner had relied upon and filed a copy of the University Undertaking dated 15.02.2017. However, on perusal of the said University Undertaking although the date is "15.02.2017" it does not reflect as to who the communication was addressed to and therefore merits no consideration. So far as the information in the RTI is concerned it has been explained by the Respondent No.2 that it was incorrectly furnished and was not based on a correct understanding of the earlier Public Notice of the Respondent No.2 dated 27.06.2013. Although the Respondent No.2 ought to be circumspect in issuing such letters however it is clear that the



Public Notice, dated 27.06.2013, places restrictions on Study Centres and Study Centres as already discussed includes Examination Centres. An argument was advanced by Learned Senior Counsel for the Petitioner that Clause 2.4 of the Regulations of 2003 described Study Centre while Regulations 2017 at 2(k) described Learning Support Centre and that both required that the Centre had to be established and maintained. That, Examination Centres on the contrary are temporary and neither established nor maintained by the Petitioner University but are temporarily hired. Consequently, the question of Study Centre including the examination centre did not arise in the absence of any definition in the Regulations of 2003. Having considered this argument it may be stated that conversely in the absence of definition of Examination Centre in the 2003 Regulations it is to be understood that the Study Centres would be conducting the examination as apparent from the Regulations of the University itself and subsequently bolstered by the Madhava Menon Committee Report.

30. The argument that Draft Regulations incorporate recommendations of the Madhava Menon Committee report to conduct examinations through technologically supervised mode or at campuses of Universities through internet, resulting in dichotomy of territorial policy in the ODL Regulations 2017 and the Draft Regulations of 2017, appear in the least to be incongruous since Draft Regulations cannot be said to have attained finality. It may also be noted that the ODL Regulations of 2017 have been passed by both Houses of Parliament. The



contention that restriction on examination venues is not traceable to any Regulations or delegated powers finds its answer in the Judgment of this Court in WP(C) No.04 of 2013 and the discussions pertaining to Study Centres and Examination Centres that have emanated herein. In any event if the Petitioner University was of the opinion that an ambiguity arose due to absence of specific definition on examination centre it was incumbent upon them to have sought clarifications instead of putting enrolled students in jeopardy. It may be reiterated here that the Division Bench of this Court has concluded that the DEC for the first time imposed restrictions on the territorial jurisdiction of the Universities from 15.10.2009 which was repeated in the Notification of the IGNOU dated 29.03.2010 which culminated in the Order dated 29.12.2012.

31. In the light of the foregoing discussions, it cannot be said that the Public Notice and communications impugned herein are either capricious or unreasonable. The Respondent No.2 is clothed with powers to regulate Distance Education. The impugned Notification also do not infringe on the Petitioner's right under Article 19(1)(g) or Article 21 of the Constitution. That apart which what stares us in the face is that the students who are said to be enrolled in the Distance Education Programme of the Petitioner University have at no point of time objected to the impugned Notifications or communications neither have they sought impleadment as intervenors in the instant Writ Petition.



Sikkim Manipal University v. Union of India and Others

32.

Consequently, in consideration of the discussions hereinabove, the Writ Petition stands dismissed and disposed of.
33.

No order as to costs.

Sd/-

(Justice Meenakshi Madan Rai)

Judge

03-01-2020

Approved for reporting : **Yes**

ml