BHARATI VIDYAPEETH (DEEMED UNIVERSITY) AND ORS. A

v.

STATE OF MAHARASHTRA AND ANR.

FEBRUARY 26, 2004

[S. RAJENDRA BABU AND G.P. MATHUR, JJ.] B

Education:

Maharashtra State University Act:

C

Section 65—Deemed university—Admission procedure—Powers of State in regard to—Society running various educational institutions was declared deemed university by UGC—Society allowed admissions to be made in its respective medical, engineering and dental colleges up to academic year 1995-96 under the stream of Common Entrance Test (CET) conducted by the State authority—Society filed a writ petition challenging the Admission Rules whereby D *colleges run by the said society were included in the admission proposed to be controlled by the CET authority—High Court dismissed the writ petition—Correctness of—Held: State has no legislative competence to extend the provisions of the Act to a deemed university—Hence, the institutions of the Society cannot be brought within the stream of CET Examination—University* E *Grants Commission Act, 1956.*

Constitution of India, 1950: Entry 66 List I Seventh Schedule.

"Coordination"—Scope and ambit of—Explained.

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Deemed university—Admission procedure—Held: Admission procedure to a deemed university is occupied by Entry 66 of List I and State cannot exercise any power over such admission procedure.

Words & Phrases:

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"Coordination"—Meaning of—In the context of Entry 66 List I of the Seventh Schedule to the Constitution of India, 1950.

C.A. No. 7660/2002

The appellant, established as a society, was declared as a deemed

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university under Section 3 of the University Grants Commission Act, 1956 on the strong recommendation of the State Government.

The appellant, as a deemed university, allowed admissions to be made in their respective medical, engineering and dental colleges up to the academic year 1995-96 under the stream of the Common Entrance Test (CET) conducted by the State authority. Thereafter, the appellant decided to keep itself outside the scope of the State authority.

The appellant filed a writ petition before the High Court challenging the Admission Rules whereby the colleges run by the appellant were included in the admission proposed to be controlled by the CET authority.

High Court dismissed the writ petition by holding that the Admission Rules framed under Section 65 of the Maharashtra State University Act could be treated as framed under Article 162 of the Constitution and, therefore, the said Rules were applicable to the institutions run by the appellant. Hence the appeal.

On behalf of the appellant, it was contended that the UGC Act was enacted under Entry 66 List I of the Seventh Schedule to the Constitution and, therefore, the respondent-State was not competent to make any Rules under Entry 25 List III in relation to those aspects covered under Entry 66 List I; and since the respondent-State lacked legislative competence it was not competent to exercise Executive power to frame any Rules under Article 162 of the Constitution.

C.A. NOS. 5543-5544/1994

The appellant enacted the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 and issued a notification by which the Rule for selection of candidates for admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses were amended and thereby the institutions of the respondent No. 1 were specifically brought within the scope of the said enactment.

Respondent No. 1, which was a deemed university, filed a writ petition before the High Court challenging the said notification. The High Court allowed the writ petition on the ground that the said notification was not applicable to a deemed university. Hence the appeal.

Allowing C.A. No. 7660/2002 and dismissing C.A. Nos. 5543-5544/

1994, the Court A

HELD:

C.A. NO. 7660 OF 2002

1.1. The expression "coordination" used in Entry 66 of List I of the B Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forging uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It will include power to do all things, which are necessary to C prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention. [783-D-F]

Gujarat University v. *Krishna Ranganath Mudholkar,* [1963] Supp. 1 D SCR 112 and *State of T.N.* v. *Adhiyaman Educations & Research Institute,* [1995] 4 SCC 104, relied on.

1.2. The concept of prescribing standards would include the process of admission. Hence, selection and admission cannot be compartmentalized E but it is one single process. [784-D]

Dr. Preeti Srivastava v. *State of M.P.,* [1999] 7 SCC 120; *State of M.P.* v. *Kumari Nivedita Jain,* [1982] 1 SCR 759 and *Ajay Kumar Singh* v. *State of Bihar,* [1994] 4 SCC 401, relied on.

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Post Graduate Institute of Medical Education & Research v. *K.L. Narasimhan,* [1997] 6 SCC 282, cited.

2. It is now settled position in law that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire G gamut of admission will fall. [784-G]

3. Once an institution comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of List III. [785-D]

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A 4.1. Under Section 3 of the University Grants Commission Act, 1956 deemed university status will be given to those institutions that for historical reasons or for any other circumstances are not universities and yet are doing work of a high standard in specialized academic field compared to a university and that granting of a university status would enable them to further contribute to the cause of higher education which B would mutually enrich the institution and the university system. Guidelines for considering proposals for declaring an institution as deemed to be university were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-C India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. Admission plays a crucial role in maintaining the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to a deemed university has to be made under the control of the UGC. This further goes to show that admission procedure to a deemed university is fully occupied by D Entry 66 of List I and the State cannot exercise any powers over admission procedure. [785-D-G]

4.2. The State could not have enacted any legislation in that regard. If that is so, neither in exercise of executive power under Article 162 of the Constitution which extends only to the extent of legislative power nor E in respect of power arising under the Maharashtra State Universities Act, such rules could have been prescribed. To the extent the High Court holds to the contrary the order of the High Court is set aside.

[785-H; 786-A]

F 5. A note of caution is struck in regard to the institutions, which are exclusively owned by the Government and in respect of the institutions, which stand affiliated to the university or in respect of the institutions to which either affiliation or grant is made. Such institutions may be controlled to an extent by the State in regard to admission as a condition of affiliation or grant or owner of the institutions. But those conditions, G again if they are in respect of the institutions of higher education must apply the standard prescribed by the statutory authorities such as UGC, Medical Council, Dental Council, AICTE, governed by Entry 66 of List I of the Constitution. [786-B, C]

H 7. The institution in question entirely falls within the scope of the

UGC Act. UGC has prescribed the norms of admission also which include fees that can be collected from students and specifically debar collection of capitation fee. The university or the State Government has no role to play either in the matter of recognition, affiliation or making any financial grants to exercise powers either as a condition thereto or in exercise of the powers under Entry 25 of List II. [786-D-E] A B

8. It would not be appropriate for the State to contend that even though the institution has now attained the deemed university status it is not beyond the clutches of the State in the matter of admissions of the students to such colleges as before granting of the deemed university status, the State was indeed consulted and the State conveyed its strong recommendation for grant of such status. Particularly when such status has been granted after consulting the Government concerned, argument on the basis of local needs should not be accepted. [788-B] C

T.M.A. Pai Foundation v. *State of Karnataka,* [2002] 8 SCC 481 and *Islamic Academy of Education* v. *State of Karnataka,* [2003] 6 SCC 697, held inapplicable. D

9. The High Court's order is set aside and the writ petition filed by the appellants is allowed to the extent of restraining the respondents from enforcing their instructions for bringing the institutions of the appellants within the stream of the Common Entrance Test Examination. [788-D] E

C.A. NOS. 5543-5544/1994

10. The view taken by the High Court that the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 and the Rules framed thereunder cannot be made applicable to respondent No. 1, which is a deemed university, is consistent with the view taken by this Court in *Dr. Preeti Srivastava's* case and in C.A. No. 7660/2002 - *Bharati Vidyapeeth (Deemed University) and Ors.* v. *State of Maharashtra and Anr.* [789-E] F G

Dr. Preeti Srivastava v. *State of M.P.,* [1999] 7 SCC 120 and *Bharati Vidyapeeth (Deemed University) and Ors.* v. *State of Maharashtra and Anr.,* AIR (2004) SC 1943, relied on.

State of M.P. v. *Kumari Nivedita Jain,* [1982] 1 SCR 759 and *Ajay* H

A *Kumar Singh* v. *State of Bihar,* **[1994] 4 SCC 401, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7660 of 2002.

From the Judgment and Order dated 25, 28, 29, 30.4.97 and 2.5.97 of
B the Bombay High Court in W.P. No. 3238 of 1996.

WITH

C.A. Nos. 5543-44 of 1994.

C Harish N. Salve, Dr. Rajiv Dhawan, P.P. Rao, Bhimrao N. Naik, Kailash Vasdev, Sanjay R. Hegde, Lakshmi Raman Singh, Vivek Singh, Ravi Prakash, Chander Prakash, S. P. Sharma, Ashwani Bhardwaj, Abhishek Atery, Shishir Singh, Vikash Singh, Yunus Malik, Ms.Amrita Narayan, Ms. Mahalakshmi Pavani, G. Balaji, Sumanth Sharma, Prashant Chaudhary, Satyajit Saha, Ms. Meenakshi Grover, Mrs. V.D. Khanna, Uday Umesh Lalit, Ravindra K. Adsure,
D Mukesh K. Giri, B.Y. Kulkarni, Bhupender Yadav, D. Bharat Kumar, S.S. Shamshery, R.C. Kohli, Amitesh Kumar, Navin Prakash, Maninder Singh, Mrs. Pratibha M. Singh, Angad Mirdha, Kirti Man Singh, S.V. Deshpande, Ms. Anuradha Rustagi, Chinmoy Khaladkar, S.K. Nandy, Prashant Kumar and Goodwill Indeevar for the appearing parties.

E The Judgment of the Court was delivered by

S. RAJENDRA BABU, J. C.A. No. 7660/2002

Bharati Vidyapeeth, located in Pune, was established as a society. Several
F Colleges affiliated to Pune University were run by the said Society. It applied to the U.G.C. for treating the society as a deemed university and the State Government strongly recommended the case of appellants to the U.O.I. for grant of the status of Deemed University. The Central Government on advice of U.G.C. declared various institutions of Bharati Vidyapeeth at Pune as "Deemed to be University" for the purpose of the U.G.C. Act vide Notification
G dated 26.4.1996. On 13.6.1996 U.G.C. issued office memorandum declaring Bharati Vidyapeeth as a Deemed University in terms of Section 3 of the U.G.C. Act.

When the matter stood thus, it appears that the Bharati Vidyapeeth as deemed University allowed admissions to be made in their respective medical,
H engineering and dental colleges up to the academic year 1995-1996 under the

stream of the Common Entrance Test conducted by the State authority. Thereafter, they decided to keep themselves outside the scope of the State authority. At that stage, appellants herein filed a writ petition before the High Court challenging the Admission Rules to Medical, Engineering and Dental colleges for the year 1996-97 whereby the colleges run by Bharati Vidyapeeth were included in the admission proposed to be controlled by the CET authority. The High Court after considering various arguments of the learned counsel appearing on either side dismissed the writ petition. Hence, this appeal by special leave.

This Court granted an interim order on 19.5.1997 to the following effect which is continuing till today:

> ".....We are informed that the examination process has already began as early as February, 1997. In the larger public interest, we are of the view that the petitioner will conduct an All India Entrance Test and will grant admission strictly on the basis of the merit of the candidates. Admission so granted will be subject to the final orders, that will be passed by this Court."

The High Court in reaching the conclusion that the petitioner (appellant herein) had not made out any case, mainly adverted to Section 65 of the Maharasthra State University Act and held that the State can frame rules in respect of admission of students and the manner in which the admissions are to be made under those rules has also been spelt out. Inasmuch as the institution with which we are concerned did not fall under the Schedule to the Maharashtra Act, the High Court took the view that the Rules framed under Section 65 of the Maharasthra Act would not be attracted. However, the High Court placed reliance upon Article 162 of the Constitution and held that the rules, though framed under Section 65 of the Maharashtra Act could as well be treated as framed in exercise of powers under Article 162 of the Constitution and, therefore, stated that such power was available and hence these Rules could be made applicable to the appellants' institutions. The argument addressed on behalf of the petitioner before the High Court is that once the appellant institution comes under the umbrella of deemed university, it is no longer open to the State to exercise any of its powers under Entry 25 of List III inasmuch as the same are the powers exercised by the University Grants Commission under the U.G.C. Act which has been enacted in terms of Entry 66 of List I of the Constitution. It is in this background that the matter falls for our consideration.

A Shri Harish N. Salve, learned Senior Advocate appearing for the appellant after developing history of the law in relation to the Entries in the Constitution and how they have been understood, specifically submitted that the institutions in question are governed by the University Grants Commission Act and the terms under which it had been granted the status of deemed University as well as the regulations framed and therefore, it is no longer open to the State B or University to impose Rules upon the manner in which the admission could be made in the appellant institution.

It is submitted that once it is held that the power is available under Entry 66 of List I of the Constitution, the power stood carved out under Entry C 25 of List III of the Constitution. Thus a State would not have competence at all to make such an enactment or exercise any power in relation to those aspects covered under Entry 66 of List I. He further submitted that the view of the High Court that the State action fell under Article 162 of the Constitution in framing the relevant Rules, is plainly impermissible for the reason that the State lacks legislative competence over those aspects carved out by Entry 66 D of List I. If the State is not competent to make any legislation in that regard, it will not have any Executive power to frame any instruction or exercise any power to frame Rules.

He further drew our attention to various decisions of this Court as to E the scope of Entry 25 of List III and Entry 66 of List I. He submitted that the concept of coordination and determination of standards of admission in institutions will cover a situation in which the admission is to be made in the institutions governed by the UGC Act as well.

While summing up, he stated that the State's competence in regard to F a deemed university with respect to higher education, such as medical, engineering and dental is completely excluded and a university established under the Central enactment falls outside the scope of Entry 25 of List III. He also submitted that the Union law prevails over the State law to the extent of overlapping. Therefore, it is contended that the action of the State in this regard is totally ultra vires the Constitution.

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In answer, the learned counsel for the State submitted that the institutions in the present case prior to 1996 had been part of the Common Entrance Test conducted by the State authority and admissions were made on that basis and it will not be correct to state that the entire process of admission is relatable to and governed by Entry 66 of List 1 and that there are still certain facets

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even in cases of institutions governed by Entry 66 List 1 to which appropriate legislation can be made within the scope of Entry 25 of List III. He also pointed out that the grant of status of deemed university on the institutions in question is only for purposes of the UGC Act. Therefore, he argued that the deemed universities cannot be given any higher status than what has been considered under the Act. It is only for certain purposes status has been given. He, therefore, submitted that though he does not subscribe to the reasoning of the High Court, he will maintain that the State Government had sufficient powers to impose necessary rules upon a deemed University.

In order to appreciate the various contentions put forth, we have to first examine the scope of Entry 66 of List I. which reads:-

> "Co-ordination and determination of standards in institutions for higher education ~~or~~ research and scientific and technical institutions".

The expression 'coordination' has been explained by this Court in more than one decision. Firstly in *the Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and Ors.,* [1963] Supp. 1 SCR 112 and recently in the *State of T.N. and Anr.* v. *Adhiyaman Educations & Research Institute and Ors.,* [1995] 4 SCC 104. In these two decisions it is stated that the expression 'coordination' used in Entry 66 of List I of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It will include power to do all things, which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

So far as standard of education is concerned, this Court in *Dr. Preeti Srivastava* v. *State of M.P. and Ors.,* [1999] 7 SCC 120, has explained that the process of admission falls within the scope of determining standards and held as follows :-

> "It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course,

A there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education."

After specifically adverting to the decisions in *State of M.P. and Anr.* v. *Kumari Nivedita Jain and Ors.*, [1982] 1 SCR 759 and *Ajay Kumar Singh and Ors.* v. *State of Bihar and Ors.*, [1994] 4 SCC 401, this Court disagreed with the proposition that standards come into picture after admissions are made and held as follows:- ".....It is the result of a sum total of all the inputs - calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in *Ajay Kumar Singh* v. *State of Bihar,* [1994] 4 SCC 40, and Post Graduate *Institute of Medical Education & Research* v. *K.L. Narasimhan,* [1997] 6 SCC 282."

It was also held that the concept of prescribing standards would include the process of admission. Hence, selection and admission cannot be compartmentalized but it is one single process.

The High Court has also adverted to the decisions in *Kumari Nivedita Jain's* case (Supra) and *Ajay Kumar Singh's* case (Supra) which stood overruled in *Preeti Srivastava's* case (Supra) to state that admission is one of the areas which will come after selections are made and, therefore, in that area the Government can play certain role and in this context in the absence of appropriate rules, rules will have to be framed and such rules have been framed by the Government, such rules have been framed though purporting to be under Section 65 of the Mahrasthra Act, would be applicable to institutions of the appellant.

It is now settled position in law that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall. Therefore if any aspect of admission of students in colleges would fall within Entry 66 and it necessarily stands excluded as has been held in the *Gujarat University's* case (Supra). After examining the power of the State to

prescribe medium of instruction in institutions for higher education it is stated in that decision as follows:

> "Item 25 of the Concurrent List confers power upon the Union Parliament and the State Legislatures to enact legislation with respect to "vocational and technical training of labour". It is manifest that the extensive power vested in the Provincial Legislature to legislate with respect to higher, scientific and technical education and vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I and List III mentioned in item 11 of List II. Item 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament".

If the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament even at a time when 'Education' fell under List II, we find no reason now not to accept the arguments advanced on behalf of the appellant that once an institution comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of List III.

Under Section 3 of the Act, deemed University status will be given to those institutions that for historical reasons or for any other circumstances are not Universities and yet are doing work of a high standard in specialised academic field compared to a University and that granting of a University status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the University system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out, admission plays a crucial role in maintaining of the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to deemed University has to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be University is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure.

Therefore, the State could not have enacted any legislation in that regard.

A If that is so, neither in exercise of executive power under Article 162 of the Constitution which extends only to the extent of legislative power nor in respect of power arising under the Maharashtra State Universities Act, such rules could have been prescribed. To the extent the High Court holds to the contrary, we set aside the order of the High Court.

B At this stage we must strike a note of caution in regard to institutions which are exclusively owned by the Government and in respect of institutions which stand affiliated to the University or in respect of institutions to which either affiliation or grant is made. Such institutions may be controlled to an extent by the State in regard to admission as a condition of affiliation or grant C or owner of the institutions. But those conditions, again if they are in respect of the institutions of higher education must apply the standard prescribed by the statutory authorities such as U.G.C., Medical Council, Dental Council, AICTE, governed by Entry 66 of List I of the Constitution.

Though arguments have been advanced before us that even if some D area is covered under Entry 25 in relation to admission, inasmuch as the power has been exercised under Entry 66 which in pith and substance falls within that scope the State legislation to that extent has to yield to Central legislation. In this case it is unnecessary to examine this aspect of the matter as the institution in question entirely falls within the scope of the U.G.C. Act. UGC has prescribed the norms of admission also which include Fees that can E be collected from students and specifically debar collection of Capitation fee. The university or the State Government has no role to play either in the matter of recognition, affiliation or making any financial grants to exercise powers either as condition thereto or in exercise of Entry 25 of List II.

F However, we may advert to the various provisions of the U.G.C. Act. The Act provides for various aspects which would be looked after. Section 12 relates to Powers and Functions of the University Grants Commission under which it shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of university education G and for the determination and maintenance of standards of teaching, examination and research in universities and for the purpose of performing its functions under the Act. It may have other powers, including power to establish, in accordance with the regulations made under the Act, institutions for providing common facilities, services and programmes for a group of universities or for the universities in general and maintain such institutions H

or provide for their maintenance by allocating and disbursing out of the Fund of the Commission such grants as the Commission may deem necessary. A

The Commission is also authorised to frame regulations under Section 26 of the UGC Act. Section 26(1)(f) in particular defines the minimum standards of instruction for the grant of any degree by any university and regulating the maintenance of standards and the co-ordination of work or facilities in universities and to regulate the establishment of institutions referred to in clause (ccc) of Section 12 and other matters relating to such institutions. It also provides for fees to be charged and scales of fees in accordance with which fees may be charged. It is also empowered under Section 25 to frame rules for carrying out the purposes of the Act in general and in particular any function that may be performed under Section 12 and additional functions which may be performed by the Commission under clause (j) of the Act. B C

Learned counsel appearing for the State very strenuously urged that the U.G.C. Act is only for the purpose of making grants to various institutions governed by and it was not an authority which would create a university and give a special status to it so as to keep it out of the control of the University or the State where it is located. This argument ignores the provisions of the enactment and particularly those to which we have adverted to just now, for such institutions are recognised or granted deemed status for the maintenance of the standards in the institutions and for coordinating the teaching in universities which is a higher purpose than merely giving grants and with that object, the enactment is made. We do not think it could be confined only to making of grants as has been contended by the respondents. This argument, therefore, needs to be rejected. D E

Shri Lalit learned counsel for the State drew our attention to the two decisions of this Court in *T.M.A. Pai Foundation and Ors.* v. *State of Karnataka and Ors.*, [2002] 8 SCC 481 and *Islamic Academy of Education and Anr.* v. *State of Karnataka and Ors.*, [2003] 6 SCC 697 to contend that in these two decisions certain norms have been laid down in regard to admissions and those norms are applicable even in respect of deemed universities. The observations made in those decisions are only in the context in which the decisions were rendered. There was no argument or consideration of the competing enactments whether as to which authority is empowered to make admissions or in what manner. All that was stated was the nature of control that a State can exercise in respect to educational institutions which impart different kind of education and no more. Therefore, the observations F G H

A made therein can have no relevance or application.

He further highlighted that these institutions originally started in the State of Maharashtra to cater to the local needs and therefore now if it is being given deemed status it will no longer serve the local needs, such need having been recognized by the Government by granting essentiality certificate.
B It would not be appropriate for the State to contend that even though the institution has now attained the deemed university status it is not beyond the clutches of the State in the matter of admissions of the students to such colleges as before granting of the deemed university status, the State was indeed consulted and the State conveyed its strong recommendation for grant
C of such status. Particularly when such status has been granted after consulting the Government concerned, we do not think that such argument on the basis of local needs should be accepted. Faced with this position, Learned counsel, of course, stated that the problem posed by him may have to be attended to by the concerned authority.

D We, accordingly, allow this appeal, set aside the order made by the High Court and allow the writ petition filed by the appellants to the extent of restraining the respondents to enforce their instructions for bringing the institutions of the appellants within the stream of the Common Entrance Test Examination.

E **C.A.Nos. 5543-5544/1994**

These appeals arise out of an order made by the High Court in two writ petitions filed before it by respondent No.1. The appellant enacted the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 and issued a notification on 16.9.1993 by which the Rule for selection of
F candidates for admission to Engineering, Medical, Dental, Pharmacy and Nursing Courses were amended and thereby the institutions of respondent No.1 were specifically brought within scope of the said enactment. That action of State was challenged in the aforesaid writ petitions. On the arguments raised before the Court, the High Court formulated two questions as follows:

G (1) Whether the State has legislative competence to extend the provisions of the act to the petitioner Institution (which is deemed to be an University for the purposes of the "University Grants Commission Act, 1956) by the impugned notification issued under Section 2(c) of the Act? And

H (ii) Whether the said notification is ultravires of Section 2(c) of the Act

itself? A

On the first question, the High Court examined various provisions of the enactment such as the University Grants Commission Act, 1956 (referred to as the "U.G.C. Act") and the State Act which was under challenge before it bearing in mind the scope of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution. Thereafter, adverting to various B decisions of this Court, it concluded that since specified guidelines and provisions pertaining to all relevant aspects for the purpose of performing different functions, including fixation of the scale of fee, and other matters are provided under the UGC Act, it is difficult to hold that the Act under challenge and the Rules framed thereunder can be made applicable to the C petitioner (respondent No. 1 herein).

Thereafter, the High Court adverted to the decisions of this Court in *Kumari Nivedita Jain's* case and *Ajay Kumar Singh's* case. The High Court held that the said decisions were not attracted to the instant case wherein the question for consideration is concerning a Deemed University declared as D such by the Central Government to be regulated under the provisions of the UGC Act; that the Regulations and guidelines subject to which the Deemed University status is granted to the petitioner (respondent No. 1 herein) would, therefore, cover all the relevant functions to be performed by the Deemed University, including the matters which are now sought to be regulated by the State under the Act and the Rules by including the Deemed University E within the definition of the term "Educational Institutions".

The view taken by the High Court is also consistent with the view expressed by this Court in *Dr. Preeti Srivastava's* case (supra) and by us in C.A.No. 7660/2002 - *Bharati Vidyapeeth (Deemed University) and Ors.* v. F *State of Mahrashtra and Anr.* and, therefore, all the arguments addressed by Shri Sanjay R. Hegde to the contrary stand rejected.

Therefore, we find no merit in these appeals and are dismissed.

V.S.S. Appeals No. 7660/02 allowed. G
and Appeal Nos. 5543-5544/1994 dismissed.