MAHARISHI MARKANDESHWAR MEDICAL COLLEGE AND HOSPITAL & OTHERS

v.

STATE OF HIMACHAL PRADESH & OTHERS

(Civil Appeal No. 5198 of 2017)

APRIL 28, 2017

[DIPAK MISRA, A. M. KHANWILKAR AND MOHAN M. SHANTANAGOUDAR, JJ.]

Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (as amended) – ss. 3(6), 3(6a) and 3(6b) – Validity of – Writ petition seeking direction to strike down ss. 3(6), 3(6a) and 3(6b) as null and void – Appellant-private medical college's case that amendment to 2006 Act whereby it became mandatory for all the private medical institutions set up in the State to take affiliation from the Himachal Pradesh University affected the autonomy of appellant no. 2-Maharishi Markandeshwar University, an independent and a full-fledged University established under an independent special State Legislation – Dismissal of writ petition by the High Court – On appeal, held: Appellant no.1-college being a constituent of appellant no. 2-University, it cannot be compelled to take affiliation from another University-Himachal Pradesh University – Power of granting affiliation to colleges under the control of the concerned University, must vest with the respective University to which the college will be affiliated – It cannot be whittled down by the 2006 Act or amendments made thereto – Requirement of affiliation from another University even in respect of its constituent college, would be striking at the autonomy of the appellant no. 2-University and in any case beyond the purview of the subject of admissions and fixation of fee for which Act of 2006 has been enacted – Section 3(6a)(as amended), would impinge upon the autonomy of an independent University established under a separate State Legislation, thus, cannot be sustained as the same are unreasonable, irrational and in conflict with the special State Legislation-2010 Act, under which appellant no.2-University, is established – Judgment of High Court is set aside – Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010.

A Allowing the appeal, the Court

HELD: 1.1 Since the appellant no.1-College is a constituent of the appellant no. 2-University, the question of compelling it to take affiliation from another University (Himachal Pradesh University) cannot be countenanced. The impugned judgment of B **the High Court is set aside. Section 3(6a) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, is struck down being irrational, unreasonable, *ultra vires* and unconstitutional. The Regulatory Authorities would forthwith proceed in the matter without insisting for an affiliation of the appellant no.1-College (a** C **constituent college of Appellant No.2-University) from the Himachal Pradesh University. [Paras 26, 27][456-F-H; 457-A]**

1.2 The appellant no. 2-Maharishi Markandeshwar University has been established under the Maharishi Markandeshwar University (Establishment and Regulation) Act, D **2010. The intendment of the 2010 Act is to provide for establishment, incorporation and regulation of the appellant no. 2-University for higher education, to regulate its functioning and for matters connected therewith or incidental thereto. The 2010 Act purports to establish an independent University in the State** E **of Himachal Pradesh, having full autonomy as that of any other full-fledged University including the authority to start Multi-Faculty Education Courses within its campus and also constituent colleges off campus. From the legislative scheme of 2010 Act, it is axiomatic that an independent, autonomous University has been established under this Act. The appellant no. 2-University, thus,** F **has all the trappings of a full-fledged University, to not only start imparting education in prescribed courses but also to set up its constituent colleges to effectuate the purpose for which the University has been established. Indubitably, a constituent college of the University would be an integral part of the** G **University. [Paras 14-16][441-A-B; 447-A-B; 450-C-D]**

1.3 Affiliation from University may be a pre-condition for starting any college or new courses. The constituent college of the appellant no. 2-University would therefore, at best, require affiliation from the appellant no. 2. This position was accepted H **even by the Medical Council of India and the Union of India,**

however, not by the State Government. [Para 17][450-F] A

1.4 It is unfathomable as to how sub section (2) of section 7 would take within its sweep another independent University established under a special State Legislation or a constituent college of such University. That general provision may apply to all other educational institutions situated within the State, but B certainly not to an independent University established under a special State Legislation such as the 2010 Act or to the constituent college of such an independent University. Any other interpretation would entail in rewriting the provisions of the 2010 Act, if not doing violence thereto. [Para 17][451-E-F]

C

1.5 Since the appellant no. 2 did not accede to the demand of the State Government, provisions of the 2006 Act, came to be amended so as to widen the scope of that Act, requiring all the Private Medical Educational Institutions set up in the State to take affiliation from the Himachal Pradesh University. Notably, D no corresponding amendment has been made in the 2010 Act. Nor has any amendment been made in the Himachal Pradesh University Act, 1970, mandating affiliation of the constituent college of another University established under a special State Legislation. [Para 18][451-F-G]

1.6 It is noticed from the legislative scheme of the 2010 E Act, that the appellant no. 2 has been established as an independent, autonomous University like any other full-fledged University. No doubt, some of the functions of the University, be it the appellant no. 2-University or the Himachal Pradesh University, have been controlled and regulated by the 2006 Act. F 2006 Act provides for regulation of admission and fixation of fee in Private Medical Educational Institutions in the State of Himachal Pradesh and for matters connected therewith or incidental thereto. It is not an Act for establishment of a University or, for that matter, dealing with the subject of starting a new college or new courses in the affiliated college. This Act, G no doubt uniformly applies to all the institutions affiliated to the Universities within the State of Himachal Pradesh, be it Himachal Pradesh University or the appellant no. 2-University. However, the object of this Act is limited only to regulate admissions as per the extant and applicable pronouncements of this Court; and H

A to determine the fee structure in colleges imparting medical courses within the State. [Para 19][452-B-E]

1.7 Section 3(6) came to be amended by the State Legislation, so as to fortify the stand of the State Government that the medical college started as a constituent of the appellant B no. 2-University would also require affiliation from the Himachal Pradesh University. Along with sub-section (6), amendment was also effected to Section 2(j) of the 2006 Act by including a Private Medical Institution established by or affiliated to a private University to be a Private Medical Educational Institution. Appellant no. 2-University being an independent and a full-fledged C University established under an independent special State Legislation, it must be free to discharge its functions as delineated in the 2010 Act. That, inter alia, includes granting affiliation to its constituent college, one of the facets of autonomy of the University. It is incomprehensible that a college which is a D constituent of the appellant no. 2-University can be compelled to take affiliation from some other University by taking recourse to the provisions of the 2006 Act which primarily deals only with the subject of admissions and fees in private medical colleges within the State. The grant of affiliation to the college is the prerogative of the examining body. Appellant no. 2, being the E examining body, has been bestowed with the authority to grant degrees and diplomas. The requirement of affiliation from another University even in respect of its constituent college, would be striking at the autonomy of the appellant no. 2 and in any case beyond the purview of the subject of admissions and fixation of F fee for which 2006 Act has been enacted. [Para 20][453-D-E; 454-B-E]

1.8 In the instant case, it has been asserted that the appellant no. 1-College is a constituent of the appellant no. 2-University. In such a situation, it is unfathomable that the G requirement of taking affiliation from another University (Himachal Pradesh University) established under a separate State Legislation, can and ought to be insisted upon. If insisted, it would, inevitably, entail in making an inroad into the autonomy of the appellant no. 2-University. True it is that Section 7 of the 2010 Act does not empower the appellant no. 2-University to affiliate H

or otherwise admit to its privileges any other institution. But that would have no application to the instant case. The Medical Council of India as well as the Union Government have, therefore, justly stated that it was not necessary for the appellant no.1-College to take affiliation from the Himachal Pradesh University. [Para 21][454-F-H; 455-A]

1.9 A priori, there is no hesitation in taking the view that the amended provisions, in particular Section 3(6a), would impinge upon the autonomy of an independent University established under a separate State Legislation. Further, the field of affiliation is governed by the State legislation under which the respective Universities have been established. The power of granting affiliation to colleges under the control of the concerned University, must vest with the respective University to which the college will be affiliated. That power of granting affiliation, by the University concerned, therefore, cannot be whittled down by the 2006 Act or amendments made thereto. Thus, the amended provisions of Section 3 (6a) of the 2006 Act, cannot be sustained as the same are unreasonable, irrational and in conflict with the special State Legislation under which the appellant no.2-University has been established, namely the 2010 Act. [Para 22][455-B-C]

1.10 The expression 'Private Medical Educational Institutions' in Section 2(j) includes a Private Medical Educational Institution established by or affiliated to a private University. The definition of Private Medical Educational Institution, as amended, can be extended to the appellants in relation to other matters governed by the 2006 Act, except the mandate of requiring the appellant no.1-College (a constituent college of the appellant no.2-University) to take affiliation from the Himachal Pradesh University. That requirement springs from Section 3 (6a). [Para 23][455-D, F-G]

1.11 There is no other private medical University in the State except the appellant no.2-University. Therefore, the possibility of omitting the words "Himachal Pradesh" from the amended Section 3 (6a) to save the whole of that provision from being invalid, was explored. However, it is found that if the words "Himachal Pradesh" alone were to be struck down, the remaining

A **Section 3 (6a) may create some confusion. It would then mean that Private Medical Institutions in the State must take affiliation from the "concerned" University. To wit, Himachal Pradesh University or the appellant no.2-University, as the case may be. In other words, the concerned University can exercise power to affiliate a private medical institution set up in the State. However,**
B **the appellant no. 2 is not authorised to affiliate a private medical college (not its constituent) by virtue of Section 7 of the 2010 Act, which prohibits the appellant no.2-University from affiliating or otherwise extending to its privileges any other institution. Therefore, the appropriate course to avoid any confusion is to**
C **strike down Section 3(6a) of the 2006 Act, as amended. [Para 24][455-H; 456-A-C]**

1.12 It was argued by the counsel for the State that the appellant no. 2-University was granted essentiality certificate on the condition that it would abide by the provisions of the 2006
D **Act. The fact that such condition was imposed in the communication dated 29th August 2012, does not mean that the appellant no.2-University would be bound and obliged to comply with even an onerous stipulation, which is unconstitutional and hit by Article 14 and 19(1)(g) of the Constitution and impinging upon its autonomy guaranteed under the 2010 Act. Affiliation is a**
E **matter within the prerogative of the Examining Body or the prescribed Authority, to be considered fairly and after due application of mind.[Para 25][456-D-F]**

Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others **(2016) 7 SCC**
F **353;** *Rajasthan Pradesh Vaidya Samiti, Sardarshahar and another v. Union of India and others* **[2010] 7 SCR 252 : (2010) 12 SCC 609;** *Bhartia Education Society and Another v. State of Himachal Pradesh and Others* **[2011] 2 SCR 461 : (2011) 4 SCC 527;** *State of Madhya*
G *Pradesh and Another v. Kumari Nivedita Jain and Others* **[1982] 1 SCR 759 : (1981) 4 SCC 296;** *H-Private Universities Management Association (H-PUMA) v. State of Himachal Pradesh and others* writ petition No.7688 of 2013 decided on 23.07.2014 – **referred to.**

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Case Law Reference

(2016) 7 SCC 353	**referred to**	**Para 10**
[2010] 7 SCR 252	**referred to**	**Para 10**
[2011] 2 SCR 461	**referred to**	**Para 10**
[1982] 1 SCR 759	**referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5198 of 2017.

From the Judgment and Order dated 20.12.2016 of the High Court of Himachal Pradesh at Shimla in CWP No. 4773 of 2015.

V. Giri, Sr. Adv, Aseem Mehrotra, Vijay Aw na, Abhijat P. Medh, Advs. for the Appellants.

Ashok Kumar Panda, Sr. Adv, Shadman Ali, Ms. Kiran Bhardwaj, G. S. Makker, Gaurav Sharma, Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Ms. Vara Gaur, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. This appeal emanates from the judgment of the High Court of Himachal Pradesh at Shimla dated 20.12.2016, passed in CWP No.4773 of 2015. The High Court dismissed the writ petition filed by the Appellants challenging the validity of Sections 3(6), 3(6a) and 3(6b) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 (for short "**2006 Act**") as amended vide amendment Act No.24 of 2015. The High Court also rejected the prayer of the Appellants to issue directions to the concerned authorities that the Appellant No.1 (college and hospital) or any other institution of medical stream to be started by the Appellants be governed only by The Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 (for short "**2010 Act**").

2. Briefly stated, Appellant No.1 is an unaided private medical college established by the Appellant No.3 - University Trust as a constituent of the Appellant No.2 - University. The Appellant No.2 - University has been established under the 2010 Act. Before the said Act was enacted, the sponsoring body of the Appellant No.3 - University Trust had submitted a project report on 21.07.2008 under Section 4(2) of the Himachal Pradesh Universities Report (Establishment and Regulation) Act, 2006 for establishing a multi-faculty University with emphasis on professional courses in emerging areas. The State Government issued a

A letter of intent to the Appellant No.3 – University Trust dated 28.08.2008, for setting up of a private University within the State of Himachal Pradesh. The letter delineated certain conditions to be fulfilled by the Trust for setting up of a private University in the State. The Principal Secretary to the State Government then issued an "Essentiality Certificate" on 28.08.2008, permitting the Appellant No.3 – University Trust to purchase B 25 acres of land for establishment of a medical college under the proposed private University. On the basis of the Essentiality Certificate, the Appellant No.3 - University Trust proceeded with the project to establish the medical college as a constituent unit of the proposed private University and made necessary investments in that regard. The Appellant No.3 - C University Trust purchased 125.02 bighas of land at Khalogra in Kumarhatti-Solan for setting up the proposed University. Having complied with the pre-conditions for establishment of the proposed University, the State Legislation enacted the 2010 Act to provide for establishment, incorporation and regulation of Maharishi Markandeshwar University, Solan, Himachal Pradesh for higher education, and to regulate its D functioning and for matters connected therewith or incidental thereto. The 2010 Act received the assent of the Governor on 15.09.2010. The said Act, however, was deemed to have come into force w.e.f. 16.06.2010. The Appellant No.2 - University has thus been established under the 2010 Act.

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3. On 27.07.2012, the Appellant No.2 - University requested the Principal Secretary (Health) to the Government of Himachal Pradesh for grant of an "Essentiality Certificate" to establish a new medical college at Kumarhatti, Solan "under" the Appellant No.2 – University, to be submitted to the Medical Council of India/Government of India. On F 29.08.2012, the Secretary (Health) Government of Himachal Pradesh brought to the notice of the Director, Medical Education and Research, Himachal Pradesh, regarding the grant of approval of the State Government for issuing "Essentiality and Feasibility Certificate/No Objection Certificate" to the Appellant No.2 -University for opening the stated medical college and hospital at Kumarhatti in Solan for MBBS G Course with 150 seats in the said institute. On issuance of "Essentiality and Feasibility Certificate/No Objection Certificate", the Appellant No.3 - University Trust applied to the Central Government along with required schemes under Section 10A of the Indian Medical Council Act, 1956, for grant of permission to establish a new medical college at Kumarhatti,

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Solan, Himachal Pradesh "under" the Appellant No.2 - University as its constituent. The Appellant No.3 - University Trust also wrote to the Medical Council of India vide its letter dated 27.02.2013, asserting that the proposed medical college, a constituent college of the Appellant No.2 – University was "being set up by the same Maharishi Markandeshwar University Trust at the same campus as a part of the University". Pursuant to the proposal submitted by the Appellants, correspondence ensued between the authorities, after which the Board of Governors of the Medical Council of India issued a letter dated 14.07.2013 granting permission for establishment of a new medical college and hospital in the name and style of Maharishi Markandeshwar Medical College and Hospital, at Kumarhatti, Solan, Himachal Pradesh by Maharishi Markandeshwar University with annual intake of 150 seats with prospective effect from the academic year 2013 – 2014.

4. The State Government, in exercise of its powers under Section 3(3) of the 2006 Act, issued a notification on 14.08.2013, regarding admission procedure and fee structure for admission to MBBS Course in the Appellant No.1 - College. The Special Secretary (Health) Government of Himachal Pradesh wrote to the Medical Council of India vide letter dated 02.01.2014, seeking clarification with regard to the letter of intent and letter of permission issued to the Appellants as, in the perception of the State, the Appellant No.1 – College was merely a college and required affiliation from the Himachal Pradesh University. The Medical Council of India vide letter dated 14.02.2014 sent its reply to the Secretary, stating that the letter of permission dated 14.07.2013 has been granted to the Appellant No.1 - College, which is affiliated to the Appellant No.2 - University with an annual intake of 150 students for the academic year 2013-2014, under Section 10A of the Indian Medical Council Act, 1956. The Medical Council of India also wrote to the Special Secretary (Health) Government of Himachal Pradesh on 26.02.2014, clarifying the position that the letter of permission has been granted to the Appellants on the understanding that the Appellant No.1 - College was affiliated to the Appellant No.2 – University. On receipt of this communication, the Special Secretary (Health) Government of Himachal Pradesh wrote to the Medical Council of India to reconsider its decision. The Medical Council of India, by a detailed communication dated 26.08.2014, clarified its stand in the following words:

A *"MEDICAL COUNCIL OF INDIA*

No. MCI - 34(41)(E-46)/2013-Med. *Dated: 26.08.2014*

The Special Secretary (Health) to the
Govt. of Himachal Pradesh.,
Department of Health & Family Welfare,
B *Shimla – 171002.*

Ref.: No.MCI-34(41)(E-46)/2013-Med./57586, Dated 14.02.2014.
No.MCI-34(41)(E-46)/2013-Med./59892-59893,
Dated 26.02.2014

C *Sub.:Regarding Maharishi Markandeshwar Medical College & Hospital Kumarhatti, Distt. Solan, H.P.*

Sir,

Please refer to your letter No.HFW-B(F)4-12/2013 dated
D *29.03.2014, on the subject noted above.*

In this connection, according to the Establishment of Medical College Regulation, 1999, apart from other statutory requirements there are two main qualifying criteria which are required to be fulfilled by all applicants at the time of submitting their application/scheme
E *for the establishment of new medical college i.e. the essentiality certificate from the State Government and the consent of affiliation from the affiliating University. The application dated 26.09.2012 for the establishment of Maharishi Markandeshwar medical college was submitted along with an essentiality certificate dated 24.08.2012 issued by the Government of Himachal Pradesh and consent of*
F *affiliation dated 25.08.2012 issued by Maharishi Markandeshwar University. It is relevant to point out that the essentiality certificate dated 24.08.2012 issued by the Special Secretary (Health) to the Government of Himachal Pradesh was in favour of Maharishi Markandeshwar University Trust, Kumarhatti, Solan (H.P.). The*
G *essentiality certificate dated 24.08.2012 clearly certified that it is feasible to establish a medical college at Kumarhatti, Distt. Solan, H.P. under the Maharishi Markandeshwar University.*

Further, it is to be noted that the State of Himachal Pradesh by Act No.22/2010 enacted Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 (hereinafter referred to
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as Maharishi Markandeshwar University Act) on 20.09.2010 to provide establishment, incorporation and regulation of Maharishi Markandeshwar University, Solan Himachal Pradesh for higher education and to regulate its functioning and for matters connected therewith or incidental thereto. Section 5 of the Maharishi Markandeshwar University Act, deals with the power and functions of the University. Section 5 (xxvi) provides that the University can set-up colleges, institutions, off-campus centres, offshore campus, study centres or to start distance education, after fulfilling the norms and regulations of the Central Government Regulatory Bodies and Central Government issued from time to time, and after obtaining the specified approval of the State Government.

The Council accordingly processed the application of the Maharishi Markandeshwar Medical College, on completing the statutory requirement as per the IMC Act, 1956 and the regulations made there under. A physical assessment of the applicant medical college was carried out, where after the inspection report was placed before the then Board of Governors nominated by the Central Government who after considering the scheme of the applicant medical college, decided to grant letter of intent to the applicant for the establishment of new medical college at Kumarhatti, Solan, Himachal Pradesh u/s 10A of the Act from the academic year 2013-14 with certain conditions. Accordingly the letter of intent was issued to the applicant medical college on 12.07.2013.

The applicant on fulfilling all the conditions as provided in the letter of intent was thereafter granted the letter of permission on 14.07.2013 for establishment of Maharishi Markandeshwar Medical College & Hospital, Kumarhatti, Solan, Himachal Pradesh with 150 MBBS admissions from the academic year 2013-14.

The above facts clearly establish that Maharishi Markandeshwar Medical College & Hospital, Solan was established by Maharishi Markandeshwar University Trust under Maharishi Markandeshwar University and that the same is permissible under section 5 (xxvi) of the Maharishi Markandeshwar University Act, 2010. The prohibition as provided under Section 7 of the Maharishi Markandeshwar University Act, 2010 will not be applicable in the facts and circumstances of the present case as Maharishi Markandeshwar Medical College & Hospital, Solan is a constituent

A *college under the said University. The State of Himachal Pradesh while issuing essentiality certificate was aware of this fact that the medical college will be established by the Maharishi Markandeshwar University Trust under Maharishi Markandeshwar University.*

B *Under these circumstances, the Competent Authority holds that the then Board of Governors nominated by the Central Govt. had granted permission for establishment of Maharishi Markandeshwar Medical College & Hospital, Solan in accordance with the provisions of the IMC Act, 1956 and the Regulations made thereunder and there is no need for reconsideration of the said*
C *decision.*

Yours faithfully,
Sd/-
(B.D. Jain)
Admn. Officer"

D (emphasis supplied)

Even the Joint Secretary, Ministry of Health & Family Welfare, Government of India sent a separate response on 15th September, 2014 to the Chief Secretary of the Government of Himachal Pradesh, reiterating the position stated by the Medical Council of India in its
E communication dated 26.08.2014. This communication reads as under:

"Government of India
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi-110011

D.O. No.U-12012/11/2013-ME-P.H.

F *Dated the 15th September, 2014*

Dear Sir,

This is with reference to Govt. of Himachal Pradesh letter No.HFW-B(F)11-4/2013 dated 23rd June, 2014 regarding affiliation
G *of Maharashi Markandeshwar Medical College, Kumarhatti, Distt. Solan, H.P.*

The Medical Council of India vide their communication dated 26th August, 2014 (copy enclosed) addressed to Special Secretary (Health), Govt. of Himachal Pradesh has informed that the prohibition under Section 7 of Maharishi Markandeshwar
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University (Establishment and Regulation) Act, 2010 will not be applicable in the facts and circumstances of the present case if the Section 7 is read with section 5 (xxvi) of which provides that the University can set-up colleges, institutions campus centre/offshore campus, study centres or to start distance education, after fulfilling the norms and regulations of the Central Government Regulatory Bodies and Central government issued from time to time, and after obtaining the specified approval of the State Government.

The Maharishi Markandeshwar Medical College & Hospital is a constituent college under the said University and the State Government has issued Essentiality Certificate/NOC in favour of Maharishi Markandeshwar University certifying the feasibility to establish a medical college at Kamarhatti, District Solan, Himachal Pradesh.

With Kind regards,

Yours sincerely,
Sd/-
(Dr. Vishwas Mehra)"

(emphasis supplied)

5. The Central Government, accordingly, issued a letter of permission to the Appellant No.1 - College for 150 students annual intake capacity in academic year 2014 – 2015. Out of total 75 State quota MBBS seats in the Appellant No.1 – College, only 35 seats could be filled up. As a result, one more competitive entrance test was held for the left-out MBBS seats, under the supervision of the officers of the Government deputed to conduct/process the said examination. For academic year 2015 – 2016, the Central Government once again issued a letter of permission to Appellant No.1 - College for 150 seats annual intake.

6. The Appellant No.2 was, however, called upon by the State Government vide letter dated 01.06.2015 to comply with the admission procedure as provided in the notification issued on 14.08.2013 and the amendments thereto dated 31.08.2013 and 19.12.2014, while making admissions to the third batch of MBBS students in the Appellant No.1 - College. The Registrar of the Appellant No.2 - University then wrote to the Special Secretary (Health) to Government of Himachal Pradesh vide letter dated 04.06.2015, asserting that the 2010 Act authorised the

A Appellant No.2 - University to conduct its own entrance test, in view of the recent decision of the Supreme Court. The Health, Revenue and Law Minister, Government of Himachal Pradesh vide letter dated 05.06.2015, immediately wrote to the Union Minister for Health & Family Welfare, Government of India requesting the Central Government and the Medical Council of India to take corrective measures so that the B Appellant No.1 - medical college could be affiliated to Himachal Pradesh University at Shimla. In view of the stand taken by the State Government, the Fee Committee constituted for fixation of fees, in its meeting held on 07.07.2015 recommended that since the affiliation of Appellant No.1 - medical college was under dispute and reference in that behalf was C pending with the Central Government, in the meantime, necessary amendments ought be made to the 2010 Act and the 2006 Act, to the extent that all the medical courses in any institution under any University shall be regulated under the "private medical institutions under 2006 Act".

7. In the context of the correspondence made by the State D Government, the Under Secretary of the Ministry of Health & Family Welfare, Government of India vide letter dated 10.07.2015, wrote to the Medical Council of India to offer its comments on the communication received from the State Government dated 05.06.2015. The Medical Council of India, in turn, wrote to the Secretary of the Ministry of Health & Family Welfare, Government of India about the correct perception of E the Medical Council of India on the subject matter vide its letter dated 02.09.2015. The said letter reads thus:

"MEDICAL COUNCIL OF INDIA

MCI-No. 34(41)(E-46)/2013-Med./131542 Dated: 02.9.15

F *The Secretary*
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.

G *Sub.:Maharishi Markandeshwar Medical College & Hospital Kumarhatti, Distt. Solan – reg.*

Sir,

This is with reference to your letter No.U.12012/11/2013-ME(P-II) dated 10.07.2015 by which you have forwarded a copy of the D.O. letter dated 05.06.2015 received from Shri H

Kaul Singh Thakur, Hon'ble Health, revenue and Law Minister, Govt. of Himachal Pradesh relating to the issue of Maharishi Markandeshwar Medical College and Hospital, Kumarhatti, District Solan, Himachal Pradesh. The matter was examined by the Council Office on the basis of records furnished by the applicant Maharishi Markandeshwar University trust the applicant for the establishment of Maharishi Markandeshwar Medical College and Hospital, Kumarhatti, District Solan, Himachal Pradesh. In this regard, the Council has the following comments to offer:

1. The Maharishi Markandeshwar University is establish under an Act of Himachal Pradesh State namely the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010. This Act vide Section 2 (p) of the said Act recognize the Status of Maharishi Markandeshwar University trust and defines it thus:-

"sponsoring body" means the Maharishi Markandeshwar University Trust, 55, Model town, Ambala registered under the Indian Trust Act, 1882 through it subsidiary trust "Maharishi Markandeshwar University Trust" in the State of Himachal Pradesh.

2. Further Section 5 (v-a) of the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 provides that:-

"the sponsoring body/university shall appoint full time regular employees for the university and the salary of the employees shall be deposited in the bank account of the employees every month".

3. Section 8 (i) of the Maharishi Markandeshwar University (Establishment and Regulation) Act, 2010 requires the sponsoring body shall establish an Endowment Fund for the University with an amount of three crore rupees which shall be pledged to the government of Himachal Pradesh.

4. It is to be noted that the Act passed by the State Legislature accords recognition to Maharishi Markandeshwar University Trust and for that purpose the responsibility of paying salary

A *as well as maintaining an Endowment Fund with the Govt. of Himachal Pradesh has been casted upon the sponsoring body of Maharishi Markandeshwar which is the Maharishi Markandeshwar University Trust. Thus, though in law the Maharishi Markandeshwar University Trust and Maharishi Markandeshwar University are two distinct legal entity, however, the responsibility of maintaining endowment fund and paying salary to the Staff has been entrusted upon the sponsoring Trust. It is this Marakandeshwar University at Solan, Himachal Pradesh. Therefore, the above clearly reveals that it is the Maharishi Markandeshwar University Trust which has established the Maharishi Markandeshwar University and it is responsible for running the affairs of Maharishi Markandeshwar University.*

5. It is not out of place to mention that the Maharishi Markandeshwar University is statutorily empowered by way of Section 5 (1) (xxvi) "to setup colleges". Hence, when the State Legislature has itself granted the right to Maharishi Markandeshwar University to have its own colleges then in such case affiliating its medical college to another University i.e. H.P. University appears to be contrary to the Act of Himachal Legislature.

6. It is pertinent to add that the copy of the Letter of Permission dated 14.07.2013 was also marked to the Secretary (Medical Education) Department of Health & Family Welfare, Shimla and the Director Medical Education & Research, Shimla and the first correspondence raising any objection from the State Govt. was received only on 18.01.2014 that was duly examined and replied to by the Council vide its letters dated 14.02.2014 and 26.02.2014.

Yours faithfully,
Sd/-
(S. Savitha)
Asstt. Secretary."

(emphasis supplied)

8. Realising the legal obstacles to impel the Appellant No.1 - College to obtain affiliation from Himachal Pradesh University and presumably, as recommended by the Fee Committee, steps were taken to amend the 2006 Act by amending Section 3 thereof. Sections 3(6), 3(6a), 3(6b) and 3(6c) in the said Act were inserted. The statement of objects and reasons for the said amendment reads thus:

"STATEMENT OF OBJECTS AND REASONS

Section 3 of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 provides for regulation of admission in Private Medical Education Institutions on the basis of merit obtained in Centralized Common Entrance Test. However, it has been observed that due to some loopholes and ambiguities in definitions of clauses (e) and (j) of section 3, the same are being misused by the Private Medical Institutions to introduce element of opaqueness and irregularities in the admission process. Therefore, to plug such loopholes, it is considered necessary to remove these ambiguities and to redefine clauses (e) and (j) of Section 2 and also to amend 3 of the Act ibid, so that the admissions are made from the Centralized examinations (AIIPMT, NEET) conducted by either central agency (with CBSE) or by Himachal Pradesh University and to ensure that all Private Medical Educational Institutions are regulated under the provisions of the Act ibid. This has necessitated amendment in the Act ibid.

The Bill seeks to achieve the aforesaid objectives.

(KAUL SINGH THAKUR)
Minister-in-Charge

Shimla:
Dated: Nil"

9. The 2006 Act was accordingly amended with a view to make it mandatory for all the private medical institutions set up in the State to take affiliation from the Himachal Pradesh University. As the purport of the amendment affected the autonomy of the Appellant No.2 - University, the Appellants challenged the amendments to 2006 Act *inter alia* on the ground that it was the outcome of legal malice. The Appellants, therefore, filed a writ petition before the High Court of Himachal Pradesh at Shimla for the following reliefs:

A *"PRAYER:*

It is therefore most respectfully prayed that this Hon'ble Court may, in the interest of justice, be pleased

(i) To issue a writ in the nature of mandamus or any other appropriate writ, direction or order striking down Sections B *3(6), 3(6)(a) and 3(6)(b) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006 as amended vide Amendment Act No.24 of 2015 as null and void being wholly arbitrary, grossly malafide, in contravention of the law settled by the* C *Hon'ble Supreme Court and in naked breach of the fundamental rights of the petitioners under Article 19 (1) (g) of the Constitution of India.*

(ii) To issue the orders of appropriate nature that the petitioner No.1 MM Medical College and Hospital or any other D *Institutions of Medical Streams which may be started by petitioners be governed by the MMU (E&R) Act.*

(iii) That the Respondents may be directed to produce the records of the case.

(iv) Any other order deemed just and proper may also be E *passed in the facts and circumstances stated herein below in favour of the petitioners."*

10. By the impugned judgment the High Court rejected the writ petition and in doing so, made a distinction between the authority of the Medical Council of India to grant "recognition" and the authority of the F State Government or the University to grant "affiliation" for starting any medical college within the State. The High Court adverted to the decision of this Court in the case of ***Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others***[1] to conclude that the grant of affiliation was a pre-condition for granting G recognition and that the process of the grant of affiliation was not a mere formality on the part of the examining body. The authority to grant affiliation was vested in the affiliating/examining body and the affiliation could be granted only by following prescribed procedure and after application of mind. The High Court further held that the examining

[1] (2016) 7 SCC 353

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body could always impose conditions as per its own requirements, such as:

"a) eligibility of students for admission;

b) conduct of examinations;

c) the manner in which the prescribed courses should be completed; and

d) to see that the conditions imposed by the MCI are complied with."

The High Court held that the affiliating body must exercise its discretion fairly and transparently. Further, the functions of the affiliating body were complementary to the recognition to be given by the Medical Council of India and not in derogation thereof. The High Court then relied on the decisions of this Court in the case of ***Rajasthan Pradesh Vaidya Samiti, Sardarshahar and another Vs. Union of India and others***[2] and in ***Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others***[3] for the purpose of differentiating between the scope of "recognition" and "affiliation". The High Court noted that the purpose of affiliation is to enable and permit an institution to send students to participate in the public examination conducted by the examining body and secure the qualification for Degrees, Diplomas and Certificates. On the other hand, the purpose of recognition is to grant licence to start a course or training in the concerned stream of education. The High Court then relied on the decision in the case of ***State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others***[4] which has delineated the powers conferred on the Medical Council of India under the MCI Act to empower it to make regulations for carrying out the purpose of that Act. The High Court then adverted to Section 7 of the Himachal Pradesh University Act, 1970 (for short **"1970 Act"**) and noted that that was a parent statute under which all the Universities in the State must be constituted. It then went on to observe thus:

"49. Indubitably, the petitioners have not assailed the constitutionality of the aforesaid provision. Sub-section (2)

[2] (2010) 12 SCC 609
[3] (2011) 4 SCC 527
[4] (1981) 4 SCC 296

A *of section 7 starts with the non-obstante clause and, therefore, would have predominance and would prevail inspite of anything contrary contained in any other law for the time being in force. Once that is so, the petitioners can have no right to claim that it should be affiliated to a University of its choice despite the fact as contained in section 7 (supra)*

B

50. Even otherwise the State Government in its quest and endeavour to ensure common standards of maintaining the excellence of medical education within the State can always exercise its power to affiliate a private educational medical institute set up in a State to a particular University set up within the State, as this power vests within the exclusive domain of the State. The State can always act as a regulatory authority to ensure good quality education and see that the excellence of education standard does not fall below than what has been prescribed by the State Government. Rather, it is crucial for the State to act as a regulator even if this may have some effect on the autonomy of the private institution as that would not mean that the freedom of the Institute under Article 19(1) (g) of the Constitution of India has been violated."

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The High Court then relied on its earlier decision in the case of

E ***H-Private Universities Management Association (H-PUMA) Vs. State of Himachal Pradesh and others***[5] which dealt with the extent to which a private unaided institution could claim freedom under Article 19(1) (g) of the Constitution of India. It noted that the said decision has been affirmed by this Court with the dismissal of SLP on 21.11.2014. After noticing the aforementioned decisions, in paragraph 53 and 54 the Court

F concluded thus:

"53. From the aforesaid detailed discussion, we are of the considered view that the provisions of the MCI Act identify the scope and extent of power which each of the State stakeholders, i.e. MCI, State Government, Affiliating Body or the University is expected to exercise. While the MCI has been assigned the paramount role of according recognition, the affiliation is best left to the State Government/University/ examining body and, therefore, it is beyond the competence of the MCI or the Central Government to dictate terms to the

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H [5] In writ petition No.7688 of 2013 decided on 23.07.2014

State insofar as the question of grant of 'affiliation' is concerned or direct the State to affiliate a Medical College to a particular University. This is clearly beyond the powers conferred by the Constitution upon the Central Government or for that matter even the MCI. Even the College seeking affiliation is bound by the provisions of the Himachal Pradesh University Act, 1970, more particularly, the provisions contained in Section 7 thereof and cannot of its own claim any right of privilege to get affiliated to any University of its choice including petitioner No.2.

54. Having said so, we find no merit in this petition and the same is accordingly dismissed alongwith all applications leaving the parties to bear their own costs."

11. The counsel for the Appellants submits that the core issue involved and as was raised before the High Court, has not been answered, much less appropriately. According to the Appellants, the Appellant No.2 – University, having been established under an independent State Legislation i.e. the 2010 Act, is an autonomous and independent University and is fully authorised to start "campus/study centres" of its own. The Appellant No.1, a constituent college, being one of its segment, cannot be asked to take affiliation from another independent University in the State. That stipulation impinges upon the autonomy of the Appellant No.2 – University; and moreso such dispensation is not envisaged under the 2010 Act. It is submitted that although the 2006 Act is applicable and will be adhered to by the Appellant No.2 - University and its constituent colleges for all other purposes, that does not mean that the constituent college of Appellant No.2 - University can be compelled to take affiliation from Himachal Pradesh University by remodeling the definition of Private Medical Educational Institutions under the 2006 Act and correspondingly, by introducing stipulation in that behalf in Section 3 (6a) of that Act. It is submitted that the amendment in the 2006 Act cannot undermine the Special Legislation under which the Appellant No.2 -University has been established viz. the 2010 Act. It is contended that the 2006 Act deals with the regime regarding Admission and Fixation of Fee in Private Medical Educational Institutions in the State and for matters connected therewith or incidental thereto. That is the limited field in which it must operate. Whereas, the 2010 Act is a special legislation not only dealing with establishment and incorporation of the Appellant No.2 - University

A but also for regulation and administration of the said University. The objects and functions of the University so established under a Special Legislation must prevail with regard to the matter of grant of affiliation to its constituent colleges. What has been prohibited by Section 7 of the 2010 Act, is to affiliate or otherwise admit to its privileges any other institutions. Section 7 has no bearing on the matter in issue, which concerns B the starting of a medical college as a constituent of the Appellant No.2 - University. Thus, the authority to grant affiliation to colleges which are constituents of the Appellant No.2 - University must vest with the Appellant No.2 – University and not with any other University. Taking any other view will entail in undermining the autonomy of the Appellant C No.2 – University, established under the 2010 Act. For that reason, the amendment made in the 2006 Act will be in conflict with the special legislation, namely, 2010 Act; and moreso the autonomy of the Appellant No.2 - University. The 2006 Act cannot have an overriding effect on a special legislation under which the Appellant No.2 – University has been established. The 2010 Act deals with establishment of an independent D University with full autonomy to discharge its powers and functions as per the objects in Section 3 of the Act, which includes to set up its constituent colleges, establish its campus in the State, create centres of excellence for research and development, establish examination centres, off campus centres or to start distance education, and institute degrees, E diplomas, certificates and other academic distinctions on the basis of examinations or such other method, subject to fulfilling the norms of the Central Government Regulatory Bodies and which the Central Government may issue from time to time. Further, the State Government having already issued the essentiality certificate; and the Appellant No.1 - College being a constituent of the Appellant No.2 – University, affiliation F from Himachal Pradesh University was not required to be obtained at all. The requirement postulated under the amended 2006 Act would, however, compel the Appellant No.1 – College, which is a constituent of the Appellant No.2 – University, to take affiliation from another University. That will inevitably make an inroad into the autonomy of the Appellant G No.2 - University. The purpose for which affiliation is required to be taken is already ensured by the Appellant No.2 – University, while starting its constituent college. Another University cannot be allowed to sit over the subjective satisfaction of the Appellant No.2 - University on those aspects. That is not envisaged under the 2010 Act. Moreover, the private medical institution referred to in amended Section 3(6a) must be H

understood to be a private medical college affiliated to the respective Universities, namely Himachal Pradesh University and Appellant No.2 – University, as the case may be. The amendment to Section 2(j) is also of no utility even if the Appellant No.2 - University has no power to affiliate or extend its privileges to any other institution. It is submitted that the expression "Himachal Pradesh" occurring in Section 3(6a) of 2006 Act as amended, deserves to be struck down and in which case, the rest of the provision would apply to the institutions affiliated to the concerned University namely "Himachal Pradesh University" or the Appellant No.2 - University as the case may be. In other words, the power to affiliate a private medical institution set up in the State as a constituent of the Appellant No.2 – University, would vest and must remain in the Appellant No.2- University established under the 2010 Act. The counsel for the Appellants made it amply clear that except the mandatory condition of affiliation of the Himachal Pradesh University even for its constituent college, as per the amending Act, the Appellants are not challenging any other stipulation regarding the procedure for admission or fixation of fees to medical courses governed by the provisions of the 2006 Act.

12. The counsels for the Respondents (Medical Council of India and Union of India) have reiterated the stand of the said Authorities, as articulated in their correspondence reproduced above. That stand supports the claim of the Appellants.

13. The counsel for the State, however, supports the decision of the High Court and submits that the essentiality certificate to establish a new medical college was given to the Appellants on the condition that it shall be governed as per the provisions of the 2006 Act, in respect of matters concerning admissions, fee structure and related issues. It is therefore, not open to the Appellants to now question the intention of the State Legislature much less contend that the amended provisions of the 2006 Act are *ultra vires*. He submits that the role of the affiliating body is to ensure that the college would be able to maintain the requisite standards regarding quality education to be imparted by the college. He submits that the State Legislature is competent to enact a law on those matters. The Appellant No.2 - University has no power to grant affiliation to any college. Section 7 of the 2010 Act prohibits the Appellant No.2 – University from affiliating or otherwise extending its privileges to any other institution. Moreover, Section 7 of the Himachal Pradesh University

A Act, 1970 is the bulwark under which all the Universities in the State have to be constituted and governed. He submits that there is no conflict or incompatibility between the provisions of the 2010 Act and the 2006 Act, much less the 1970 Act. The Appellant No.1 medical college would thus be governed by the provisions of 2006 Act, as amended from time to time. The 2006 Act is also a Special Legislation and must prevail over the general powers and functions of the Appellant No.2 – University, accorded to it under the 2010 Act. The Appellant No.1 - College can admit students for medical course provided it fulfills the conditions specified under the 2006 Act. That Act requires all the private colleges in the State to take affiliation from the Himachal Pradesh University. That condition does not whittle down the autonomy of the Appellant No.2 – University, which has been established under the 2010 Act. The Act of 2006, is a Special Legislation regarding admissions to medical courses and fixation of fee. If the Appellant No.1 - College fails to comply with any mandatory requirement stipulated therein, it must suffer the consequence as provided for in the said enactment. The requirement specified as per the amended provisions, to take affiliation from Himachal Pradesh University is applicable to the Appellant No.1 - College alone and does not impinge upon the autonomy of the Appellant No.2 - University. The fact that Appellant No.1 - College is a constituent of the Appellant No.2 – University, does not extricate it from the definition of a Private Medical Educational Institution under Section 2 (j) of the 2006 Act, as amended. He submits that the fact that the Appellants have conceded to abide by the other stipulations in the 2006 Act, itself dispels the argument of the Appellants that the autonomy of the Appellant No.2 - University will be affected in any manner. Inasmuch as, the 2006 Act covers the gamut of matters regarding the eligibility of students, the mode of conduct of examinations, the manner in which the prescribed courses should be conducted including the quantum of fees to be levied on the students admitted in the medical colleges in the State. He submits that no argument with regard to lack of legislative competence has been advanced. Further, the respective State Legislations operate in different fields and although may be overlapping in some areas, that would not make the 2006 Act or the amended provisions thereof *ultra vires* in any manner. He submits that the appeal deserves to be dismissed.

14. After considering the rival submissions, we are in agreement with the Appellants that the High Court has not touched upon the core

issue relating to the autonomy of the Appellant No. 2 – University including its authority to start a constituent medical college, as prescribed by the 2010 Act. Admittedly, the Appellant No. 2 – University has been established under the 2010 Act. This Act received the assent of the Governor on 15th September, 2010 and was brought into force w.e.f. 16th June, 2010. The intendment of the 2010 Act is to provide for establishment, incorporation and regulation of the Appellant No. 2 - University for higher education, to regulate its functioning and for matters connected therewith or incidental thereto. Section 2 (b) defines the expression "Campus", as 'the area of University within which it is established'. This Act also predicates imparting of education by Appellant No. 2 - University by distance education by combination of any two or more means of communication, namely broadcasting, telecasting, correspondence courses, seminars, contact programmes and any other such methodology. The expression "off campus/study centre" has been defined in Section 2(k) to mean a centre of the University established by it outside the main campus operated and maintained as its "constituent unit", having the university's complement of facilities, faculty and staff. That would obviously be an integral part of the functions of the Appellant No.2 – University. The expression "study centre", means a centre established and maintained or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students of the Appellants in the context of distance education, as set out in Section 2(t). The expression "University" has been defined in Section 2(v) to mean Maharishi Markandeshwar University, Solan in Himachal Pradesh. Section 3 provides for the objects of the University. It is an inclusive provision. The same reads thus :—

A B C D E F G H

"3. The objects of the University shall includes,-

(a) to provide instructions, teaching and training in higher education with a view to create higher levels of intellectual abilities;

(b) to establish facilities for education and training;

(c) to carry out teaching, research and offer continuing education programmes;

(d) to create centres of excellence for research and development relevant to the needs of the State and for sharing knowledge and its application;

A *(e) to establish campus in the State;*

(f) to establish examination centres;

(g) to institute degrees, diplomas, certificates and other academic distinctions on the basis of examination or any such other method; while doing so, the University shall ensure that
B *the standards of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by regulating bodies; and*

(h) to set up off campus centres, subject to applicable rules or regulations.
C

(i) to engage in areas of specialization with proven ability to make distinctive contributions to the objectives of the University education system that is academic engagement clearly distinguishable from programmes of an ordinary nature that lead to conventional degrees in arts, science, engineering,
D *medicine, dental, pharmacy, management, etc. routinely offered by conventional institutions; and*

(j) to establish broad-based and viable under graduate, post graduate and research programmes in several disciplines with the firm interdisciplinary orientation and linkages.
E

(k) to make the University functional within one year from the date of commencement of this Act."

(emphasis supplied)

Section 4, which is of some significance to the case on hand,
F reads thus:-

"4. (1) The first Chancellor and the first Vice-Chancellor of the University and the first members of the Governing body, Board of Management and the Academic Council and all persons who may hereafter become such officers or members,
G *so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of Maharishi Markandeshwar University, Solan, Himachal Pradesh.*

(2) The University shall have perpetual succession and a
H *common seal and shall sue and be sued by the said name.*

(3) The University shall be situated and have its head quarters at Kumarhatti-Solan, Himachal Pradesh."

(emphasis supplied)

The extent to which the Appellant No. 2 -University can and ought to exercise its powers and functions, can be discerned from Section 5 of the Act. The same reads as follows:-

"5. (1) The University shall have the following powers and functions, namely:-

(i) to provide for instructions in such branches of learning as the University may, from time to time, determine, and to make provision for research and for advancement and dissemination of knowledge and for extension of education;

(ii) to conduct innovative experiments in modern methods and technologies in the field of technical education in order to maintain international standards of such education, training and research;

(iii) to organize and to undertake extra-mural teaching and extension services;

(iv) to hold examinations and grant diplomas and certificates to and confer degrees and other academic distinctions on persons, subject to recognition by any statutory body under any law, if required, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(v) to create such teaching, administrative and other posts as the University may deem necessary, from time to time, and make appointments thereto;

(v-a) the sponsoring body/university shall appoint full time regular employees for the university and the salary of the employees shall be deposited in the bank account of the employees every month;

(vi) to institute and award Fellowships, Studentships and Prizes;

A *(vii) to establish and maintain Hostel including Halls; recognize, guide, supervise and control Hostels including Halls not maintained by the University and other accommodation for the residence of the students, and to withdraw any such recognition;*

B *(viii) to regulate and enforce discipline among students and employees of the University and to take such disciplinary measures as may be deemed necessary;*

(ix) to make arrangements for promoting health and general welfare of the students and the employees of the University
C *and of the Colleges;*

(x) to determine the criterion for admission in the University or its Colleges;

(xi) to recognize for any purpose, either in whole or in part, any institution or members or students thereof on such terms
D *and conditions as may, from time to time, be specified and to withdraw such recognition;*

(xii) to develop and maintain twinning arrangement with centers of excellence in modern advanced technology in the developed countries for higher education training and
E *research, including distance education subject to the University Grants Commission Act, 1956 and the regulations made thereunder;*

(xiii) to co-operate with any other University, authority or association or any public body having purposes and objects
F *similar to those of the University for such purposes as may be agreed upon, on such terms and conditions as may, from time to time, be specified by the University;*

(xiv) to co-operate with other National and International institutions in the conduct of research and higher education
G *subject to the University Grants Commission Act, 1956 and the regulations made thereunder;*

(xv) to deal with property belonging to or vested in the University in any manner which is considered necessary for promoting the objects of the University;

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(xvi) to enter into any agreement for the incorporation in the University of any institution and for taking over its rights, properties and liabilities and for any other purpose not repugnant to this Act;

(xvii) to demand and receive payment of such fees and other charges as may be specified from time to time;

(xviii) to receive donations and grants, except from parents and students and to acquire, hold, manage and dispose of any property, movable or immovable, including trust or endowed property within or outside Himachal Pradesh for the purposes and objects of the University, and to invest funds in such manner as the University thinks fit;

(xix) to make provisions for research and advisory services and for that purpose to enter into such arrangements with other institutions or bodies as the University may deem necessary;

(xx) to provide for the printing, reproduction and publication of research and other work, including text books, which may be issued by the University;

(xxi) to accord recognition to institutions and examinations for admission in the University;

(xxii) to do all such other things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the University;

(xxiii) to frame statutes, ordinances and regulations for carrying out the objects of the University in accordance with the provisions of the Act;

(xxiv) to provide for dual degrees, diplomas or certificates vis-à-vis other Universities on reciprocal basis within and outside the country;

(xxv) to make provisions for integrated courses in different disciplines in the educational programmes of the University;

(xxvi) to set-up colleges, institutions, off-campus centres, off-shore campus, study centres or to start distance education,

A *after fulfilling the norms and regulations of the Central Government Regulatory Bodies and Central Government, issued from time to time, and after obtaining the specific approval of the State Government; and*

(xxvii)to seek collaboration with other institutions on mutually
B *acceptable terms and conditions.*

(2) in pursuit of its objects and in exercise of its powers and in performing of its functions, the University shall not discriminate between any person, whosoever, on the basis of caste, class, colour, creed, sex, religion or race."

C (emphasis supplied)

Section 6 stipulates that the Appellant No. 2 – University shall be self-financed and shall not be entitled to receive any grant or other financial assistance from the Government. The University is required to establish an Endowment Fund in terms of Section 8 and a General Fund
D as per Section 9. The manner in which the General Fund is to be utilized is set out in Section 10 of the Act. Section 11 of the Act provides for the officers of the University and their designations. Section 12 deals with the appointment of the Chancellor of the Appellant No.2 –University, who shall be the Head of the University and exercise powers as
E prescribed therein. A similar provision is made in respect of appointment of Vice-Chancellor and the exercise of powers by him under Section 13 of the Act. Section 14 of the Act deals with the appointment of Registrar of the University. Section 15 provides for the appointment of Chief Finance and Accounts Officer of the Appellant No. 2 - University. Section 16 deals with the appointment of other officers as will be necessary for
F the functioning of the Appellant No. 2 - University. The authority of the Appellant No. 2 - University has been spelt out in Section 17, namely the Governing Body, the Board of Management, the Academic Council and such other authorities as may be declared by the statutes to be the authorities of the University. The Governing Body, consisting of members
G specified in Section 18, is supposed to be the supreme body or supreme authority of the University. Powers to be exercised by the Governing Body are specified in the same Section (i.e. Section 18). Section 19 deals with the constitution of the Board of Management and its powers and functions. Section 20 stipulates the constitution of the Academic Council.

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15. From the aforementioned provisions, it is indisputable that the 2010 Act purports to establish an independent University in the State of Himachal Pradesh, having full autonomy as that of any other full-fledged University including the authority to start Multi-Faculty Education Courses within its campus and also constituent colleges off campus. The Appellant No. 2 – University has been bestowed with the power to confer Degrees and Diplomas in terms of Section 35 of the Act. The same reads thus.:-

> *"35. The convocation of the University shall be held in every academic year in the manner as may be specified by the statutes for conferring degrees, diplomas or for any other purpose."*

The provisions regarding accreditation of the University can be discerned from Section 36 of the Act. Section 37 postulates that the Appellant No.2 - University will be bound to comply with all the rules, regulations and norms etc. of the regulating bodies and provide all such facilities and assistance to such bodies as are required by them to discharge their duties and to carry out their functions. The powers of the State Government to inspect the University can be traced to Section 40 of the Act. The special power of the Government in certain circumstances can be found in Section 42 of the Act. Sections 40 and 42 of the Act read as follows:-

> *"40. (1) For the purpose of ascertaining the standards of teaching, examination and research or any other matter relating to the University, the Government or the Regulatory Commission may, cause an assessment to be made in such manner as may be prescribed, by such person or persons as it may deem fit.*
>
> *(2) The Government or the Regulatory Commission, as the case may be, shall communicate to the University its recommendations in regard to the result of such assessment for corrective action and the University shall take such corrective measures as are necessary so as to ensure the compliance of the recommendations.*
>
> *(3) If the University fails to comply with the recommendations made under sub-section (2) within a reasonable time, the Government or the Regulatory Commission, as the case may be, may give such directions as it may deem fit which shall be*

A *binding on the University.*

....

42. (1) If it appears to the Government that the University has contravened any of the provisions of this Act or the rules, statutes or ordinances made thereunder or has contravened any of the directions issued by it under this Act or has ceased to carry out any of the undertakings given or a situation of financial mis-management or mal-administration has arisen in the University, it shall issue notice requiring the University to show cause within forty five days as to why an order of its liquidation should not be made.

(2) If the Government, on receipt of reply of the University on the notice issued under sub-section (1), is satisfied that there is a prima facie case of contravening all or any of the provisions of this Act or the rules, statues or ordinances made thereunder or of contravening directions issued by it under this Act or of ceasing to carry out the undertaking given or of financial mis-management or mal-administration, it shall make an order of such enquiry as it may consider necessary.

(3) The Government shall, for the purpose of any enquiry under sub-section (2), appoint an inquiry officer or officers to inquire into any of the allegations and to make report thereon.

(4) The inquiry officer or officers appointed under sub-section(3) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-

(a) summoning and enforcing he attendance of any person and examining him on oath;

(b) requiring the discovery and production of any such document or any other material as may be predicable in evidence

(c) requisitioning any public record from any court or office; and

(d) any other matter which may be prescribed.

(5) The inquiry officer or officers inquiring under this Act, shall be deemed to be a civil court for the purposes of section 195 and Chapter 26 of the Code of Criminal Procedure, 1973.

(6) On receipt of the enquiry report from the officer or officers appointed under sub-section (3), if the Government is satisfied that the University has contravened all or any of the provisions of this Act or the rules, statutes, or ordinances made thereunder or has violated any of the directions issued by it under this Act or has ceased to carry out the undertakings given by it or a situation of financial mis-management and mal-administration has arisen in the University which threatens the academic standard of the University, it shall issue orders for the liquidation of the University and appoint an administrator.

(7) The administrator appointed under sub-section (6) shall have all the powers and be subject to all the duties of the Governing Body and the Board of Management under this Act and shall administer the affairs of the University until the last batch of the students of the regular courses have completed their courses and they have been awarded degrees, diplomas or awards, as the case may be.

(8) After having awarded the degrees, diplomas or awards, as the case may be, to the last batches of the students of the regular courses, the administrator shall make a report to this effect to the Government.

(9) On receipt of the report under sub-section (8), the Government shall, by notification in the Official Gazette, issue an order dissolving the University and from the date of publication of such notification, the University shall stand dissolved and all the assets of the University including assets of the sponsoring body pertaining to the University shall vest in the Government free from all encumbrances from the date of dissolution."-

Section 44 of the Act is a provision for removing any difficulty. The same reads as follows:-

"44.(1) If any difficulty arises in giving effect to the provisions

A *of this Act, the Government may, by order published in the Official Gazette, make provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:*

Provided that no such order shall be made under this section
B *after the expiry of a period of two years from the commencement of this Act.*

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly."

C 16. From the legislative scheme of 2010 Act, it is axiomatic that an independent, autonomous University has been established under this Act. The Appellant No. 2 – University, therefore, has all the trappings of a full-fledged University, to not only start imparting education in prescribed courses but also to set up its constituent colleges to effectuate
D the purpose for which the University has been established. Indubitably, a constituent college of the University would be an integral part of the University. In one sense, an alter ego of the University. A student pursuing education in such a college will be required to appear in the examination conducted by the Appellant No. 2 – University and, at the end of the academic year, it is the Appellant No. 2 - University which can confer
E degrees or diplomas upon such successful students.

17. Indeed, affiliation from University may be a pre-condition for starting any college or new courses. The constituent college of the Appellant No. 2 – University would therefore, at best, require affiliation from the Appellant No. 2. This position has been accepted even by the
F Medical Council of India and the Union of India. It is, however, the State Government which has been insisting that the Appellant No. 1-College must take affiliation from the Himachal Pradesh University established under the Himachal Pradesh University Act, 1970. To buttress that stand, reliance is placed on Section 7 of the Act of 1970. The same
G reads thus:

*"7. **Jurisdiction of the University.***

(1) Save as otherwise provided by or under this Act, the powers conferred on the University shall be exercisable in the area constituting Himachal Pradesh.

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(2) Notwithstanding anything contained in any other law for the time being in force, no educational institution situated within the territorial limits of the University shall be admitted to any privilege of any other University, incorporated by law in India, and any such privilege granted by any such other University to any such educational institution prior to the commencement of this Act, shall unless otherwise directed by the State Government be deemed to be withdrawn on the commencement of this Act, and any such institution shall be deemed to be admitted to the privileges of the Himachal Pradesh University.

(3) Where any institution or body established outside Himachal Pradesh seeks recognition from the University, then the powers and jurisdiction of the University shall extend to such institution or body subject to the laws in force in the State within which, and the rules and regulations of the University within whose jurisdiction, the said institution or body is situated."

It is unfathomable as to how sub section (2) of this provision will take within its sweep another independent University established under a special State Legislation or a constituent college of such University. That general provision may apply to all other educational institutions situated within the State, but certainly not to an independent University established under a special State Legislation such as the 2010 Act or to the constituent college of such an independent University. Any other interpretation will entail in rewriting the provisions of the 2010 Act, if not doing violence thereto.

18. Since the Appellant No. 2 did not accede to the demand of the State Government, provisions of the 2006 Act, came to be amended so as to widen the scope of that Act, requiring all the Private Medical Educational Institutions set up in the State to take affiliation from the Himachal Pradesh University. Notably, no corresponding amendment has been made in the 2010 Act under which the Appellant No.2 – University has been established as an independent autonomous University. Nor has any amendment been made in the Himachal Pradesh University Act, 1970, mandating affiliation of the constituent college of another University established under a special State Legislation. We may not be understood to have expressed any opinion either way, that

A such a course is permissible.

19. As noticed from the legislative scheme of the 2010 Act, the Appellant No. 2 has been established as an independent, autonomous University like any other full-fledged University. No doubt, some of the functions of the University, be it the Appellant No. 2 – University or the B Himachal Pradesh University, have been controlled and regulated by the 2006 Act. The limited issue raised by the Appellants, however, is with regard to the mandate of the amended Section 3(6a), requiring all the Private Medical Institutions set up within the State to take affiliation from Himachal Pradesh University. To answer this argument, we must first analyse the scheme and purport of the 2006 Act. It is an Act to C provide for regulation of admission and fixation of fee in Private Medical Educational Institutions in the State of Himachal Pradesh and for matters connected therewith or incidental thereto. It is not an Act for establishment of a University or, for that matter, dealing with the subject of starting a new college or new courses in the affiliated college. This Act, no doubt D uniformly applies to all the institutions affiliated to the Universities within the State of Himachal Pradesh, be it Himachal Pradesh University or the Appellant No. 2 – University. However, the object of this Act is limited only to regulate admissions as per the extant and applicable pronouncements of this Court; and to determine the fee structure in colleges imparting medical courses within the State.

E

20. It is not the case of the Appellants that they are not governed by the other provisions of the 2006 Act, but the limited grievance is that the amendment made to Section 3 of this Act has the effect of making an inroad into the autonomy of the Appellant No. 2 – University, in respect of matter of grant of affiliation to its constituent college. For considering F this argument, we must advert to Section 3, as it originally stood. The same reads thus :-

> *"3.**Regulation of admission, fixation of fee and making of reservation**.- (1) The State Government may regulate admission, fix fee and make reservation for different* G *categories in admissions to Private Medical Educational Institutions.*
>
> *(2) The State Government shall ensure that the admission under all the categories in an institution is done in a fair and transparent manner;*

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(3) The State Government, may constitute an Admission and Fee Committee, (hereinafter referred to as the 'Committee') consisting of such members as may be specified by the State Government, by notification, to recommend the mode of admission, making of reservation, allocation of seats and fixation of fees etc. to the State Government.

(4) The State Government, shall oversee the working of Admission and Fee Committee.

(5) The terms and conditions of the Committee constituted under sub-section (3) and its members shall be specified, by the State Government, by notification from time to time.

(6) If the State Government is satisfied that the institution affiliated to the Himachal Pradesh University, has contravened any provision of this Act, it may recommend to the Himachal Pradesh University for withdrawal of recognition or affiliation of such institution."

Sub-section 6 of this provision came to be amended by the State Legislation, so as to fortify the stand of the State Government that the medical college started as a constituent of the Appellant No. 2 – University would also require affiliation from the Himachal Pradesh University. As a result, sub-section 6 came to be amended in the following terms:-

"In Section 3 of the principal Act, for sub-section (6), the following sub-sections shall be substituted, namely:-

"(6) If, the State Government is satisfied that the institution affiliated to the Himachal Pradesh University or any other University has contravened any of the provisions of this Act, it may recommend to that University for withdrawal of recognition or affiliation of such institution.

(6a) In order to ensure common standards for maintaining the excellence of Medical Education in the State, the Himachal Pradesh University shall have the exclusive power to affiliate Private Medical Educational Institutions set up in the State; and

(6b) Notwithstanding anything contained in this Act, the Private Medical Educational Institutions shall be bound to

A *comply with all the rules, directions and notifications issued by the State Government, from time to time, and provide all such facilities and assistance as are required to implement such rules, directions and notifications".*

Along with sub-section 6, amendment was also effected to Section B 2(j) of the 2006 Act by including a Private Medical Institution established by or affiliated to a private University to be a Private Medical Educational Institution. Once it is noted that the Appellant No. 2 – University is an independent and a full-fledged University established under an independent special State Legislation, it must be free to discharge its functions as delineated in the 2010 Act. That, inter alia, includes granting C affiliation to its constituent college which is one of the facets of autonomy of the University. It is incomprehensible that a college which is a constituent of the Appellant No. 2 – University can be compelled to take affiliation from some other University by taking recourse to the provisions of the 2006 Act which primarily deals only with the subject of admissions D and fees in private medical colleges within the State. The grant of affiliation to the college is the prerogative of the examining body. The Appellant No. 2 – University, being the examining body, has been bestowed with the authority to grant degrees and diplomas. The requirement of affiliation from another University even in respect of its constituent college, would be striking at the autonomy of the Appellant E No. 2 – University and in any case beyond the purview of the subject of admissions and fixation of fee for which limited purpose the 2006 Act has been enacted.

21. In the present case, it has been asserted that the Appellant No. 1 – College is a constituent of the Appellant No. 2 – University. In F such a situation, it is unfathomable that the requirement of taking affiliation from another University (Himachal Pradesh University) established under a separate State Legislation, can and ought to be insisted upon. If insisted, it would, inevitably, entail in making an inroad into the autonomy of the Appellant No. 2 – University. True it is that Section 7 of the 2010 Act G does not empower the Appellant No. 2 – University to affiliate or otherwise admit to its privileges any other institution. But that will have no application to the case on hand. For, the Appellant No. 1 - College is none other than a constituent college of Appellant No. 2 – University itself. The Medical Council of India as well as the Union Government have, therefore, justly stated that it was not necessary for the Appellant H

No.1 - College to take affiliation from the Himachal Pradesh University. A

22. A priori, we have no hesitation in taking the view that the amended provisions, in particular Section 3(6a), would impinge upon the autonomy of an independent University established under a separate State Legislation. Further, the field of affiliation is governed by the State legislation under which the respective Universities have been established. B The power of granting affiliation to colleges under the control of the concerned University, must vest with the respective University to which the college will be affiliated. That power of granting affiliation, by the University concerned, therefore, cannot be whittled down by the 2006 Act or amendments made thereto. Understood thus, the amended provisions of Section 3 (6a) of the 2006 Act, cannot be sustained as the C same are unreasonable, irrational and in conflict with the special State Legislation under which the Appellant No.2 – University has been established, namely the 2010 Act.

23. We shall now examine the possibility of reading down the impugned provision in Section 3 (6a) of the Act so as to save it from D being unconstitutional. That may be possible by giving a restricted meaning to the expression "Private Medical Educational Institutions" set up in the State, but for the amended Section 2(j) which defines the expression "Private Medical Educational Institutions" as under:-

> *"(j) "Private Medical Educational Institution" means an* E *institution not promoted or run by the Central Government, State Government or Union Territory Administration or any agency or instrumentality of the Central or State Government and includes a Private Medical Educational Institution established by or affiliated to a private University;"* F

This expression includes a Private Medical Educational Institution established by or affiliated to a private University. We find force in the argument of the Appellants that the definition of Private Medical Educational Institution, as amended, can be extended to the Appellants in relation to other matters governed by the 2006 Act, except the mandate G of requiring the Appellant No.1 - College (a constituent college of the Appellant No.2 – University) to take affiliation from the Himachal Pradesh University. That requirement springs from Section 3 (6a).

24. Indisputably, there is no other private medical University in the State except the Appellant No.2 - University. Therefore, we explored H

A the possibility of omitting the words "Himachal Pradesh" from the amended Section 3 (6a) to save the whole of that provision from being invalid, as was contended. However, we find that if the words "Himachal Pradesh" alone were to be struck down, the remaining Section 3 (6a) may create some confusion. It would then mean that Private Medical Institutions in the State must take affiliation from the "concerned" B University. To wit, Himachal Pradesh University or the Appellant No. 2 – University, as the case may be. In other words, the concerned University can exercise power to affiliate a private medical institution set up in the State. However, the Appellant No. 2 is not authorised to affiliate a private medical college (not its constituent) by virtue of Section 7 of the C 2010 Act, which prohibits the Appellant No.2 – University from affiliating or otherwise extending to its privileges any other institution. Therefore, the appropriate course to avoid any confusion is to strike down Section 3(6a) of the 2006 Act, as amended.

25. It was vehemently argued by the counsel for the State that D the Appellant No. 2 – University was granted essentiality certificate on the condition that it would abide by the provisions of the 2006 Act. The fact that such condition was imposed in the communication dated 29th August 2012, does not mean that the Appellant No.2 -University would be bound and obliged to comply with even an onerous stipulation, which is unconstitutional and hit by Article 14 and 19(1)(g) of the Constitution E and impinging upon its autonomy guaranteed under the 2010 Act. The High Court has adverted to the decisions which have culled out the distinction between "recognition" and "affiliation". We need not dilate on that matter except to observe that it is well settled that affiliation is a matter within the prerogative of the Examining Body or the prescribed F Authority, to be considered fairly and after due application of mind.

26. As noted earlier, since the Appellant No.1 – College is a constituent of the Appellant No. 2 – University, the question of compelling it to take affiliation from another University (Himachal Pradesh University) cannot be countenanced.

G 27. Accordingly, this appeal should succeed. The impugned judgment of the High Court of Himachal Pradesh dated 20.12.2016 in CWP No.4773 of 2015 is set aside. We also strike down Section 3(6a) of the Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2006, being irrational, H unreasonable, *ultra vires* and unconstitutional. Further, the Regulatory

Authorities shall forthwith proceed in the matter without insisting for an affiliation of the Appellant No.1 – College (a constituent college of Appellant No.2 – University) from the Himachal Pradesh University. A

28. The Appeal is allowed in the above terms with no order as to costs.

B

Nidhi Jain Appeal allowed.