

THE CENTRAL UNIVERSITY ACT, 2009 AND PRIVATE EDUCATIONAL INSTITUTE

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INTRODUCTION

Education in its true aspect is more a mission and a vocation rather than a profession or trade or business.....¹ In the 1950s and 1960s, the nation made significant moves in the higher education sector, with the establishment of Indian Institutes of Technology (IITs), Indian Institutes of Management (IIMs) and other institutional devices. Other Asian nations have surged ahead. Even as recently as two decades back, at least 20 Indian higher education institutions were listed among the top 500 in the world. Not one, Indian institute or institution now figures in this list. Even in Asia, we have been overtaken by a big margin, and our position has fallen precipitously. Amartya Sen, the Nobel Laureate has characterized our education scene as 'in a crisis'.

As in the primary education field, even in higher education this is a well-researched area, and the problems are well known, some of which are summarized as:

- (a) Our colleges are now 'education shops', which are really essentially business ventures, providing degrees for money;
- (b) There are a few good colleges, the others are purely for selling degrees;
- (c) Standards of coaching are very poor, pedagogy is of a low level; and
- (d) An average Indian graduate is of poor quality, not even capable of simple correct sentences to express thoughts.

Many 'advance' to college due to lack of job opportunities. There has been mushroom growth of poor quality engineering and other professional colleges, without corresponding growth in employment

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¹ Justice V.R. Krishana Iyer in the case Bangalore Water-Supply & vs R. Rajappa & Others : 1978 AIR 548, 1978 SCR (3) 207

opportunities, this debasing the quality of education. Commercialization of the education scene is now rampant and capitation fees is the key element in university education. One can find nearly every education institution linked to a politician for obvious reasons. Academics is no more a concern-commercialization is the only fact.²

STATUS OF CENTRAL UNIVERSITY

2. A Central University or a Union University in India is established by Act of Parliament and are under the purview of the Department of Higher Education in the Union Human Resource Development Ministry. In general, universities in India are recognized by the University Grants Commission (UGC), which draws its power from the *University Grants Commission Act, 1956*. It is the primary duty of a university to maintain the highest standards of its teaching and examinations. A university is a place of higher education where the personality and capacities of the students are developed to the utmost by teachers who should themselves be at work at the frontiers of knowledge in their respective fields. The success of a university is to be judged as much by the type of graduate it turns out as by the amount and quality of research contributed by its teachers and research students. It must be clearly recognized that there is no conflict involved between the twofold function of a university to educate its members and to advance the frontiers of knowledge the two functions are, in fact, complementary. Unless high standards of teaching and examinations are maintained, research will suffer, since research can continue uninterrupted only if there is a regular supply of graduates well prepared by general education for specialized research work. On the other hand, if research is neglected by teachers, their teaching will lack vitality and will rapidly become stale. A degree must always be what a university makes it by the kind of teaching it imparts and the type of intellectual and social life it provides for its members. If our universities are to be the makers of future leaders of thought and action in the country, as they should be, our degrees must connote a high standard of scholarly achievement in our graduates.³

² T.S.R. Subramanian *INDIA AT TURNING POINT The Road to Good Governance*, New Delhi : Rupa Publication India Ltd. 2014 at P 97.

³ Prof. Yashpal and another Vs. State of Chhatisgarh and others (2005) 5 SCC 420.

3. Central Universities, their role and responsibility is clear - it is to function effectively and vigorously as all-India basis to help build up a corporate intellectual life in the country and to further national integration. Broadly speaking, the Central Universities should provide courses which need facilities (in terms of staff and equipment) Ordinarily beyond the reach of State Universities or for which the demand would be too small if limited only to the requirements of an individual state. There is another aspect which we would like to refer as it has reference to the special functions and responsibilities of Central Universities. It is well known that in our country, just as some areas are economically backward, so are some areas educationally backward; as we feel that the Central Universities should regard it as a part of their special function to contribute towards removal of imbalances from the academic life of our country and take suitable action to help deserving students from educationally backward areas. In order to achieve this object such facilities as may be necessary should be made available to the Central Universities".⁴

CONSTITUTIONAL PROVISION

4. The foundation for a federal set up for the nation was laid in the Government of India Act, 1935. Though in every respect the distribution of legislative power between the Union and the States as envisaged in the 1935 Act has not been adopted in the Constitution but the basic framework is same. It will be seen that Entry 17 in List II of Seventh Schedule in Government of India Act pacifically provided for Universities and the same is now part of Entry 32 in List II of the Seventh Schedule of the Constitution. Entries 17 and 33 of List II of Government of India Act have been combined and made one composite entry (Entry 32) in List II of the Seventh Schedule of the Constitution.⁵

Though incorporation of a University as a legislative head is a State subject (Entry 32 List II) but basically University is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union....⁶

⁴ Report of the Committee to enquire into the working of Central Universities, UGC, New Delhi 1983, at P. 12.

⁵ *Supra* No. 3 at P. 436.

⁶ *Ibid* at P. 441

The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.⁷

SECTION 4F OF CENTRAL UNIVERSITY ACT, 2009 AND PRIVATE EDUCATIONAL INSTITUTE

5. There are various private education institution in Garhwal region which were earlier affiliated to H.N.B. Garhwal University (then State University) are still affiliated to H.N.B. Garhwal Central University due to provision of section 4(f) Central University Act, 2009. The purpose of this article is to bring attention to misinterpretation of section 4(f) Central University Act, 2009 by the University which is against the academic interest of State of Uttarakhand. The provision of section 4(f) Central University Act, 2009 states that-

‘All Colleges, Institutions, Schools or Facilities, and Departments affiliated to, or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University shall stand affiliated to or admitted to the privileges of, or maintained by, Guru Ghasidas Vishwavidyalaya, Doctor Harisingh Gour Vishwavidyalaya and Hemvati Nandan Bahuguna Garhwal University, respectively, established under this Act.’

6. Recently, Hon’ble High Court of Uttarakhand, Naintal in writ petition no. 2050/2014 *Neelima Bangwal vs. State of Uttarakhand* order dated 04-12-2014 has stated that- ‘Undisputedly, in the present cases, no such lacuna was ever observed and no action was ever taken by the

⁷ Ibid at P. 441.

State University for withdrawing or canceling the affiliation so granted prior to 14.1.2009. Not only this, although initially affiliation so granted in 2004 was only for one year, however, fact remains that considering the same affiliation in force State University permitted the petitioners/institutes to admit the students and such students were permitted to appear in the examinations held every year prior to 2009 i.e. creation of Central University. Therefore, it can very well be said that had there been no continuous affiliation, there would have been no occasion for the State University prior to the creation of the Central University, to permit the petitioners/institutes to admit the students and to allow such students to appear in the examinations held by the State University prior to creation of Central University. Therefore, I have no hesitation to hold that affiliation so granted shall be deemed having been continued till 15.1.2009 when Central University came into force. Therefore, in view of Section 4(f) of the Central University Act, affiliation and privileges by the State University stood transferred and affiliated with the Central University. There is another important aspect of the matter. Under the Central Universities Act, undisputedly, as on date there is no provision of affiliation and de-affiliation or withdrawal of the affiliation except Section 4(f) of the Act which talk about the transfer of the affiliation with the Central University. Therefore, Central University has absolutely no jurisdiction to compel the petitioner institutes who stood affiliated with the Central University in view of Section 4 (f) with effect from 15.1.2009, either to seek renewal of affiliation or new affiliation.

Undisputedly, UGC Regulations came into force with effect from 29.4.2010. I have carefully perused the UGC Regulations and I find that these Regulations of 13 29.4.2010 are prospective in nature and should not be pressed in service with retrospective effect to say that affiliation granted to the petitioners/ institutes for one year would have expired on expiry of one year.'

7. First of all, we should make it clear that Central University has been established for a particular purpose that is to provide higher research based education. The object of Central University Act, 2009 is clear in section 5 of the Act. According to Section 5 of the of Central University Act, 2009 'The object of the University shall be to disseminate and advance knowledge by providing instructional and research facilities in such branches

of learning as it may deem fit; to make special provision for integrated courses in humanities, social sciences, science and technology in its educational Programmes; to take appropriate measures for promoting innovations in teaching- learning process and interdisciplinary studies and research; to educate and train manpower for the development of the country; to establish linkages with industries for the promotion of science and technology; and **to pay special attention to the improvement of the social and economic conditions and welfare of the people, their intellectual, academic and cultural development.**' Section 5 makes clear that the purpose of Central University is to provide advance knowledge of different subjects inter disciplinary studies and research, promotion of science & technology and pay special attention into the social-economic condition and welfare of the people. Now the question arises, can private institute be part of Central University ?

8. To find out the answer, first of all we have to go through definition clause-

Section 2(d) "College" means a college maintained by the University;

Section 2(g) "Department" means a Department of Studies and include a Centre of Studies;

Section 2(l) "Institution" means an academic institution, not being a College, maintained by the University;

Section 2(o) "School" means a school of Studies of the University;

The perusal of section 2 makes it clear that an institution for college can only be part of Central University when they are maintained by a university. Private College & Institution is not maintained by a university. In this regard, an earlier division bench judgment of Hon'ble High Court of Uttarakhand in writ petition n. 23/2010 (S/B) *Dr. Subodh Kumar Agarwal Vs. Union of India & ors.* Dated 06-05-2010 is also relevant, in which the Hon'ble Court has state that- 'A perusal of the aforesaid statute reveals, that there are only three constituent colleges. Admittedly, the management, administration and other activities of the constituent colleges are controlled and governed by the H.N.B. Garhwal University itself. In that sense, a constituent college, under the H.N.B. Garhwal University, Srinagar, is a college, which can be treated as a part and parcel of the H.N.B. Garhwal University, Srinagar.

Whilst, in our considered view, the benefits of conditions of service, including the age of superannuation available to employees of the H.N.B. Garhwal University after it was declared as a Central University, can be extended to constituent colleges, which are a class apart, we are satisfied, that the same cannot be extended to affiliated colleges for a variety of reasons. ***Firstly, affiliated colleges are not under the control of the H.N.B. Garhwal University. Secondly, the salary and emoluments drawn by the staff of affiliated colleges, are not borne either by the H.N.B. Garhwal University or by the Government of India.*** Thus viewed, it is not possible for us to accept even the third contention advanced by the petitioner, for grant of parity in the age of superannuation adopted for teaching employees of the H.N.B. Garhwal University.' This decision makes it clear that those institution which are not under control of HNB Garhwal University or aided by Central Govt. doesn't entitle to take benefit of Section 4(f) of Central University Act, 2009.

9. UGC (AFFILIATION OF COLLEGES BY UNIVERSITIES) REGULATIONS, 2009 has made provision of affiliation & withdrawal of affiliation. According to the above said regulations -

1. Short Title, Application and Commencement:
 - 1.1 These Regulations may be called the UGC (Affiliation of Colleges by Universities) Regulations, 2009.
 - 1.2 They shall apply to all colleges seeking affiliation and already affiliated to the Universities in India established or incorporated by or under a Central Act, a Provincial Act or a State Act.
 - 1.3 They shall come into force with immediate effect.
2. Definitions: In these Regulations:
 - 2.1 "affiliation" together with its grammatical variations, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a university;

Section 8 of the regulation-

Withdrawal of affiliation:

- 8.1 The privileges conferred on a college by affiliation may be withdrawn part or in full, suspended or modified, if the college, on due

enquiry, is found to have failed to comply with any of the provisions of the act, the Statutes, the Ordinances, the Rules and Regulations or any other direction or instruction of the UGC/University/Statutory/Regulatory body concerned, or failed to observe any of the conditions of affiliation, or has conducted itself in a manner prejudicial to the academic and administrative standards and interests of the University.

8.2 If an affiliated college ceases to function or is shifted to a different location or is transferred to a different Society, Trust, individual or a group of individuals without the prior approval of the University, the affiliation granted to the college shall lapse automatically on such cease, shifting or transfer, as the case may be, and it shall be treated a new college for the purposed of future affiliation. The University/Government shall have the duty to alleviate the educational future of the affected students in appropriate manner as per its decision.

8.3 Without prejudice to the Regulations, the Commission on its own, or on the basis of any complaint or any other information or report from any other source, can cause an enquiry by the University in respect of a college, and after giving the college a reasonable opportunity of being heard, may pass an order under Section (12A) of the UGC Act prohibiting such college from presenting any student therein to an university for the award of the qualification concerned and the affiliation of the college shall stand terminated as per Section (12A)(5) of the UGC Act.

8.4 If the university decides to withdraw the affiliation of the college, or the affiliation stands terminated by the order of the University, temporarily or permanently, such decision shall not affect the interests of the students of the college who were on its rolls at the time of issue of the order till they pass out the normal duration of programmes to which they are registered at that time. The University/Government shall have the duty to alleviate the educational future of the affected students in an appropriate manner as per its decision.

10. UGC Regulation, 2009 makes provision for affiliation and de-affiliation and University has enough power to de-affiliate any college or institution, if the relevant Act is silent. Affiliation & Deaffiliation (Withdrawal of affiliation is a matter of procedure, it can be initiated at any time. It is applicable to all university. The observation regarding

retrospective affect of regulation 2009 is not correct). Hon'ble Supreme Court of India in *Hitendra Vishnu Thakur vs. State of Maharashtra*⁸ held that 'where a statute which merely affects procedure, unless such a construction is textually impossible is presumed to be retrospective in its application should not be given extended meaning and should be strictly confined to its clearly defined limits. In another matter the Honb'le Supreme Court again held that '*if the new Act affects matters of procedure only then, prima facie it applies to all actions pending as well as future.*'⁹ According to Section 6(1)(vii) of Central University Act-

"University shall have the powers, namely:- to recognize an institution of higher learning for such purposes as the University may determine and to withdraw such recognition".

According to Section 4 Sub-section (1) of The Uttarakhand Technical University (Amendment) Act, 2009-

"The University shall for the purpose of exercising powers under this Act have the jurisdiction over the entire Uttarakhand in case of Technical Education and over Garhwal Division in the case of Professional Education."

It is pertinent to note that there is no provision regarding de-affiliation or withdrawal of affiliation has been maintained in The Uttarakhand Technical University Act, 2009. Does it means once a affiliation granted no one can de-affiliate it ?

11. According to the Section 4 of The Hemwati Nandan Bahuguna Medical Education University Act, 2014 -

Jurisdiction and Affiliation- (1) The University shall, in the exercise of its powers under this Act, have jurisdiction over the whole State of Uttarakhand.

(2) Every college or Institution imparting education in medical sciences in the State on the date of commencement of this Act shall apply for affiliation afresh. The State Government, by notification shall constitute a

⁸ AIR 1994 SC 2623

⁹ K. Eapin Chako vs. Provident Fund Investment Company (P) Ltd. AIR 1970 SC 2610 quoted in Justice J.P. Singh Principles of Statutory Interpretation, Agra/nagpur/New Delhi; 2008 at P. 498.

high level screening committee for a certain period of time for this purpose. No college shall be run in the state/admit new students without affiliation from the University.

Provided that a student pursuing his study in medical sciences in any college or institution on the date of such commencement of the Act shall be entitled and allowed to continue and complete such study under the erstwhile University after such commencement and the erstwhile University shall hold examination of such students and confer degree or any other academic distinction on him.

12. According to Section 28(2) of Central University Act, 2009-

‘The first Ordinances shall be made by the Vice Chancellor with the previous approval of the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes: Provided that in the case of Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, till such time as the first Ordinances are not so made, in respect of the matters that are to be provided for by the Ordinances under this Act and the Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and the Uttar Pradesh State Universities Act, 1973, respectively, shall be applicable in so far as they are not inconsistent with the provision of this Act and the Statutes’.

Now, U.P. University Act, 1973 is not applicable to Central University due to certain reasons. First, the first statute of HNB Garhwal University has been framed and secondly, UP State University Act, 1973 is inconsistent with the Act and Statutes. So, no affiliation can be granted in pursuance of U.P. University Act, 1973.

The combined reading of object of Central University Act, 2009; Section 2, Section 6(vii) of Central University Act 2009; UGC (Affiliation of colleges by Universities) Regulation, 2009 and Section 4 Sub-section (1) of The Uttarakhand Technical University (Amendment) Act, 2009 makes clear that private education institute cannot be part of Central University.

CONCLUSION

University education plays a vital role for Social economic development and welfare of people. It provides many internal and external benefits. A number of universities have mushroomed after independence. Central universities were established with specific objectives. These universities are institutions of national importance and should cater to students and faculty all over India. Central University has been established with specific purposes. So, it can't act like a State University. Central University Act, 2009 does not provide provision affiliation, it means that the intention of legislature is clear that a Central University shall not provide affiliation to private educational institution. Central University is under jurisdiction of Union Government so State law like U.P. State University Act, 1973 is not applicable on a Central University. So, if a private educational institute has taken affiliation earlier from HNB Garhwal University it can not claim further affiliation on this basis under U.P. State University Act, 1973 no one can claim any relief against Central University without making Union of India as a necessary party. An institution or college can only be a part of Central University if it is maintained by Central University or if it is funded by Central Government. These institutions are neither maintained by Central University nor funded by Central Government. So, the private institute are not entitled to take benefit of Section 4(f) of Central University act. Central University Official encroaching the jurisdiction of State Government due to some undisclosed interest well known to them. There is urgent need to de-affiliate all the private colleges of the Central University. The staff and teacher of Central University are mostly spending their time in the process of affiliation, conducting examination and declaring result of private colleges which ultimately hampers research activities of university and it is also against larger interest of society.
