

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MAY, 2021

BEFORE

THE HON' BLE MR.JUSTICE R. DEVDAS

WRIT PETITION NO.63550/2016 (EDN-RES)

BETWEEN

THE NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
ESTABLISHED UNDER THE NATIONAL LAW
SCHOOL OF INDIA ACT, 1986
GNANA BHARATHI MAIN ROAD
NAGARBHAVI, BENGALURU-560242
REPRESENTED BY ITS REGISTRAR IN CHARGE

...PETITIONER

(BY SRI ADITHYA SONDHI, SENIOR COUNSEL FOR
SMT B V NIDHISHREE, ADVOCATE)

AND

1 . THE UNIVERSITY GRANTS COMMISSION
ESTABLISHED UNDER THE UNIVERSITY
GRANTS COMMISSION ACT, 1956
BAHADUR SHAH ZAFAR MARG
NEW DELHI-110002
REPRESENTED BY ITS REGISTRAR

2 . THE UNION OF INDIA
MINISTRY OF HUMAN RESOURCE
DEVELOPMENT, SHASTRI BHAWAN
DR RAJENDRA PRASAD ROAD
NEW DELHI-110001
REPRESENTED BY ITS SECRETARY

...RESPONDENTS

(BY SRI SHOWRI H R, ADVOCATE FOR R1
SMT MADAVI, CGC FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE PUBLIC NOTICE DTD.19.7.2016 VIDE ANNEXURE-L AND COMMUNICATION DTD.6.10.2016 VIDE ANNEXURE-M ISSUED BY THE R-1 AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 05.04.2021 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, National Law School, Bengaluru, is before this Court, aggrieved by a public notice dated 19.07.2016 at Annexure 'L' and a communication dated 06.10.2016 at Annexure 'M', issued by respondent No.1, the University Grants Commission (for short 'UGC'). Subsequent to the filing of the writ petition, the first respondent formulated the University Grants Commission (Open and Distance Learning) Regulations, 2017, therefore, an additional prayer to quash the Regulations, is also made by the petitioner.

2. By issuing the impugned public notice and communication, the respondent-UGC has curtailed the physical jurisdiction of the Universities and higher educational institutions in the country in the matter of Open and Distance Learning. In essence, it provides that

in the matter of distance education, a University which is established or incorporated by or under a State Act shall operate only within the territorial jurisdiction allotted to it under the Act and in no case it shall operate beyond the territory of the State where it is located. It is contended at the hands of the UGC that such restriction was put in place consequent to the decision of the Hon'ble Supreme Court in the case of ***Prof. Yashpal and Another Vs. State of Chhattisgarh and Others***, reported in **(2005) 5 SCC 420**.

3. It is contended at the hands of the petitioner that by placing a restriction on the territorial jurisdiction, the UGC has violated the right of the petitioner under Articles 14 and 19 (1)(g) and the Right to Education under Article 21-A of the Constitution of India. It is contended that when there was no restriction of the territorial jurisdiction under the Act by which the petitioner-University is established, the same cannot be imposed upon the petitioner by the UGC. It is contended that it is by now well established that UGC is established under an Act of the Parliament for maintenance of standard of education in the country, but the impugned public notice, communication and Regulations, 2017 travel beyond the

powers of the UGC. It is contended that such restriction is inconsistent with the object and nature of distance education. Moreover, it is contended that the petitioner-University has not established any study centre beyond Karnataka and neither overseas. On the contrary, the petitioner-University has only established examination centres at New Delhi, Kolkata and Pune, other than Bengaluru. It is therefore contended that it is beyond the powers of the UGC to place restrictions on the petitioner-University directing it not to conduct examinations in the examination centers which are beyond the territories of the State where the University is established.

4. Per contra, learned Counsel for the respondent-UGC draws the attention of this Court to the larger Bench decision of the Apex Court in the case of **Prof. Yashpal** (supra) where it was held that when the Constitution has conferred power on the State to legislate on incorporation of University, any Act providing for establishment of the University must make such provisions that only an Institution/University in the sense of University as it is generally understood with all the infrastructural facilities where teaching and research on a wide range of subjects and of a particular level are

actually done, acquires the status of a University. It was held that establishment of a University conferring the legal status, but lacking in all the basic requirements, is clearly contrary to the constitutional scheme and is not contemplated by Article 246 of the Constitution. The power of the UGC in reigning in such violations and to ensure the standards of learning are maintained, has been upheld by the Apex Court. The decision of the Apex Court in the case of ***Annamalai University Vs. Secretary to Government, Information and Tourism Department and Others***, reported in ***(2009) 4 SCC 590***, in the matter of distance education and the powers and functions of the UGC in such matters, is also pressed into service. Lastly, it is contended that on establishment of the UGC (Institutions of Eminence Deemed to be Universities) Regulations, 2017, the UGC has made provision to create a distinct category of Deemed to be Universities, called 'Institutions of Eminence Deemed to be Universities' which would be regulated differently from other Deemed to be Universities so as to evolve into institutions of world class in a reasonable time period. It is therefore submitted that if the petitioner-University seeks to provide such world class education through distance learning, it is

required to seek conferment of such status, in terms of the UGC (Institutions of Eminence Deemed to be Universities) Regulations, 2017.

5. It is necessary to mention that during the course of the argument, learned Senior Counsel Sri Aditya Sondhi, appearing for the petitioner University placed reliance on a decision of a Division Bench of this Court in the case of **Master Balachandar Krishnan Vs. The State of Karnataka and Others** and connected matters in W.P.No.8788/2020, which were decided on 29.09.2020. It was submitted that the Division Bench has held that although the petitioner-University is indicated to be a State University, it is only for the purpose of making grants to the University by construing it to be a University established by a State enactment. But, the said fact would not make the petitioner-University a State University, as contended by the learned Advocate General. It was also held that although the petitioner-University may not be an institution of national importance or Institution of Eminence as per the Central Government, but it is, nevertheless, a national level institution. Per contra, it was contended by the learned Counsel for the UGC that even the Division Bench has accepted the contention of the UGC

that the petitioner-University is in fact established by virtue of a State enactment.

6. Heard the learned Senior Counsel for the petitioner-University and the learned Counsel for the UGC and learned CGC for respondent No.2 and perused the petition papers.

7. The reliance placed on the decision of the Division Bench in the case of Master Balachandar Krishnan, by the learned Senior Counsel for the petitioner-University, cannot come to its rescue. The issue considered in the said decision was regarding the powers of the State Government in directing to provide reservations for students belonging to the State. Therefore, in that context, the Division Bench noticed the role of Bar Council of India, its Trust and the Society in the establishment and functioning of the Law School and it was held that the State Government has been only a facilitator in granting the Deemed University status to the petitioner-University, through the enactment. In the opinion of this Court, that by itself, will not permit the petitioner-University to contend that it was not established by the State Act.

8. In the two decisions cited by the learned Counsel for the UGC, viz., **Prof. Yashpal** and **Annamalai University** (supra), the

powers and functions of the UGC under the UGC Act, 1956 and IGNOU Act, 1985 have been considered. It has been held that Regulations framed by UGC to determine standards of education, become part of the UGC Act and the same are applicable to both Open Universities as well as conventional formal Universities and in that respect, the alternative system envisaged under IGNOU Act, was not in substitution of the formal system. The distinction lay rather in the mode and manner of imparting education and hence, any Degree awarded in violation of Regulation-II of the UGC Regulations of 1985 by a University under Open University system, was held to be void. The validity of Universities/Institutions holding Online examinations and examinations conducted from remote centers have also been considered by the Apex Court.

9. Now that the UGC has come up with the UGC (Institutions of Eminence Deemed to be Universities) Regulations, 2017, making provision to create a distinct category of Institutions of Eminence Deemed to be Universities, which would have the benefit of establishing Off-campus centres and Offshore campus, the petitioner University is free to make an application seeking declaration as 'Institutions of Eminence Deemed to be Universities'.

As rightly submitted by the learned Counsel for UGC, any directions issued to the contrary, would place the petitioner University on a different pedestal, in contravention of the UGC Regulations, beyond the provisions of the UGC Act, 1956, under which the UGC is the only authority to determine standards of education.

10. Consequently, the writ petition stands disposed of, leaving it to the petitioner-University to approach the UGC seeking a declaration of Deemed to be University status, in terms of the University Grants Commission (Institutions of Eminence Deemed to be Universities) Regulations, 2017.

Ordered accordingly.

**Sd/-
JUDGE**

JT/-