IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 22nd DAY OF MAY 2014

BEFORE:

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos. 17940-17941 OF 2011 (GM-RES)

CONNECTED WITH

WRIT PETITION Nos 5789 AND 8874 OF 2011 (EDN-RES)

WRIT PETITION Nos 48057-48059 OF 2011 (EDN-GIA)

WRIT PETITION Nos. 48060-48062 OF 2011 (EDN-RES)

WRIT PETITION Nos.8375-8377 OF 2012 (EDN-RES)

WRIT PETITION Nos.8378-8379 OF 2012 (EDN-RES)

WRIT PETITION No.12476 OF 2012 (EDN-RES)

IN W.P.Nos.17940-17941/2011

BETWEEN:

1. Manipal University,
(Formerly Manipal Academy of
Higher Education)
"A Deemed to be University",
Having its Registered Office at
University Building,
Madhav Nagar,
Manipal – 576 119 [Karnataka]
Through its Registrar Dr. G.K.Prabhu.

2. Dr. Ramdas M Pai,
Son of Late Dr. TMA Pai,
Resident of Geethanjali,
Manipal [Karnataka] President,
Manipal Academy of Higher
Education Trust and Chancellor,
Manipal University (Deemed University)

…PETITIONERS

(By Shri. Rajeev Dhavan, Senior Advocate for Shri. M. Ravindranath Kamath, Advocate)

AND:

1. Union of India,
Through the Secretary to
The Government Ministry of
Human Resource Development,
[Department of Higher Education],
Government of India,
Shastri Bhawan,
New Delhi – 110 115.

2. University Grants Commission,
Through its Secretary,
Bahadur Sbnhah Zafar Marg,
New Delhi – 110 002.

…RESPONDENTS

(By Shri. G. Mallikarjunaiah, C.G.C., for Respondent No.1
Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate for Respondent No.2)

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These Writ Petitions filed under Article 226 of the Constitution of India, praying to quash the impugned regulation dated 21.5.2010 issued by the second respondent as contained in Annexure-A as ultra virus of the U.G.C. Act 1956 and infringing the petitioners fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India and etc,

IN W.P.Nos.5789 AND 8874 OF 2011

BETWEEN:

1. Sri. Siddartha Academy of Higher Education, (deemed to be University u/s. 3 of the UGC Act) Represented by its Registrar, Agalakote, Siddartha Nagar, Tumkur.

2. Dr. G. Shiva Prasad, Trustee, aged about 65 years, Sri Siddartha Academy of Higher Education, Agalakote, Siddartha Nagar, Tumkur.

…PETITIONERS

(By Shri. Chandrakanth R Goulay, Advocate)

AND:

1. The Government of India, Ministry of Human Resource Development, Department of Higher Education, Represented by its Secretary,

128, 'C' Wing, Shastri Bhavan,
New Delhi – 110 115.

2. University Grants Commission,
By its Secretary,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

3. The Joint Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

…RESPONDENTS

(By Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate for Respondent nos. 2 and 3
Shri. M.I. Arun, Advocate for Respondent No.1)

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These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to declare the University Grants Commission [Institutions deemed to be Universities] Regulations 2010, [Notification No.E6-1(11)/2006 [CPP I] dated 21.5.2010 as per Annexure-E, issued by the first respondent, to be unconstitutional and ultra virus the provisions of University Grants Commission Act, 1956 and consequently declare the same to be inapplicable to the petitioner no.1 University and etc;

IN W.P. Nos.48057-48059 OF 2011

BETWEEN:

1. KLE Academy of Higher
Education and Research,
Deemed University,

J N M C Campus,
Belgaum – 590 010,
Represented by its Registrar,
Prof. (Dr.) P. F. Kotur,
Aged about 59 years.

2. Jawaharlal Nehru Medical College,
J N M C Campus,
Belgaum – 590 010,
Represented by its Registrar,
Prof. (Dr.) P.F. Kotur,
Aged about 59 years.

3. Prof (Dr.) P.F. Kotur,
Registrar,
KLE Academy of Higher
Education and Research,
Deemed University,
J N M C Campus,
Belgaum – 590 010.

[Note: the petitioners No. 1 and 2
Represented by its Registrar
Petitioner No.3]

…PETITIONERS

(By Shri. K. Shashi Kiran Shetty, Advocate)

AND:

1. The Government of India,
Ministry of Human Resource
Development, Department of
Higher Education,
Represented by its Secretary,

128, 'C' Wing, Shastri Bhavan,
New Delhi – 110 115.

2. University Grants Commission,
By its Secretary,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

3. The Joint Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

…RESPONDENTS

(By Shri. Raju Ramachandran, Senior Advocate for Respondent nos. 2 and 3
Shri. Kalyan Basavaraj, A.S.G., for Respondent No.1)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to quash the University Grants Commission [Institutions deemed to be Universities] Regulations 2010 dated 21.5.2010 issued by the first respondent, to be unconstitutional and ultra virus to the provisions of University Grants Commission Act 1956 vide Annexure-A and etc;

IN W.A Nos. 48060-48062 OF 2011

BETWEEN:

1. BLDE University,
Smt. Bangaramma Sajjan Campus,
Sholapur Road,
Bijapur – 586 103,
Represented by its Registrar,

Sri. Dr. J.G. Ambekar,
Aged about 57 years.

2. Sri. M.B.Patil Medical College,
Smt. Bangaramma Sajjan Campus,
Sholapur Road,
Bijapur – 586 103,
Represented by its President,
Sri. M.B.Patil,
Aged about 55 years.

3. Sri. M.B. Patil,
President ,
Aged about 55 years,
BLDE University,
Smt. Bangaramma Sajjan Campus,
Sholapur Road,
Bijapur – 586 103.

…PETITIONERS

(By Shri. K. Shashi Kiran Shetty, Advocate)

AND:

1. The Government of India,
Ministry of Human Resource
Development, Department of
Higher Education,
Represented by its Secretary,
128, 'C' Wing, Shastri Bhavan,
New Delhi – 110 115.

2. University Grants Commission,
By its Secretary,
Bahadur Shah Jafar Marg,

New Delhi – 110 002.

3. The Joint Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

…RESPONDENTS

(By Shri. V.Y. Kumar, Advocate for Respondent No.1
Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate Respondent nos. 2 and 3)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to call for the relevant records; quash the University Grants Commission (Institutions deemed to be Universities) Regulations 2010. Notification dated 21.5.2010 issued by the respondent No.1 to be unconstitutional and ultra virus to the provisions of University Grants Commission Act, 1956 vide Annexure-A and etc;

IN W.P.Nos. 8375-8377/2012

BETWEEN:

1. Devaraj Urs Academy of Higher
Education and Research,
A Deemed to be University,
Tamaka, Kolar 563 101,
Karnataka State,
Represented by its Registrar,
Dr. A.V. Moideen Kutty,
Son of Late Sri A.A. Veeran,
Aged about 53 years,
Resident of Tamaka,
Kolar – 563 101.

2. Sri. Devaraj Urs Educational Trust
For Backward Classes,
Represented by its Chairman,
Sri. R.L. Jalappa,
Son of R. Lakshminarayanappa,
Aged about 86 years,
Resident of Tamaka,
Kolar – 563 101.

3. Sri. Devaraj Urs Medical College,
Tamaka, Kolar 563 101,
Karnataka State, represented by
Its Dean and Principal,
Dr. M.B. Sanikop,
Son of Basavannappa Sanikop,
Aged about 54 years,
Resident of Tamaka,
Kolar – 563 101.

…PETITIONERS

(By Shri. Madhusudhana R Naik, Senior Advocate for Shri. Abhishek Malipatil, Advocate)

AND:

1. The Government of India,
Ministry of Human Resource
Development, Department of
Higher Education,
Represented by its Secretary,
128, 'C' Wing, Shastri Bhavan,
New Delhi – 110 115.

2. University Grants Commission,

By its Secretary,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

3. The Joint Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

…RESPONDENTS

(By Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate Respondent nos. 2 and 3
Shri. Kalyan Basavaraj, A.S.G., for Respondent No.1)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to call for the relevant records; quash the University Grants Commission (Institutions Deemed to be Universities) Regulations 2010, dated 21.5.2010 issued by the first respondent, more particularly, clauses, 4, 5.2, 5.3,5.4; 5.5, 5.7,6.1,6.4, 6.7, 7.5. to 7.7; 12.02, 20 and 22.2. of the UGC (Institutions Deemed to be Universities) Regulations 2010 dated 21.5.2010, to be unconstitutional and ultra virus to the provisions of University Grants Commission Act, 1956 vide Annexure-A and etc;

IN W.P.Nos.8378-8379 OF 2012

BETWEEN:

1 Yenepoya University,
[A Deemed University],
University Road,
Deralakatte,
Mangalore – 575 018.
Represented by its Registrar,

Dr. Janardhana Konaje,
Son of Abbu Moolya,
Aged about 69 years,
Resident of Mangalore.

2. Islamic Academy of Education,
Mangalore Deralakatte,
Mangalore – 575 018,
Represented by its Trustee,
Mr. Y. Abdulla Javeed,
Son of Y. Mohammed Kunhi,
Aged about 41 years,
Resident of Mangalore. …PETITIONERS

(By Shri. Madhusudhana R Naik, Senior Advocate for Shri. Abhishek Malipatil, Advocate)

AND:

1. The Government of India,
Ministry of Human Resource
Development, Department of
Higher Education,
Represented by its Secretary,
128, 'C' Wing, Shastri Bhavan,
New Delhi – 110 115.

2. University Grants Commission,
By its Secretary,
Bahadur Shah Jafar Marg,
New Delhi – 110 002.

3. The Joint Secretary,
University Grants Commission,
Bahadur Shah Jafar Marg,

New Delhi – 110 002.

…RESPONDENTS

(By Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate Respondent nos. 2 and 3
Shri. Kalyan Basavaraj, A.S.G., for Respondent No.1)

These Writ Petitions filed under Articles 226 and 227 of the Constitution of India praying to call for the relevant records; quash the University Grants Commission (Institutions Deemed to be Universities) Regulations 2010, (Notification No.E6-1(11)/2006(CPP I) dated 21.5.2010 issued by the first respondent, more particularly, clauses, 4, 5.2, 5.3,5.4; 5.5, 5.7,6.1,6.4, 6.7, 7.5. to 7.7; 12.02, 20 and 22.2. of the UGC (Institutions Deemed to be Universities) Regulations 2010 dated 21.5.2010, to be unconstitutional and ultra virus to the provisions of University Grants Commission Act, 1956 vide Annexure-A and etc;

IN W.P.No.12476/2012

BETWEEN:

1. Symbiosis International University
(Formerly Symbiosis International
Education Centre)
An Institution Deemed to be
University, having its
Main Campus at:
Village : Lavale, District : Pune.

And Campus in Bangalore at:
At 95/1, 95/2, Electronic City
Phase – 1, Hosur Road,
Bangalore – 560 100,
Through its Regitrar,

Mrs. Madhu Sharma.

2. Symbiosis Society,
A Society registered under
Societies Registration Act
Having its registered office at
Senapati Bapat Road,
Pune, and Administrative office
In Bangalore at:
At 95/1, 95/2, Electronic City
Phase – 1, Hosur Road,
Bangalore – 560 100,
By its Authorised Officer,
Mr. Jagannath Raghunath Pathare,

3. Dr. S.B. Mujumdar,
Son of Late Balwant Mujumdar,
Aged 77 years,
Chancellor, Symbiosis International
University and President,
Symbiosis Society Flat No: 1 and 2,
Building No.4 , Wing: A-2,
New Ajantha Avenue,
Paud Road, Pune – 411 038. …PETITIONERS

(By Shri. Ashok Haranahalli, Senior Advocate for Shri. Manmohan P.N, Advocate)

AND:

1. Union of India
Through Ministry of Human
Resource Development,
(Department of Higher Education)
Government of India,

Shastri Bhavan,
New Delhi – 110 115,
Through the Secretary to the Government

2. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi – 110 002,
Represented by its Secretary.

…RESPONDENTS

(By Shri. S. Kalyan Basavaraj, A.S.G., for Respondent No.1
Shri. Raju Ramachandran, Senior Advocate for Shri. P.S. Dinesh Kumar, Advocate for Respondent No.2)

This Writ Petition filed under Articles 226 and 227 of the Constitution of India praying to declare that the UGC (Institutions Deemed to be Universities) Regulations, 2010 enacted vide UGC Notification dated 21.5.2010 issued by the second respondent published in the Gazette of India (Extraordinary) on 26.5.2010, is ultra virus the Constitution of India and the UGC Act 1956 ; vide Annexure-A and etc;

These petitions having been heard and reserved on 24.4.2014 and coming on for pronouncement of orders this day, the Court delivered the following:-

ORDER

These petitions are heard and disposed of by this common order as the issues that arise for consideration are common. To wit, the petitioners who are said to be institutions and

representatives of institutions, which are deemed to be Universities have called in question the validity of the University Grants Commission (Institutions Deemed to be Universities) Regulations 2010, (Hereinafter referred to as the "2010 Regulations", for brevity), on the primary ground that the same infringe the fundamental rights of the Petitioners guaranteed under Articles 14 and 19 of the Constitution of India.

Re. WP 17940- 941/2011

It is, inter alia, stated that the Government of India had, in exercise of power under Section 3 of the University Grants Commission Act, 1956 (Hereinafter referred to as the "UGC Act", for brevity), vide notification dated 1.6.1993 conferred the "Deemed University " status on the "Manipal Academy of Higher Education" consisting of Kasturba Medical College, Manipal; Kasturba Medical college, Mangalore; College of Dental Surgery, Manipal; College of Dental Surgery, Mangalore and College of Nursing, Manipal. Further, the Central Government, vide notification dated 24.4.2000, brought the "Manipal Institute of

Technology" and the "College of Pharmaceutical Sciences, Manipal" under the umbrella of the Manipal Academy of Higher Education (MAHE) .

It is urged that the law declared by the Apex court in the case of *TMA Pai Foundation and Others vs. State of Karnataka and Others, (2002) 8 SCC 481)* is to the effect that the right to establish and to administer educational institutions is a right guaranteed under the Constitution to all citizens under Article 19(1)(g) and Article 26 of the Constitution of India and therefore there could only be reasonable restrictions, if any, imposed on the exercise of such rights by a citizen, in the interest of the general public. It is from this stand point that the petitioner seeks to question the several provisions of the impugned Regulations.

Re. WP 12476/2012

Petitioner no.1 herein is said to have been declared as a 'Deemed to be University' under the UGC Act, in the year 2002. Petitioner no.2 is said to be the sponsoring body of Petitioner no.1. The petitioner University has its campuses in several cities

in India and is said to have academic collaborations with reputed foreign Universities, offering over a hundred academic programmes under myriad faculties.

Re: WP 5789 and 8874/2011

The petitioner no.1 herein has been granted the status of a deemed to be University with effect from the year 2008 in respective of its Medical, Engineering and Dental Colleges, respectively.

Re. WP 48057/2011

The petitioner no.1 herein is a Deemed University – it is sponsored by a Society established in the year 1916 and which is presently managing 211 institutions engaged in imparting education in conventional and non-conventional disciplines. The medical and dental colleges under the said petitioner were conferred the status of deemed to be universities in April, 2006.

Re. WP 48060-62/2011

Petitioner no.1 is sponsored by an Association – which was said to have been established in the year 1910. It has to-day

established institutions imparting education in almost all disciplines. The petitioner no.1 has been granted deemed to be University status in respect of its Medical, Dental and Engineering colleges with effect from 29-2-2008 by the Government of India.

Re. WP 8375-8377/2012

Petitioner no.1 herein is said to be a 'deemed to be University' one of its constituent units of is Petitioner no.3, which offers Under-Graduate and Post Graduate courses in medicine and was conferred the status as aforesaid by the government of India on 25.5.2007.

WP 8378-79/2012

The first petitioner University was sponsored by the second petitioner, a religious minority Trust, and the Dental, Medical, Nursing and Physiotherapy Colleges established and managed by the petitioners are said to have been granted the Deemed to be University status by the Government of India in the year 2008 and 2009.

All of the above petitioners claim that it is on account of the excellent infrastructure, faculty and the superior quality of education being imparted in their respective institutions, though varying in scale, that the University Grants Commission (UGC) had recommended to the Central Government to consider the status of specific institutions, to be declared as 'deemed to be Universities', from time to time. It is the case of the petitioners that conferment of such a status is obviously on ascertainment that any given institution fulfills all criteria and requirements in terms of guidelines for declaring that institution as a deemed to be University under Section 3 of the UGC Act.

It is stated that each of the petitioners and their institutions have been administered all along in accordance with such terms and conditions incorporated into their respective Memoranda of Association or such other document – the content of which is duly approved by the UGC.

It transpires that the second respondent has, in exercise of power conferred under Clauses (f) and (g) of Sub-section (1) of Section 26 of the UGC Act, on 21.5.2010 framed the UGC (Institutions Deemed to be Universities) Regulations, 2010 (Hereinafter referred to as the "2010 Regulations" for brevity). The same has been duly published in the Gazette Extra-Ordinary of the Government of India, as on 26.5.2010. Consequently, the UGC is said to have communicated to the petitioners to make necessary modifications to the Memoranda of Association, vis-à-vis the terms and conditions and the Rules therein, in consonance with the 2010 Regulations, governing their functioning and management and to report compliance. Hence the petitions.

2. The learned Senior Advocate, Shri Rajeev Dhavan, appearing for the learned counsel for the petitioners in WP 17940-41/2011, leading the arguments canvassed on behalf of the several petitioners contends that the following Regulations, of the 2010

Regulations, are invalid and unconstitutional, for reasons as elaborated further.

I Regulation 1.2 of the 2010 Regulations reads as follows:

> ***"1.2 These Regulations shall apply to every institution seeking declaration as an institution deemed to be university under the Act as also, albeit prospectively, to an institution which has been declared as an institution deemed to be university under Section 3 of the UGC Act, 1956."***

It is pointed out that the seeming prospective application of the Regulations to an Institution which has been declared as an Institution deemed to be a University under the UGC Act, is illusory and is in direct conflict with the safeguard provided under Sub-section (3) of Section 26 of the UGC Act. In that, compliance with the requirements under various other Regulations, of the 2010 Regulations, would directly and adversely affect existing rights of Institutions that are already declared as deemed to be Universities. Therefore, the impugned Regulations cannot be given retrospective effect so as to

prejudicially affect the interests of Institutions, to whom such regulations may be applicable.

It is pointed out that by virtue of the 2010 Regulations, the petitioners would be required to bring about major changes in respect of the following matters :

(a) Management structure

(b) Fee fixation

(c) Student admissions

(d) Off – Campus and Off – Shore campus Programmes

(e) To provide for a Reservation policy

II. It is elaborated with reference to particular Regulations as hereunder:

> ***"5.0 GOVERNANCE SYSTEM FOR AN INSTITUTION TO BE DECLARED AS AN INSTITUTION DEEMED TO BE UNIVERSITY***
>
> ***An institution to be declared as a deemed to be university shall adhere to the following criteria :***

5.1 The proposed institution deemed to be university shall be registered either as a not-for profit Society under the Societies Registration Act, or as a not-for-profit Trust under the Public Trust Act with the Society/Trust strictly in accordance with the following provisions.

5.2 Among the authorities of the deemed to be universities, there shall be a Chancellor who shall be appointed by the sponsoring Society or the sponsoring Trust. He/she shall be an eminent educationist or a distinguished public figure other than the President of the sponsoring Society or his/her close relatives.

5.3 There shall be no position of Pro-Chancellor(s).

5.4 The highest governing body of the deemed to be university shall be a Board of Management to be headed by the Vice Chancellor or a distinguished academic. This body shall consist of a minimum of ten members and a maximum of twelve members.

5.5 The Board of Management of the Institution shall be independent of the trust (or) Society with full autonomy to perform its academic and administrative responsibilities. The number of representative(s)/nominee(s) of the trust (or) society on the Board of Management shall be limited to a maximum of two.

5.6 The Board of Management shall consist of eminent persons capable of contributing to and upholding university ideals and traditions.

5.7 There shall be a Board of Management consisting of the following :

i) Vice Chancellor ……Chairperson
ii) Pro-Vice Chancellor (wherever applicable)

iii) Deans of Faculties not exceeding two (by rotation based on seniority)
iv) Three eminent academics as nominated by the Chancellor
v) One eminent academic to be nominated by the Central Government in consultation with UGC
vi) Two teachers (from Professors, Associate Professors) by rotation based on seniority
vii) One nominee of the sponsoring Society
viii) The Registrar, who shall be the Secretary

The term of membership of the Board of Management and its powers are as shown in Annexure 1.

5.8 The Vice Chancellor shall be an eminent academic and shall be appointed by the Chancellor on the recommendation of a Search-cum-Selection Committee consisting of a nominee of the Government who shall be nominated in consultation with UGC, a nominee of the Chancellor and that of the Board of Management. The Committee shall be chaired by the nominee of the Board of Management.

5.9 All other statutory bodies of the deemed to be university shall be as described in Annexure 2."

It is contended that Regulations 5.5, 5.7 and 5.8 – especially, have the effect of divesting the Institutions of management. In that, un-aided, non-minority educational institutions are guaranteed several autonomies, including the right to constitute a governing body. It is pointed out that the scope of

that right is stated by the Apex court in the case of *TMA Pai,* supra thus :

> *" In any event, a private institution will have the right to constitute its own governing body, for which qualification may be prescribed by the State or the University concerned. It will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies "* (Paragraph 53)

It is contended that *TMA Pai* also spells out the reasonable restrictions that could be imposed on the institutions, thus :

> *" The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admission would be unacceptable restrictions." (Paragraph 54)*

III ***"6.1 Admission of students to all deemed to be universities, public or private, shall be made strictly on merit based on an All India examination as prescribed by***

the Regulations and in consistence with the national policy in this behalf, from time to time."

"6.4 The fee structure for various programmes of study in the deemed to be universities shall also be fixed in accordance with the Fee Regulations framed by the Government or by the Commission in this behalf from time to time."

It is pointed out that the Apex court has held that private unaided educational institutions cannot be deprived of their choice in matters of selection of students and fixation of fees.

And it is further laid down that any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection which it has devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test *(See: Paragraph 40 of TMA Pai)*

It is further held that minority unaided institutions can legitimately claim an unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. (See:

Paragraph 137 of *P.A.Inamdar v. State of Maharashtra (2005) 6 SCC 537).*

And further in so far as determination of the scale of fees is concerned, it has been found by the Apex court that providing better amenities to students in the form of competent teaching faculty and other infrastructure, costs money. And hence it should be left to the institution, which does not seek any aid from the State, to determine the scale of fee that it can charge from the students. *(See: Paragraph 56 of TMA Pai)*

> *"To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution." (See: Paragraph 57 of TMA Pai.)*

IV ***"7.5.5 In the event of withdrawal of the declaration of 'deemed to be university' status or dissolution of the Society or the Trust of the institution deemed to be university, the Corpus Fund shall stand forfeited to the Commission for meeting the liabilities, if any."***

> ***"22.2 After conducting an inspection of the institution deemed to be university by the Commission on its own or on the basis of any other authentic information or report received from any other reliable source(s) and after considering the explanation submitted by the institution deemed to be university, if the Commission is satisfied that the institution deemed to be university has violated any of the provisions of these Regulations or any directives issued by the Commission, the Commission may direct the concerned institution deemed to be university not to admit new students for the period to be decided by the Commission and in case of deliberate continuous violation of these Regulations, may advise the Central Government for withdrawal of the declaration notifying the institution as an institution deemed to be university. In the event of such withdrawal of the declaration, the entire movable and immovable properties of the institution deemed to be university shall stand forfeited to the Commission. For first violation, the withdrawal may be restricted to one academic session which can be extended up to five academic sessions for repeated violations. However, for serious and deliberate violation, the status of deemed to be university shall be withdrawn permanently."***

It is contended that the above provisions are plainly confiscatory and are violative of Article 300A of the constitution of India, the scope of which has been considered and interpreted in several decisions of the apex court to hold that in its wider ambit, the said Article would also cover confiscation of property. Reliance is placed on the following authorities:

a) Hindustan Petroleum Limited vs.Darius Shapur Chenai, (2005)7 SCC 627, Paras 6,9

b) Lachhman Dass v. Jagat Ram, (2007)10 SCC 448, Para 16

c) State of Haryana vs. Mukesh Kumar, (2011)10 SCC 404 Para 33

d) Dev Sharan vs. Uttar Pradesh (2011) 4 SCC 769, Paras 24,31

e) Chairman Indore Vikas Pradhikaran vs. Pure Industrial Coke and Chemicals Limited, (2007)8 SCC 705, Paras 53-55

f) Entertainment Network India Private Limited vs. Super Cassettes Industries Limited, (2008)13 SCC 30, Paras 118 and 121

It is further contended that the above Regulations apart from being confiscatory also militate against the principle of proportionality and reasonableness. In that, the principle of proportionality envisages that any restriction imposed, in regulating the exercise of fundamental rights, must be so devised "so that the least invasive" approach and effect is pursued. It would be necessary to ensure and maintain a proper balance between the adverse effect which the legislation may have on the rights and interests of persons, while keeping in view the purpose

and object of the legislation. *(Teri Oat Estate Private Limited vs. U.T.Chandigarh, (2004)2 SCC 130)*

It is thus asserted that the above said Regulations are clearly unreasonable and unconstitutional.

V ***"12. NEW DEPARTMENTS, OFF-CAMPUS CENTRES AND OFF-SHORE CAMPUSES"***

"13. INCLUSION OF OTHER INSTITUTIONS UNDER THE AMBIT OF INSTITUTION DEEMED TO BE UNIVERSITY"

It is contended that the above Regulations dramatically alter the position in so far as the Off- Campus centres and Off- Shore Campuses that have been established prior to the coming into force of the 2010 Regulations.

VI ***"17. RESERVATION POLICY***

The institution deemed to be university shall implement the reservation policy in admissions and recruitment, in accordance with any Act of Parliament for the time being in force."

It is contended that the above Regulation is clearly opposed to the law as declared by the Apex Court in *P.A Inamdar v. State of Maharashtra (2005) 6 SCC 537* wherein it has been held thus :

> *"127. Nowhere in T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481 either in the majority or in the minority opinion, have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.*
>
> *128. We make it clear that the observations in T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481 in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.*
>
> *129. In T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees.*

130. For the aforesaid reasons, we cannot approve of the scheme evolved in Islamic Academy of Education v. State of Karnataka, (2003)6 SCC 697 to the extent it allows the States to fix quota for seat-sharing between the management and the States on the basis of local needs of each State, in the unaided private educational institutions of both minority and non-minority categories. That part of the judgment in Islamic Academy of Education v. State of Karnataka, (2003)6 SCC 697 in our considered opinion, does not lay down the correct law and runs counter to T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481."

VII It is next contended that the 2010 Regulations are also to be declared *ultra vires* Section 26(2) of the UGC Act given the brazen abdication of power by the UGC and non-compliance with mandatory procedural requirements in the framing of the same.

It is stated that from the material produced on record it is evident that the following sequence of events undeniably emerge. It is contended that in terms of Section 26 (2) of the UGC Act, other than the Regulations specified therein, the Commission did not require the prior approval of the Central Government in making the 2010 Regulations, which are contemplated under

Clause (f) and (g) of Section 26(1) of the Act. However, it is evident that the UGC had abdicated its power to the Central Government – which has with impugnity proceeded to dictate the content of the Regulations.

The above circumstance of such abdication is evident from the fact that on 19th February, 2010, the UGC had despatched the Draft Regulations to the Central government, (as is mentioned in a letter of the Central government dated 19th April, 2010) . In its letter dated 19th April 2010, the Central government to the UGC, it is stated that its Review Committee and Task Force have "modified" the Draft Regulations and forwarded the same to the UGC with the following direction :

> *" A copy of the UGC (Institutions Deemed to be Universities) Regulations, 2010 as approved by the Central Government, is forwarded herewith for notification by the Commission. A comparative chart of substantive provisions of the draft regulations as prepared by the UGC and as modified by the Task Force , as also enclosed (Annexure – N) "*

On 30th April 2010, the UGC has sent the 2010 Regulations for publication at its expense.

On 4th May 2010, the UGC has approved the Regulations.

It is thus contended from the above it is clear that the UGC has clearly abdicated its discretion and has violated the procedure prescribed in the purported framing of the 2010 Regulations . It is contended that the Privy Council in *Nazir Ahmed v. King Emperor, AIR 1936 PC 253* has laid down the principle that when a statutory power has to be exercised in a particular way, it must be exercised in that way alone and no other. This has been consistently followed in a catena of decisions by the Apex Court, the latest being *Pune Municipal Corporation v. Harakchand (2014) 3 SCC 183*.

Attention is also drawn to Paragraph 14 of *Purtabpur Co. v. Cane Commissioner, AIR 1970 SC 1896, which reads thus:*

> *" The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when*

it is a relevant factory in weighing the policy but this will not above them from their duty to exercise their personal judgment in individual cases unless explicitly statutory provision has been made for them to be given binding instructions by a superior." (See further Jain and Jain: Principles of Administrative Law (2011) pp 1313-1319)."

It is hence contended by Shri Dhavan that in the face of the above circumstances and the state of the law, the petition ought to be allowed as prayed for.

3. Shri Madhusudhan R. Naik, Senior Advocate, appearing for the counsel for the petitioner in WP 8375–77/2012 would add that historically, the Radhakrishna Committee Report which was submitted to the Government of India in the year 1948 , reference to part of which is to be found at Paragraph 51 of *TMA Pai,* was endorsed with approval as regards the need for autonomy in education. The opinion of the Apex court would clearly indicate that governmental domination of the education system is unwelcome. And that yet another pithy observation of the Committee that was taken note of was that the State aid was not to

be confused with State control over academic policies and practices.

It is further contended that the Kothari Committee Report that followed later has also endorsed the Radhakrishnan Committee Report and has highlighted the salient features of a deemed university, as envisaged at the time of enactment of the UGC Act. The guidelines that were framed for considering the proposal for declaring an institution as deemed to be Universities, were framed with these closely deliberated ideals in view. It is hence contended that the 2010 Regulations seek to undo and deconstruct this structure, which on the face of it have been demonstrated to be unconstitutional and unreasonable.

4. The Additional Solicitor General of India, Shri Raju Ramachandran, representing the UGC, on the other hand, would contend that in view of the decisions of the Apex Court in *Prem Chand Jain v. RK Chhabra, AIR 1984 SC 981*; *Osmania University Teachers' Association v. State of AP, 1987(3) SCR*

949 and *University of Delhi v. Raj Singh (1994 Supp.3 SCR 217)* – it is established that the UGC is vested with the authority and duty to maintain standards of teaching, examination and research in Universities and to take all such steps as it may think fit for the promotion and co-ordination of University education.

It is stated that prior to the 2010 Regulations, there were guidelines framed by the UGC to implement the provisions of the UGC Act. Over a period of time the said guidelines were found to be woefully inadequate in statutory force and character, to regulate and maintain the standards of Institutions deemed to be Universities, warranting the framing of the 2010 Regulations. It is stated that the Central Government is said to have directed the UGC, as on 4-6-2009 to review the functioning of the existing institutions deemed to be Universities with regard to availability of adequate infrastructure and faculty. In addition, the Government itself is said to have constituted a Review Committee, as on 6-7-2009, for an identical purpose. It is based

on the reports of those Committees, it is said , that Regulations have originated.

In addressing the challenge to the several provisions of the 2010 Regulations, it is contended, that in so far as the challenge to Regulation 1.2 is concerned, it is pointed out that it is an 'applicability clause' and only makes it explicit that the Regulations would apply to both , the existing institutions deemed to be Universities and institutions seeking a declaration as an institution deemed to be a University.

In so far as the challenge to Regulation 5.0 etc., is concerned, the said provisions pertain to governance of the concerned institutions. The changes are made in order to usher in transparency and accountability in the functioning of the institutions, which bear a public character. It would be highly reprehensible that institutions discharging public functions and responsibilities , in imparting higher education, should be reduced to a fiefdom and management by private family groups, which was found to be a common feature amongst many of the concerned

institutions. In other words, it had been found that invariably the Board of Management in most institutions was tightly controlled by members of the sponsoring Trust or Society and further the head of the founding Trust or Society was the ex officio Chancellor , irrespective of his eligibility or qualification. This practice of packing the management with friends and family members of the founders, resulted in depriving the institution the benefit of free flow of ideas from the academic community.

In so far as the challenge to Regulation 6.0 is concerned, it is asserted that regulation of admission and fees contribute to the maintenance of academic standards, removal of hardship to students and in prevention of commercialization of higher education. Sustenance is sought to be drawn from the following observations of the Apex court.

> *".....within the concepts of coordination and determination of standards in institutions for higher education of research and scientific and technical institutions the entire gamut of admissions will fall ."*

And further:

> *"…….admissions play a crucial role in maintaining the high quality of education . And for the proper maintenance of academic excellence, as intended by the UGC Act ,admissions to a deemed university have to be made under the control of the UGC " (Bharathi Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755)*

It is also contended that the said Regulation is in the nature of a reasonable restriction under Article 19(6) of the Constitution of India, as recognised by the Apex Court in *TMA Pai*.

It is also contended that in *PA Inamdar's* case, supra, the apex court has held thus :

> ***"Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student community. Professional education should be made accessible on the criterion of merit and on non -- exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational Rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure." Further, the Hon'ble***

Court has also held that "In our considered view, on the basis of judgment in Pai Foundation and various previous judgments of this Court which have been taken into consideration in that case, the scheme evolved out of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and Article 19(1)(g) read with Article 30 in case of unaided professional institutions of minorities."

In the light of the above, it is claimed that the above Regulation is in the nature of a reasonable restriction which is essential in the larger public interest.

In so far as Clause 12 of the impugned Regulations providing for a prior approval of the Commission to start any Off-campus centre or an Off –shore campus, is in order to ensure that the Universities do not resort to franchising and expansion by thinning the existing physical and other infrastructural facilities-thereby directly affecting the exacting standards of excellence to be maintained. The framing of such a clause is well within the

powers of the Commission and is very much needed to protect the interest of the student community.

That so far as Clause 7.5.5 and 22 of the impugned Regulation is concerned, the same provides for consequences of violation of Regulations.

It is well within the powers of the Commission to advice the Central Government to withdraw the declaration issued by the Central Government under Section 3 of the Act. In any case, under the UGC Act 1956, the Central Government being the competent authority to declare an institution as deemed to be university, is fully competent to withdraw such declaration.

It is not open to any institution to either state or even suggest that an institution which violates the Regulations and would still claim a right in law to continue its activities. That in the event of withdrawal of status and closure of educational activities of an institution, the interest of students such as their academic future and other aspects must be protected and secure and in such circumstances, the concerned institution shall be

bound to compensate such students, which shall be met through movable and immovable properties of institutions. Hence, it is contended that impugned Clause of the Regulation is justified, serves the public interest and is valid being in consonance with the provisions and objectives of UGC Act.

It is contended that the Supreme Court in the matter of *TMA Pai Foundation – Vs.- State of Karnataka*, *2002 (8) SCC 481)* has held that "*The right to administer does not include the right to mal-administer. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest….".*

It is hence contended that the various provisions of the Regulations are aimed at achieving excellence in the field of Education by putting the Board of Management of the Institution with full Autonomy to perform its academic and administrative responsibilities free from the influence of the Trustees or

Sponsors, who in most of the cases, are not either Educationalists or Academicians. It is contended that various grounds raised by the petitioners are not available to them having regard to the object and purpose for which the Regulations have been framed.

That the Commission is empowered to frame Regulations under Section 26(1) subject to the same being consistent with the UGC Act and Rules made there under by the Central Government under Section 25. Further, the UGC has framed the Regulation in question in exercise of its power conferred by Section 26(1) (f) & (g) of the UGC Act 1956, and hence, the contention of the petitioner that UGC has not acted in the manner it is required to act under the provisions of the UGC Act, is wholly unfounded.

Shri Raju also draws attention to a decision of the Madras High Court in *WP No.16015/2010* and connected cases – *SRM University and others vs. University Grants Commission,* decided on 30.8.2011, whereby a learned Single judge of that court having

negated a challenge brought to the 2010 Regulations, by several Deemed Universities situate in Tamil Nadu, has concluded thus :

> *" Hence, it is for the petitioners to comply with the requirements demanded under the impugned regulations should they want to continue with the status as IDUs. Or else , they are better advised to opt out of the Scheme. In effect , they cannot have the cake and eat it too. "*

It is also contended that even assuming that the Regulations are held not to affect any alleged rights that have vested in institutions that are already declared to be deemed to be Universities, there ought not to be any impediment to make the same applicable to all new institutions and hence the challenge being sustained would be outside scope of the present petition.

It is hence contended that the present petitions are misconceived and seeks that the same be dismissed with costs.

5. A counter affidavit has been filed on behalf of the Government of India reiterating the very contentions urged on behalf of the UGC. Apart from supplying the additional

information that the order of the learned single judge of the Madras High court referred to here in above, has been challenged in an appeal before a Division Bench of that Court and the Division bench has by its order dated 26-9-2011, directed that status quo be maintained until further orders. The appeal is said to be pending.

6. By way of reply, Shri Dhavan would contend that the justification sought to be urged on behalf of the respondents to sustain the impugned Regulations is clearly without reference to the opinion expressed and reiterated by the apex court on the several aspects with reference to which the validity of the Regulations are questioned.

It is also pointed out that the reference to the decision in *Bharatiya Vidyapeet* case and the companion case of *Manipal*, supra, involved the issue, whether the State Government could control fees and admissions. And it was held that it was the UGC and not the States that could control fees and admissions. By no

stretch of imagination, could *TMA Pai* be interpreted to hold that the State was so empowered.

It is pointed out that the contention on behalf of UGC to the effect that the impugned Regulations would in any case apply to new institutions, is facetious. It is contended that when the several clauses of the impugned Regulations are demonstrably unconstitutional, applying the doctrine of Severability the whole Regulations must fail. If the same are intrinsically bad, they are to be struck down in entirety, for what is left out after omitting the invalid portion, the Regulations would be truncated and redundant. Reliance is placed *on RMD Chamarbaugwalla v. The Union of India , AIR 1957 SC 628.*

7. In the light of the above contentions, the issues that would arise for consideration before this court are :

a. Whether the UGC (Institutions Deemed to be Universities) Regulations 2010 are invalid and unconstitutional in the light of the *TMA Pai, PA Inamdar* and related decisions of the Apex Court

b. Whether the 2010 Regulations are *ultra vires* Section 26 (2) of the UGC Act on account of the UGC having abdicated its discretion to frame the Regulations as the same are dictated by the Central Government

c. Whether it could be said that the said Regulations are prospective in application and would not adversely affect the interest of an existing University

d. Whether the directions issued by the UGC, seeking to enforce the said Regulations are to be struck down.

Points - a and c:

The UGC has been constituted under the provisions of the UGC Act. Under the provisions of the said Act, the UGC has been entrusted with the duty towards determination and maintenance of standards of teaching, examination and research in Universities.

Section 3 of the UGC Act deals with institutions deemed to be universities. It is provided therein that on the advise of the UGC the Central government may declare any institution for higher education (other than a University) as deemed to be a

University, for the purposes of the UGC Act. On such a declaration all the provisions of the Act shall apply to such Institution as if it were a University.

It is stated on behalf of the Central government in these proceedings, that it had constituted a Committee of eminent academic experts to review the functioning of all the institutions deemed to be Universities to ensure that standards of higher education and research are maintained to justify their continuance. This it is claimed, was found warranted in the wake of heightened public perception as regards the fall in academic standards of certain institutions deemed to be universities. As was also evident from a petition filed before the Supreme Court, in the nature of public interest litigation, in *WP(C) 142/2006, Viplav Sharma v. Union of India*, seeking that the bar be raised in considering institutions fit to be conferred with the Deemed to be University status apart from seeking a direction to the UGC to formulate Regulations to regulate the functioning of Institutions deemed to be Universities.

The Committee so appointed is said to have concluded that 38 institutions on an aggregation of their achievements, performance and potential – justified their continuation as "deemed universities" . And that another 44 institutions were on an aggregate found to be deficient in certain aspects which required to be rectified. And that there were 44 other institutions which, neither on past performance nor on promise for the future, possessed the attributes to retain their status as deemed to be Universities. It is stated that based on the recommendation of the Review Committee , the Government is said to have constituted a Task Force, as on 16-11-2009 to draw an action plan for safe guarding the interest of students as well as to advise the Government on the draft UGC Regulations.

The above disclosure by the Central Government as to background in which the Regulations appear to have been drafted is perplexing. This is especially so when there is no indication of the role the UGC had in the above "blood letting" exercise to root out the non-performing institutions and framing of the

Regulations. It is equally perplexing that the " Task force" was called upon to advise the Government on the draft Regulations.

The above circumstances assume significance in the light of a specific ground of challenge as to abdication of discretion by the UGC in having allowed the Government to dictate the content of the Regulations – which is considered shortly hereinafter.

It is well settled that courts shall presume the constitutionality of an Act and the burden of proof is upon the incumbent who challenges it. Presumption of constitutionality would also arise in a case of subordinate legislation. The constitutional validity of an Act can be challenged only on two grounds , viz :

(i) lack of legislative competence and

(ii)violation of any of the fundamental rights guaranteed in Part III of the Constitution or any other constitutional provisions.

The ground of invalidation must necessarily fall within the four corners of these two grounds.

It is not in dispute that the impugned Regulations apply to the existing deemed Universities. The UGC has called upon the petitioners to make changes in their respective Memoranda of Association and Rules in line with the 2010 Regulations, as early as in the year 2010 and has thereafter issued a warning that their status may have to be reconsidered if there was any further delay in non-compliance . At which stage many of the petitioners had approached this court.

On a plain reading of the several clauses which are particularly challenged, it is clear that it would require the petitioners to change their management structure, the fixation of fees would be out of their hands, student selection and admissions would no longer be under their control , apart from bringing into play several other restrictions not to speak of obligations that would arise.

In this regard the dicta of the Supreme Court would certainly be the law of the land. In addressing the reasonable restrictions that could be imposed on the right of unaided non-

minority and minority educational institutions to administer their institutions , it has been held that such institutions are guaranteed certain autonomies especially in the following areas .

> *"The right to establish and administer broadly comprises the following rights :*
> *(a)to admit students;*
> *(b)to set up a reasonable fee structure;*
> *(c)to constitute a governing body;*
> *(d)to appoint staff (teaching and non-teaching) ; and*
> *(e)to take action if there is dereliction of duty on the part of any employees. "* (See paragraph 50 of TMA Pai)

The above rights are in the nature of autonomies and rights which are protected under Article 19(1)(g), Article 26 and Article 30 of the Constitution of India. Any restriction affecting the same would render such restriction unconstitutional .

Without having to repeat the particular manner in which the petitioners allege that the aforesaid rights are affected, it would be sufficient if it is shown as to how the contentions put forth by the respondents, to support and justify the impugned Regulations, are untenable.

There is no substance in the contention of the respondents that the present challenge is premature and that the Regulations are applicable prospectively and hence the existing institutions remain unaffected. On the other hand it is pointed out that the very provocation to prefer the petitions was on account of the petitioners being called upon to implement the Regulations by firstly amending the respective Memoranda of Association and the Rules of the Institutions to conform to the present impugned Regulations. There is no attempt to elaborate on how the existing institutions would be in a position to have the benefit of any existing rights. Regulation 1(2) of the 2010 Regulations has to be read with Section 26(3) of the UGC Act. Section 26(3) specifically lays down that :

> "….no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable **"**

This is also true of the Central Government's Rule making power under Section 25(3) of the UGC Act.

Further, Regulation 5.0 dealing with governance is said to be aimed at preventing private and family controlled management of Universities. This presumption as to all Institutions being so managed and controlled may not be tenable. Even if this were to be the case – it is the opinion of the apex court that :

> *" .... ..a private institution will have the right to constitute its own governing body, for which qualification may be prescribed by the State or the University concerned. It will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies "*

Regulation 5.5 and 5.7 would clearly alienate the sponsoring body from the management. It would be unfair and unreasonable if the sponsoring body is capable of supplying equally highly qualified and eminent persons as contemplated by the Regulations.

In the matter of admissions and fees, Regulation 6.o, would run completely contrary to the dictum of the apex court in *Inamdar, supra*. It is held therein as follows :

" 127. Nowhere in Pai Foundation either in the majority or in the minority opinion have we found any justification for imposing seat-sharing quota by the State on unaided private professional educational institutions and reservation policy of the State or State quota seats or management seats.

128. We make it clear that the observations in T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481 in para 68 and other paragraphs mentioning fixation of percentage of quota are to be read and understood as possible consensual arrangements which can be reached between unaided private professional institutions and the State.

129. In T.M.A.Pai Foundation v. State of Karnataka, (2002)8 SCC 481, it has been very clearly held at several places that unaided professional institutions should be given greater autonomy in determination of admission procedure and fee structure. State regulation should be minimal and only with a view to maintain fairness and transparency in admission procedure and to check exploitation of the students by charging exorbitant money or capitation fees."

And further as follows :

"137. Pai Foundation has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefore subject to its being fair, transparent and

non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the above said triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly."

In so far as the fee structure is concerned, the measures contemplated under the Regulations clearly undermine and overlook the reasoning and the opinion expressed by the apex court in paragraphs 55 to 57 of *TMA Pai Foundation*.

"55. The Constitution recognizes the right of the individual or religious denomination, or a religious or linguistic minority to establish an educational institution. If aid or financial assistance is not sought, then such institution will be a private unaided institution. Although, in Unni Krishnan J.P. vs. State of Andhrapradesh, (1993) 1

SCC 645, the court emphasized the important role played by private unaided institutions and the need for private funding, in the scheme that was framed, restrictions were placed on some of the important ingredients relating to the functioning of an educational institution. There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can for instance indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and the curricula. It can for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a prerequisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence. ***While an educational institution is not business, in order to examine the degree of independence that can be given to a recognized educational institution, like any private entity***

that does not seek aid or assistance from the Government, and that exists by virtue of the funds generated by it, including its loans or borrowings, it is important to note that the essential ingredients of the management of the private institution include the recruiting students and staff, and the quantum of fee that is to be charged. *(emphasis supplied)*

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. *One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students.* ***One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to***

play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government. *(emphasis supplied)*

57. We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution." *(emphasis supplied)*

In so far as the contention as regards Clause 7.5.5 and 22.2 of the Regulations, is concerned, the contention that in the event of withdrawal of status or the closure of educational activities of an institution, the interest of the students and other aspects require

to be protected and hence, the clauses providing for forfeiture of the movable and immovable assets of the institution, to the Commission, being justified, is also not tenable. It would be one thing to insist that the institutions provide indemnity in respect of any liability or obligation, pre-existing or incurred subsequent to a possible withdrawal of status of a deemed to be University, but it is yet another matter to provide that the entire movable and immovable assets of the institution would stand forfeited to the Commission, in such a circumstance.

It cannot be presumed that the Institution would be closed down on the withdrawal of the status of a deemed to be University. It cannot also be envisaged that there would always be outstanding obligations and liabilities on the part of the Institutions and therefore, to satisfy the same, the movable and immovable assets of the institution should stand forfeited to the Commission, which is then expected to address the claims of students or such other third parties, to possibly meet such claims or other demands by applying the movable and immovable assets

of the Institutions. This is wholly impermissible and is certainly a measure clearly disproportionate and unreasonable with reference to the object sought to be achieved.

Further, a plain reading of the respective clauses does not indicate that the forfeiture is intended only to provide indemnity to third parties or that the said clauses are sounded "in terrorem". Therefore, it would have to be accepted that the said provisions are confiscatory, unreasonable, and the institutions cannot be deprived of their property on withdrawal of the status of a deemed to be University. It certainly warrants the application of the doctrine of proportionality.

As laid down in *Teri Oat Estates*, supra, (Paragraph 46), *"By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the*

administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve. "

The above clauses under challenge cannot be said to be the "least restrictive choice of measure".

On the question of Reservation Policy, Regulation 17.o, which is under challenge, is clearly contrary to the law laid down in *Inamdar*. In that, the question of imposing a seat sharing quota by the State or its reservation policy, on unaided private professional educational institutions is impermissible. The fixation of any percentage quota is only possible on consensual arrangements between the institutions and the State.

In sum, it may therefore be said that the 2010 Regulations are, in scope and effect retrospective in operation and would adversely affect the interest of all existing Universities. The same are invalid and unconstitutional in the light of the above discussion.

Point b. :

In so far as the contention that there has been abdication of the discretionary power vested in the Commission in framing the Regulations is concerned, as already pointed out, the Central Government is apparently oblivious to this aspect of the matter. It is to be noticed that the Central Government acts on the advice of the Commission in declaring any institution as a deemed to be University, in terms of Section 3 of the UGC Act. It would follow that any exercise of examining whether a particular institution is no longer worthy of the status, on account of a fall in standards or other criteria, it would be expected that the Commission is the appropriate body to make a recommendation to the Central Government to withdraw such status conferred in terms of Section 3 of the UGC Act. It is inexplicable therefore that the UGC appears to have been completely sidelined and ignored in the action taken by the Central Government in appointing a Review Committee to address the working of the deemed to be Universities and thereafter to have appointed a Task Force to

implement the report, said to have been filed by the Review Committee and further to seek the advice of the Task Force on certain draft Regulations, as is stated in the counter affidavit on behalf of the Central Government. It is significant that there is reference to a "draft Regulations ", even prior to the Commission forwarding its draft Regulations as on 19-2-2010.

It is not at all in dispute that the Review Committee and the Task Force have been given a free hand to modify and alter the draft Regulations sent by the UGC, as is evident from the letter of the Central Government to the UGC dated 19-4-2010, forwarding the modified version, as modified by the Review Committee and the Task force of the Central Government.

The UGC is conferred with the power to make regulations under Section 26 of the UGC Act. The Commission is required to obtain the previous approval of the Central government in making any regulations pertaining to :

> "(a) Regulating the meetings of the Commission and the procedure for conducting business there at;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) specifying the institutions or class of institutions which may be recognised by the Commission under clause (f) of sub-section 2;

(h) regulating the establishment of institutions referred to in clause (ccc) of Section 12 and other matters relating to such institutions;

(i) specifying the matters in respect of which fees may be charged and scales of fees in accordance with which fees may be charged, by a college under sub-section (2) of section 12A;

(j) specifying the manner in which an inquiry may be conducted under sub-section (4) of section 12A.

In respect of any regulations governing the following however, there is no such requirement of a prior approval :

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

(f) defining the minimum standards of instruction for the grant of any degree by any University;

(g) regulating the maintenance of standards and the co-ordination of work or facilities in Universities."

The impugned Regulations would clearly be in relation to subjects in the latter category and therefore, the conduct of the UGC is clearly in abdication of its role as the expert body to frame appropriate Regulations.

As already pointed out by the counsel for the petitioners, the guidelines that were framed for considering a proposal for declaring an institution as deemed to be Universities were framed after much deliberation spread over a considerable period of time and with certain ideals in view. The same are now sought to be cast on the waste heap and are to be replaced by the impugned Regulations that are not even shown to be authored by the UGC. The framing of the same is clearly in violation of the procedure contemplated under Section 26(2) of the UGC Act.

Hence, it can be said that the 2010 Regulations are *ultra vires* Section 26 (2) of the UGC Act.

Point d. :

It will be in the fitness of things to strike down the directions issued by the UGC, seeking to enforce the 2010 Regulations.

On the further question whether on the doctrine of severability, it would be possible to hold that such of those clauses of the 2010 Regulations being found to be unconstitutional or invalid alone be eschewed and to sustain the body of the Regulations, is concerned, as already noticed, the challenge is to Regulations touching on key aspects in the management and functioning of the institutions and applying the well settled principles as lucidly summarized by the apex court in *RMD Chamarbaugwala's* case, which is reproduced herein for ready reference, the Regulations in entirety would have to be struck down as being invalid;

The principles relating to the doctrine of severability are summarized thus by the apex court :

"1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide Corpus Juris Secundum, Vol.82 p.156; Sutherland on Statutory Construction, Vol.2, pp.176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in is entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide Cooley's Constitutional Limitations, Vol.1 at pp.360-361; Crawford on Statutory Construction, pp.217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory Construction pp.218-219.

4. Likewise, when the valid and invalid parts of a statue are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated

as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide Cooley's Constitutional Limitations, Vol.1 pp.361-362; it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise, it will amount to judicial legislation. Vide Sutherland on Statutory Construction, Vol.2 p.194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it, Vide, Sutherland on Statutory Construction, Vol.2 pp.177-178."

Further, in so far as the reference to a decision of a learned single judge of the Madras High Court in the case of *SRM University and connected matters*, supra, a glaring feature of that decision is that there is no reference to any of the authorities that

are cited and referred to in these proceedings. Hence, it loses any persuasive value and is hence not followed.

Consequently, the petitions are allowed. The 2010 Regulations are held to be unconstitutional and invalid. The directions issued to the petitioners by the UGC to implement the said Regulations are therefore quashed.

Sd/-
JUDGE

nv*