

(2005) 07 AHC CK 0231

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 47825 of 2005

Allahabad College of Engineering
and Management

APPELLANT

Vs

His Excellency, The Chancellor,
M.J.P. Rohilkhand University and
Others

RESPONDENT

Date of Decision: July 25, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226, 245(1), 32, 41
- University Grants Commission Act, 1956 - Section 22
- Uttar Pradesh State Universities Act, 1973 - Section 19, 2, 21, 25, 3

Citation: (2005) 4 ESC 2298

Hon'ble Judges: Dilip Gupta, J; B.S. Chauhan, J

Bench: Division Bench

Advocate: Shashi Nandan, Harindra Pratap and Pooja Agarwal, for the Appellant; Sudhir Agrawal, A.G.A. and Neeraj Tripathi and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Dilip Gupta, J.

An important issue concerning most of the Universities established under the U.P. State Universities Act, 1973 (hereinafter referred to as the "Act") has come up for consideration in this petition. The controversy that needs to be decided is whether such Universities can establish Study Centres to start the degree/diploma/certificate courses through the Distance Learning .. Programme under the provisions of the Act and the Statutes of the University as they presently exist.

2. This writ petition has been filed for quashing the order dated 3rd June, 2005 passed by the learned Chancellor of the University by which he has directed the Universities to immediately stop the running of all the courses at the Study Centre

through distance learning. A further direction has been sought to restrain the respondents from interfering in any manner with the teaching through the system of distance learning and other consequential reliefs have also been sought. The petitioner No. 1 is the Allahabad College of Engineering and Management (hereinafter referred to as the "Study* Centre") whereas petitioner Nos. 2 and 3 are the students who have been admitted in the Study Centre.

3. It is the contention of the Study Centre that pursuant to the advertisement issued by the Mahatma Jyotiba Phule Rohilkhand University, Bareilly (hereinafter referred to as the "Rohilkhand University") inviting applications from prospective Institutions/Societies/Trusts to start Study Centres for Certificate/Diploma/Degree Courses in Engineering, Information Technology, Management, Para-Medical and Fashion Designing, it submitted an application in the prescribed form for starting the Study Centre. The authorization letter dated 20th July, 2004 was then issued by the Coordinator of the Centre for Distance Education of the University informing it that the application for establishment has been accepted and that it could establish and run the "Study Centre" at 9/7 Motilal Nehru Road, Allahabad under Module I/Engineering. Consequently the Study Centre enrolled a large number of students who had appeared at the first semester examination but their results are awaited. However, the second semester is in progress and the examinations are scheduled to be held in the month of July, 2005 but as a result of the order dated 3rd June, 2005 passed by the Chancellor of the University, the Study Centre cannot proceed with the system of Distance Learning.

4. We have heard Sri Shashi Nandan learned Senior Counsel for the petitioners assisted by Ms. Pooja Agarwal. Sri Sudhir Agarwal learned Additional Advocate General assisted by Sri Neeraj Tripathi has appeared for the respondents. We may state here that Sri Govind Saran learned Standing Counsel of the Rohilkhand University appearing for the respondent nos. 2, 3 and 4 has submitted that the arguments on behalf of the said respondents shall also be advanced by the learned Additional Advocate General of the State who is appearing for the Chancellor of the University. Sri Sudhir Agarwal learned Additional Advocate General has stated that he does not propose to file any affidavit on behalf of the respondents since the relevant documents required to determine the issues involved in the present petition have been placed on record by the petitioners in the writ petition and the supplementary affidavit. In such circumstances this petition is being decided without calling for any counter affidavit from the respondents.

5. Sri Shashi Nandan learned Senior Counsel for the petitioners has submitted that the order dated 3rd June, 2005 passed by the learned Chancellor of the University is liable to be set aside since it is in the nature of an omnibus order which does not take into account the situation of the individual Universities as to whether they are carrying out the programmes of Distance Learning in accordance with the provisions of the Act and the Statutes/Ordinances framed thereunder. He further

contended that Ordinances have been framed by the Executive Council of the Rohilkhand University which have not been disapproved by the Chancellor and the State Government has also issued a "No Objection Certificate"; that the Chancellor of the University does not have any power or jurisdiction to pass the impugned order; that the University has already established as many as 50 Centres where Distance Learning is being imparted to a large number of students in different fields and so the impugned order would affect the career of many students who have already undergone the study in the first semester examination and even the second semester classes are in progress and that the field of Higher Education including Universities is contained in Entry 66 in List 1 of the Union List and no law can be framed which is contrary to the law framed by the Central Government or by the University Grant Commission in exercise of its powers under the University Grant Commission Act, 1956 (hereinafter referred to as the "UGC Act").

6. Sri Sudhir Agarwal on the other hand submitted that in view of the fact that many Universities had illegally established a number of Study Centres all over the country it became imperative for the Chancellor to pass such an order u/s 68 of the Act particularly when the Universities did not respond at all to the communication dated 16th April, 2005 sent by the Chancellor to all the Universities seeking information regarding the running of the Study " Centres; that none of the Universities have framed Ordinances including the Rohilkhand University; that in the absence of any provision in the Act or the Statutes of the University for establishing the Study Centres it was not permissible for the Universities to have established such Study Centres and that even the Distance Education Council had not recognized and approved the Degrees/Diplomas/Certificate Programmes.

7. We have carefully considered the submissions advanced by the learned counsel for the parties and have perused the materials available on record.

8. The primary function of the Universities is teaching and research and to provide trained and qualified personnel for the progress of the nation. The Committee constituted by the Government of India in December, 1961 with Dr. D.S. Kothari as the Chairman and several other persons who were either Vice-Chancellors of the Universities or were connected with the field of education in the concluding part of the report observed as under:-

"....The Function of the University is not only to preserve, disseminate and advance knowledge but also, to furnish intellectual leadership and moral tone to society. No less important is the role of Universities in promoting national integration and a common culture, and in bringing about the social transformation that is desired. Finally, Universities have also to provide trained personnel to advance the country's prosperity by making full use of modern knowledge. The organizational pattern must enable the Universities to achieve these objectives."

9. These have been noticed by the Supreme Court in Prof Yashpal and Anr. v. State of Chattisgarh and Ors. AIR 2005 SC 1168. After referring to a large number of its earlier decisions regarding Entry 66 of List 1 dealing with Coordination and determination of standard in Institutions for Higher Education or Research and Scientific Technical Institutions and Entry 32 of List II dealing with incorporation of a University the Supreme Court in the aforesaid case of i Prof. Yashpal (supra) observed as follows:-

"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."

10. It would be useful to reproduce the statement of objects and reasons of the UGC Act which is as follows:-

"The Constitution of India vests Parliament with exclusive authority in regard to "co-ordination-"and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new. It is also necessary to ensure that the available resources are utilized to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities. The need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central i Government has also become more urgent on this account.

In the second para it is said that the Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities."

11. Section 22 of the UGC Act, stipulates that the right to confer or grant degree can be exercised by a University or an Institution deemed to be a University or by an

Institution specially empowered by an Act of Parliament to confer or grant degrees. As to what a degree is, the Supreme Court in the case of Prof. Yashpal (supra) observed as under:-

"A degree conferred by a University is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. In the case of a Doctorate degree, it certifies that the holder of the degree has attained a high level of knowledge and study in the concerned subject by doing some original research work. A University degree confers a kind of a status upon a person like a graduate or a post-graduate. Those who have done research work and have obtained a Ph.D., D. Lit, or D.Sc. degree become entitled to write the word "Doctor" before their name and command certain amount of respect in society as educated and knowledgeable persons. That apart the principal advantage of holding a University degree is in the matter of employment, where a minimum qualification like a graduate, post-graduate or a professional degree from a recognized institute is prescribed. Even for those who do not want to take up a job and want to remain in private profession like a doctor or lawyer, registration with Medical Council or Bar Council is necessary for which purpose a degree in medicine or law, as the case may be, from an institution recognized by the said bodies is essential. An academic degree is, therefore, of great significance and value for the holder thereof and goes a long way in shaping his future. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies.

Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given u/s 22 of the UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degrees" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in [S. Azeez Basha and Another Vs. Union of India \(UOI\)](#), ."

12. As to the concept of "University" the Supreme Court in the aforesaid case of Prof Yashpal observed as follows:-

"As shown earlier, University is a whole body of teachers and scholars engaged at a particular place in giving and receiving instructions in higher branches of learning; and as such persons associated together as a society or corporate body, with definite organization and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of

learning and also the colleges, building and other property belonging to such body. Other necessary attributes of University are plurality of teachers teaching more than one higher faculties and other facilities for imparting instructions and research, provision for residence and must have certain standard of instructions providing for graduate and post-graduate levels of study. It pre-supposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides some playgrounds and also sport facility for overall development of personality of the students. However, under the provisions of the impugned Act, a proposal which is on paper and merely gives some kind of a plan or scheme to be done in future is notified as a University. 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 in the sense of University as it is generally understood with all the infrastructural facilities, where teaching and research on wide range of subjects and of a particular level are actually done, acquires the status of a University."

13. We shall now examine the provisions of the Act and the First Statutes of the Rohilkhand University to ascertain whether they have been conferred with the power to establish Study Centres.

14. Section 4 of the Act deals with the establishment of new Universities and alteration of the areas or the names of the Universities. Various Universities including the Rohilkhand University have been established for the areas respectively specified in the Schedule and power has been given to the State Government to either increase the area of the University, diminish the area of the University or alter the name of the University by notification in the gazette, Section 5 of the Act deals with territorial exercise of powers and it provides that the powers conferred on each University shall be exercisable in respect of the area for the time being specified against it in the Schedule. Section 7 of the Act deals with the powers and duties of the University. Amongst others, it has been provided that the University shall have the powers and duties to admit any College to the privileges of affiliation or recognition; to hold examinations for, and to grant and confer degrees, diplomas and other academic distinctions to and on persons, who have pursued a course of degrees in the University, a Constituent College or an Affiliated College or an Associated College; or have pursued a course of study by correspondence whether residing within the area of the University or not and have been registered by the University or are women residing within the area of the University and have carried on private studies or are blind and are residing within the area of the University and have carried on private studies; to hold examinations for and to grant the degree of Bachelor of Arts or Commerce or Master of Arts or Commerce to persons residing within the area of the University who have carried on private studies; to lay down the conditions of affiliation or recognition of colleges and to satisfy itself by periodical inspection and otherwise that those conditions are satisfied.

15. Section 8 of the Act deals with Visitation. It provides that the State Government shall have the right to cause any inspection to be made by such person or persons as it may direct, of the University or any Constituent College or any Institute maintained by the University, including its buildings, libraries, laboratories, workshops and equipments and also of the examinations, teaching and other work conducted or done by the University or such Colleges or Institute, A detailed procedure has been prescribed for carrying out the inspection or enquiry.

16. Chapter IV-A which was inserted by Act No. 4 of 1996 w.e.f. 11th July, 1995 deals with Co-ordination Council and Central Board of Studies. Section 21 of the Act deals with the powers and duties of the Executive Council while Section 25 deals with the powers of the Academic Council. Amongst others, the Executive Council has the power to admit any College to the privilege of affiliation or recognition subject to the provisions of Section 37 of the Act and to regulate and to determine all other matters concerning the University as well as Institute, Constituent, Affiliated and Associated Colleges in accordance with the Act, the Statutes and the Ordinances. u/s 25 of the Act it has been provided that the Academic Council shall be the principal academic body of the University and subject to the provisions of the Act, Statutes and the Ordinances shall have the control and general regulation of, and be responsible for the maintenance of standard of instruction, education and research carried on or imparted in the University and to advise the Executive Council on all academic matters including matters relating to examinations conducted by the University.

17. Chapter VII of the Act deals with affiliation and recognition. Section 37 1 contained in the aforesaid Chapter deals with Affiliated Colleges and provides for ft detailed procedure regarding the manner in which the Executive Council may, with the previous sanction of the Chancellor, admit any College fulfilling the conditions of affiliation. Section 38 of the Act deals with Associated Colleges and it provides that the conditions of recognition of a Associated College shall be prescribed by the Statutes or imposed by the Executive Council. Section 40 of the Act deals with inspection of Affiliated and Associated Colleges. Section 41 of the Act deals with Constituent Colleges whereas Section 42 deals with Autonomous Colleges. While Sections 49 and 50 of the Act deal with the Statutes of the University, Sections 51 and 52 of the Act deal with the Ordinances. As one of the contention raised by the learned Senior Counsel for the petitioners is that the University has framed Ordinances it would be useful to reproduce the relevant provisions of Sections 51 and 52 of the Act which are as follows:-

"51. Ordinances- (1) Subject to the provisions of this Act and the Statutes the Ordinances may provide for any matter which by this Act or the Statutes is to be or may be provided for by the Ordinances.

(2) Without prejudice to the generality of the provisions of sub-Section (1), the Ordinance shall provide for the following matters, namely-

- (a) the admission of students to the University and their enrolment and continuance as such;
- (b) the courses of study to be laid down for all degrees, diplomas and other academic distinctions of the University;
- (c) the conditions under which students shall be admitted to the examinations, degrees and diplomas of the University and shall be eligible for the award of such degrees and diplomas;
- (h) all matters relating to correspondence courses and private candidates;
- (j) the fees which may be charged by the University or by an affiliated or associated college for any purpose.
- (o) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

52. Ordinance how made.- (1) The first Ordinances of each existing University shall be the Ordinances as in force immediately before the commencement of this Act insofar as they are not inconsistent with the provisions of this Act:

Provided that for the purpose of bringing the provisions of any such Ordinances into accord with the provisions of this Act and the Statutes, the Chancellor may by order make such adaptations and modifications of the Ordinances whether by way of repeal, amendment or addition as may be necessary or expedient and, provide that the Ordinances shall as from such date as may be specified in the order have effect subject to the adaptations and modifications so made and any such adaptation or modification shall not be called in question.

(2) The First Ordinances of the Universities of Kumaun and Garhwal and of any other University to be established after the commencement of this Act shall be made by the State Government by notification in the Gazette,

(2-A) Until the First Ordinances of the Purvanchal University are made under sub-section (2), the Ordinances of the University of Gorakhpur, as in force immediately before the establishment of the said University, shall apply to it subject to such adaptations and modifications as the State Government may, by notification, provide.

(3) Save as otherwise provided in this Section, the Executive Council may, from time to time, make new or additional Ordinances or may amend or repeal the Ordinances referred to in sub-sections (1) and (2):

Provided that no Ordinance shall be made-

(a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or the further qualifications mentioned in sub-section (1) of Section 45 for admission to the degree courses of

the University, unless a draft of the same has been proposed by the Academic Council; or

(b) effecting the conditions and mode of appointment and duties of examiners and the conduct or standard of examinations or any course of study except in accordance with a proposal of the Faculty or Faculties concerned and unless a draft of such Ordinance has been proposed by the Academic Council; or

(c) effecting the number, qualifications and emoluments of teachers of the University or the income or expenditure of the University, unless a draft of the same has been approved by the State Government.

(4) The Executive Council shall not have power to amend any draft proposed by the Academic Council under sub-section (3) but may reject it or return to the Academic Council for reconsideration either in whole or in part together with any amendments which the Executive Council may suggest.

(5) All Ordinances made by the Executive Council shall have effect from such date as it may direct and shall be submitted as soon as may be to the Chancellor.

(6) The Chancellor may, at any time signify to the Executive Council his disallowance of such Ordinances other than those referred to in clause (c) of the proviso to sub-section (3) and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinances shall become void.

(7) The Chancellor may direct that the operation of any Ordinance other than those referred to in clause (c) of the proviso to sub-section (3) shall be suspended until he has an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order."

18. We also consider it appropriate to reproduce Section 68 of the Act as it has been contended on behalf of the petitioners that the order that has been passed by the Chancellor of the University is not envisaged under the said Section.

"68. Reference to the Chancellor.- If any question arises whether any person has been duly elected or appointed as, or is entitled to be, member of any authority or other body of the University, or whether any decision of any authority or officer of the University including any question as to the validity of a Statute, Ordinance or Regulation, not being a Statute or Ordinance made or approved by the State Government or by the Chancellor is in conformity with this Act or the Statutes or the Ordinance made thereunder, the matter shall be referred to the Chancellor and the decision of the Chancellor thereon shall be final:

Provided that no reference under this section shall be made-

(a) more than three months after the date when the question could have been raised for the first time;

(b) by any person other than an authority or officer of the University or a person aggrieved:

Provided further that the Chancellor may in exceptional circumstances-

(a) act suo motu or entertain a reference after the expiry of the period mentioned in the preceding proviso;

(b) where the matter referred relates to a dispute about the election, and the eligibility of the person so elected is in doubt, pass such orders of stay as he thinks just and expedient;"

19. We may also mention that the Schedule to the Act clearly provides for the areas within which the University shall exercise jurisdiction and in respect of Rohilkhand University which is mentioned at Serial No. 11, the areas mentioned are the district of Buduan, Bareilly, Bijnor, Moradabad, Pilibhit, Rampur and Shahjahanpur.

20. The provisions of the First Statutes of the Rohilkhand University should also be examined to ascertain as to whether there is anything in these Statutes which confers power upon the University to establish such Study Centres. Statutes 7.0 of the First Statutes of the University provides for the Faculties in the University and the Faculty of Agriculture, Faculty of Arts, Faculty of Commerce, Faculty of Law, Faculty of Science and Faculty of Veterinary Science and Animal Husbandry have been mentioned. Statutes 7.07 to 7.12 provide for the various Departments in these Faculties. The Department comprised in the Faculty of Science are Botany, Chemistry, Military Studies, Geography, Mathematics, Physics, Statistics, Zoology, Economics and Geology. Statutes 1.1.01 to 11.41 contained in Chapter XI deal with the Affiliated College, A detailed procedure is provided for seeking affiliation of a College or for starting courses of instructions for a new degree or any new subjects in these Affiliated Colleges. Statutes 16.01 to 16.12 .deal with Autonomous Colleges and provide for a detailed procedure for obtaining the privileges of an Autonomous College. Statutes 19.03 provides that the University may allow any person to appear as a private candidate at any examination conducted by the University provided such person fulfills the requirements laid down in the Ordinances and such examination does not relates to a subject or course of study in which practical examination is a part of the curriculum. Under Statutes 19.04, the provisions of Statutes 19.03 shall mutatis mutandis apply to correspondence course.

21. Having referred to the various Sections of the Act and the provisions of the First Statutes of the Rohilkhand University we shall now refer to the correspondence that has been brought on record by the petitioners in connection with the establishment of the Study Centres.

22. It is said that the Academic Council of the University in its meeting held on 21st August, 2003 considered and approved the recommendations dated 14th August, 2003 of the Board of Faculties regarding the starting of the Distance Education

Programmes. It has also been recorded in Resolution No. 5 of the aforesaid meeting of the Academic Council that the list of the courses and the proposed Ordinances were placed before the members and after a detailed discussion a Committee headed by Professor Girjesh Kumar was constituted to study the same and make necessary amendments in the light of the suggestions made by the members of the Academic Council and then given a final shape to the Ordinances. It was also resolved that such Ordinances shall be deemed to have been approved by the Academic Council. The aforesaid resolution of the Academic Council was placed before the Executive Council of the University in the meeting held on 26th August, 2003 and at Item No. 5.02 the Executive Council approved the aforesaid resolution of the Academic Council.

23. Before we proceed further, we must also place the minutes of meeting of the various Board of the Faculties which were considered by the Academic Council of the University in the meeting held on 21st August, 2003. Such an exercise has been deliberately undertaken by us to highlight the courses in which the degree/diploma/certificate will be awarded by the University through such Distance Education Programmes.

24. The minutes of the meeting held on 13th August, 2003 of the Board of the Faculty of Applied Sciences are as follows:-

"The following resolutions were unanimously approved. I. Opening of different courses entitled given below under distance education programme are approved.

1. Diploma in Medical Laboratory Technology (DMLT)	2 Years
2. P.O. Diploma in Bio Informatics (PGDBI)	1 Year
3. P.O. Diploma in Bio-Technology	1 Year
4. M.Sc. in Bio-Informatics)	2 Years
5. M.Sc. in Bio-Technology	2 Years
6. M.Sc. in Microbiology	2 Years
7. M.Sc. in Bio-Chemistry	2 Years
8. B.Sc. (Bio-Informatics)	3 Years
9. B.Sc. (Bio-Technology)	3 Years
10. B.Sc. (Microbiology)	3 Years
11. B.Sc. (Bio-Chemistry)	3 Years

Faculty Board recommends that Ph.D. Programme in Computer Application may be started subject to the availability of the qualified Faculty members and the required facilities available in the Department."

25. The minutes of the meeting of the Board of Faculty of Education and Applied Sciences are as follows:-

"The following resolutions were unanimously approved.

(1). In the interest of students and society the faculty board approved to start center for Distance Education in MJP Rohilkhand University.

(2). Opening of different courses as entitled below under the Centre for Distance Education are approved by the Faculty of Education & Allied Sciences.

Title of the Programme	Duration	Eligibility
1. Certificate in Computer Assisted Fashion Design	1 Year	10+2
2. Certificate in Beauty Technology & Cosmetology	1 Year	10+2
3. Diploma in Early Child Care & Education	1 Year	10+2
4. Diploma in Community Health Worker	1 Year	10+2
5. Diploma in Nutrition & Dietetics	1 Year	10+2
6. Diploma in Fashion	1 Year	10+2
7. Diploma in Textile Design	1 Year	10+2
8. Diploma in Interior Design	1 Year	10+2
9. Diploma in Apparel Production & Merchandising Management	1 Year	10+2
10. Diploma in Fashion Retail Management	1 Year	10+2
11. Advance Diploma in Fashion	2 Years	10+2
12. Advance Diploma in Textile Designing	2 Years	10+2
13. Advance Diploma in Interior Designing	2 Years	10+2
14. Advance Diploma in Apparel" Production & Materialising Management	2 Years	10+2
15. Advance Diploma in Fashion Retail Management	1 Year	10+2
16. P.O. Diploma in Mass Communication	1 Year	10+2+3
17. P.O. Diploma in Teaching of Eng Language	1 Year	10+2+3
18. P.O. Diploma in Career Guidance & Counselling	1 Year	10+2+3
19. P.O. Diploma in Vedic Sciences	1 Year	10+2+3
20. P.O. Diploma in Training & Development	1 Year	10+2+3
21. Diploma in Health Care	1 Year	10+2

Services		
22. B.A. (Journalism & Mass. Communication)	3 Years	10+2
23. B.Sc. (Sanitary & Health Sciences)	3 Years	10+2
24. B.Sc. (Naturopathy & Yoga Sciences)	With do	PSMEN PCBE
25. B.Sc. (Fashion Tech.)	3 Years	10+2
26. B.Sc. Textile Designing	3 Years	10+2
27. B.Sc. Interior Designing	3 Years	10+2
28. M.A. (Journ. & Mass Communication)	2 Years	10+2+3

(1) All the courses are approved with their syllabus (Course Contents)

(2) Faculty Board also recommends that a P.O. Diploma in Management of Stress through Yoga and Indian Philosophy should be started from the next session."

26. Similarly a meeting of Board of another Faculty was held on 14th August, 2003 and the same is reproduced below:-

"A. In the meeting Syllabi and Courses structure of different Distance Learning Courses were discussed and approved.

1. Certificate Courses in

(a) Air Conditioning & Refrigeration

(b) Automobile

(c) Electrical

(d) Electronics

(e) Mechanical

2. B.Tech & M.Tech Degree in

(a) Aeronautical Engineering

(b) Bio-Technology

(c) Chemical Engineering

(d) Civil Engineering

(e) Computer Science & Engineering

(f) Electrical Engineering

(g) Electronics & Telecommunication

(h) Mechanical Engineering "**

(i) Marine Engineering

3. I.T. Courses in

(a) B.Sc. IT

(b) M.Sc. IT

4. Diploma Courses in

(a) Computer Engineering

(b) Electrical Engineering

(c) Mechanical Engineering

(d) Automobile Engineering

(e) Electronics & Telecommunication Engineering

(f) Civil Engineering

5. Para Medical Courses in

(a) Diploma in Physiotherapy (DPT)

(b) Diploma in Occupational Therapy (DOT)

(c) Diploma in Medical Laboratory Technology (DMLT)

(d) Diploma in Radio Imaging Technology (DRIT)

(e) Diploma in Hospital Management (DHM)

(f) Diploma in Refraction Optometry (DR-(OPT)

(g) BPT (Physiotherapy)

(h) BOT (Occupational Therapy)

(i) BMLT (Medical Lab. Technology)

(j) BRIT (Radio Imaging Technology)

(k) BHM (Hospital Management)

27. The petitioners have brought on record the letter dated 27th August, 2003 sent by the Registrar of the University to the Principal Secretary (Higher Education) Government of U.P. in which after mentioning that the Academic Council of the University and the Executive Council of the University had approved the Ordinances relating to Distance Learning, permission was sought from the State Government for starting the Distance Learning courses. A copy of the letter was also sent for

information to the Principal Secretary to the Chancellor. From the records we also find that even prior to the placing of the matter before the Academic Council and the Executive Council of the University, a communication dated 17th July, 2003 had been sent by the Vice-Chancellor to the Chancellor of the University seeking permission to start the Distance Learning Centres for conducting diploma/certificate courses for the Academic Session 2003-04. It is important to note that in the said letter the Vice-Chancellor pointed out to the Chancellor of the University that the relevant material in this connection had been prepared by the Sandeep Academy of Engineering which had been placed before the statutory bodies of the University.

28. This letter dated 17th July, 2003 was followed by the letter dated 1st August, 2003 addressed by the Registrar of the University to the Principal Secretary to the Chancellor of the University. Though in the "subject" it was mentioned that it was for granting permission to start the degree/diploma/certificate courses but in the end it was also stated that the Ordinances, relating to Distance Education, a copy of which had been enclosed along with the letter, may be placed before the Chancellor of the University for his approval. A copy of the letter was also sent to the Principal Secretary (Higher Education) Government of U.P. enclosing a copy of the Ordinances and permission was also sought to start the courses.

29. In connection with the aforesaid letters dated 17th July, 2003, 1st August, 2003 and 27th August, 2003, a communication dated 20th January, 2004 was sent by the Chancellor of the University to the Principal Secretary (Higher Education). In the said letter it was specifically stated that the First Ordinances of the Rohilkhand University were required to be framed by the State Government u/s 52 of the Act but the State Government had not framed such Ordinances. It was, therefore, stated that while framing the First Ordinances of the University, the State Government may also take necessary steps for inclusion of the so called Ordinances sent by the Rohilkhand University. A copy of the letter was also sent to the Registrar of the Rohilkhand University.

30. The Principal Secretary (Higher Education) Government of U.P. also sent a communication dated 17th March, 2004 in reply to the communication dated 27th August, 2003 sent by the Registrar of the University seeking permission to start the Distance Education courses. It was mentioned in the said letter that the State Government had granted permission to the University to start the teaching in the diploma and certificate courses only from the Academic Session 2004-05 subject to the condition that the Study Centres where such teaching was to be carried out had proper arrangements for studies/practical courses. The said letter dated 19th March, 2004 does not make any mention of the Ordinances of the University.

31. Upon receipt of the aforesaid letter of the State Government, the Registrar of the University sent a communication dated 5th April, 2004 to the Secretary (Higher Education) Government of U.P. pointing out that the University had sought permission to start the Degree Courses also along with the Diploma and Certificate

Courses but permission had been given only for Diploma and Certificate courses. A request was, therefore, made to grant permission to start the Degree Courses also.

32. The records further reveal that merely upon the exchange of such communications, the University issued the advertisements inviting applications from prospective Institutions/Societies/Trusts to start such Study Centres for certificate/diploma/degree courses. The petitioner Study Centre responded to the said advertisement by submitting an application and thereafter the authorization letter dated 20th July, 2004 was issued by the Coordinator of the 17 Centre for Distance Education informing it that it could, establish and run the Centre.

33. In the meantime a communication dated 28th May, 2004 was also sent by 14 the Registrar of the University to the Secretary (Higher Education) Government of U.P. bringing to his notice that in anticipation of the permission to be granted by the State Government for starting the Degree Courses in the Study Centres, the University had already issued advertisements in newspapers regarding starting of the courses in diploma/certificate/degrees. A request was, therefore, made that the Government may expeditiously grant permission to start the Degree Courses also under the Distance Education Programme. The State Government, however, did not grant permission to the University to start the Degree Courses and by means of the communication dated 21st September, 2004 intimated the Registrar of the University that for starting of the Degree Courses, the University must first seek approval from the All India Council for Technical Education and the Distance Education Council and then convey it to the State Government so that further orders could be passed. In this connection it may be pertinent to mention that a communication dated 1st April, 2004 had earlier been sent by the Distance Education Council to the Vice-Chancellor of the University pointing out that before starting the Distance Education Courses, the proposal of the University to start such Centres should be sent so as to facilitate the grant of approval by the Distance Education Council. However, instead of supplying the necessary information to the Distance Education Council for the purposes of obtaining its approval to the setting up of the Study Centres for starting the courses, the Vice-Chancellor of the University sent a communication dated 21st May, 2004 to the Distance Education Council merely mentioning that the Academic Council and the Executive Council of the University had approved such Distance Education Programme and so had the Government of U.P. by the letter dated 12th April, 2004. It was further stated that the Government by the aforesaid letter had "asked the University to incorporate the Distance Education Ordinances in main Ordinances of the University". The Vice-Chancellor of the University also pointed out that the University had already initiated steps to start the course and hoped that the Distance Education Programme at the University will get all support and encouragement from the Distance Education Council.

34. Having referred to the various provisions of the Act and the Statutes and the correspondence exchanged between the University, the State Government and the Chancellor, we now propose to deal with the submissions advanced by the learned counsel for the parties.

35. The principle submission advanced by Sri Shashi Nandan learned Senior Counsel for the petitioners is that once the Ordinances relating to Distance Education Programme and Centres for Distance Education had been framed by the Rohilkhand University u/s 52 of the Act, the Chancellor of the University was not justified in passing the impugned order dated 3rd June, 2005 for stopping the functioning of all such Study Centres. We shall first deal with this issue and thereafter deal with the larger issue as to whether the University could have at all made such Ordinances relating to Distance Education under the provisions of the Act, as it presently exists.

36. The First Ordinances of every University have to be initially framed by the State Government. The Executive Council of the University can only make new or additional Ordinances or may amend or repeal the Ordinances framed by the State Government. So far as the Rohilkhand University is concerned the Chancellor of the University in his communication dated 20th January, 2004 to the Principal Secretary (Higher Education) clearly mentioned that the State Government had not framed the First Ordinances of the Rohilkhand University. This factual position has not been denied in the entire petition and even the learned Senior Counsel for the petitioners fairly stated that the State Government had till date not framed the First Ordinances of the University. It is for this reason that the Chancellor of the University had written to the State Government to take necessary steps for inclusion of the Ordinances sent by the University regarding Distance Education while framing the First Ordinances of the University. In the absence of the First Ordinances having been framed by the State Government, the Executive Council of the University had no power to make the Ordinances. Thus the contention of the learned Senior Counsel for the petitioners that as the Chancellor had not signified his disallowance to the Ordinances framed by the University, the Ordinances made by the Executive Council shall have effect cannot be accepted.

37. Even otherwise, we are of the opinion that in view of the provisions of Section 52(3) of the Act, the Executive Council could not have made the Ordinances unless a draft of the same had been approved by the State Government as admittedly the Ordinances did effect the income or expenditure of the University. Such a restriction is contained in the proviso to Section 52(3) of the Act. There is nothing on the record to indicate that the State Government had ever approved the draft of the Ordinances. Sri Shashi Nandan learned Senior Counsel for the petitioners, however, submitted that since the State Government had issued the "No Objection Certificate" for starting the diploma/certificate courses under the Distance Education Programme it should be deemed that it had granted approval to the draft Ordinances. We express our inability to accept this submission. We repeat, that by

the letter dated 27th August, 2003 the University had merely sought permission from the State Government for starting the teaching in degree/diploma/certificate courses relating to the Distance Education. There was no prayer made by it for granting approval to the draft Ordinances. The "No Objection Certificate" granted by the State Government is very specific. It does not talk about the Ordinances of the University at all, and seeks to merely grant no objection to the starting of the diploma/certificate courses through the Distance Education Programme of the University subject to certain conditions. We are, therefore, unable to persuade ourselves to hold, as has been suggested by the learned Senior Counsel for the petitioners, that by mere grant of such a no objection by the State Government it must be presumed that the State Government had granted approval to the draft Ordinances.

38. This apart, even the Chancellor of the University was conscious of the fact that in the absence of the First Ordinances having been framed by the State Government, the University could not have framed the Ordinances relating to Distance Education and it is for this reason that the communication dated 20th January, 2004 was sent to the State Government for taking into consideration these Ordinances while framing the First Ordinances of the University. A copy of the letter was also sent to the Registrar of the University. In view of this specific stand having been taken by the Chancellor of the University, it cannot be contended that the Ordinances have come into force. On the other hand, this clearly implies that the Chancellor of the University was clearly of the opinion that the University could not have made the Ordinances u/s 52 of the Act and thereby it must be understood that disallowance had been conveyed by the Chancellor to the Ordinances framed by the University.

39. Though we have come to the conclusion that the Ordinances had not been framed by the University, but even a perusal of the draft of the Ordinances indicate that the Executive Council had not fixed any date for the Ordinances to take effect. u/s 52(5) of the Act, all Ordinances made by the Executive Council shall have effect from such date as it may direct. Thus also it cannot be contended on behalf of the petitioners that the Ordinances have come into effect.

40. The manner in which the University has proceeded to start the Distance Education Programme compels us to make some observations. Even before the matter could be placed before the concerned Board of Faculties, the Academic Council and the Executive Council of the University, the Vice-Chancellor of the Rohilkhand University had sent a communication dated 17th July, 2003 to the Chancellor of the University seeking permission to start the Distance Education Centres for conducting studies in diploma and certificate courses. This was followed by a communication dated 1st August, 2003 of the University to the Chancellor. Even though the Chancellor of the University by his letter dated 20th January, 2004 had clearly intimated that as the First Ordinances of the University had not been framed by the State Government and it was for the State Government to make such

provisions in the Ordinances to be framed by it, the University went ahead with its project presumably because of the letter dated 17th March, 2004 sent by the State Government conveying its no objection to the starting of the diploma and certificate courses subject to certain conditions. Upon receipt of the aforesaid letter dated 17th March, 2004 of the State Government, the University sent another communication dated 5th April, 2004 to the State Government requesting for grant of a "No Objection Certificate" in respect of the degree courses also. In the meantime the Distance Education Council had also sent a communication dated 1st April, 2004 to the Vice-Chancellor of the University clearly pointing out that before starting such Centres approval must be taken from Distance Education Council. The University, however, in spite of the clear directions issued by the Chancellor of the University, the State Government and the Distance Education Council, proceeded with the issuance of the advertisement and invited applications to start the degree/diploma/certificate courses and it is only pursuant to the advertisement issued by it that the Study Centre of the petitioner No. 1 was granted authorization.

41. We are at a loss to understand as to how the University could have undertaken such an important programme merely on the basis of the "No Objection Certificate" issued by the State Government and the manner in which the University went ahead clearly gives us a feeling that it was merely to give some colour of authenticity to the programme about to be undertaken by it that , it desperately sought the permission from the State Government to start the courses. No provision under the Act or the Statutes of the University has been placed before us to show why such a permission was required from the State Government. What Section 52(3) of the Act requires is approval of the draft ordinances by the State Government and not the permission to start the courses but as stated above, the University in its communication dated 27th August, 2003 did not seek approval of the draft Ordinances from the State Government. Not only this, the University had issued the advertisements even in respect of degree classes when such permission had not been granted by the State Government and even in the communication dated 21st September, 2004 the University had been clearly intimated by the -State Government that for starting the Degree Courses, the University must first seek approval from the All India Council for Technical Education and the Distance Education Council. The University was also aware of the fact that approval by the Distance Education Council was necessary because it had received the letter dated 1st April, 2004 sent by the Distance Education Council. What is most disturbing is the communication dated 21st May, 2004 sent by the Vice-Chancellor of the University to the Distance Education Council in which it was pointed out that the State Government had granted permission by the letter dated 12th April, 2004 and thereby hinting that the Distance Education Council may not insist for its approval and that the University hoped "that it will-"get all the support and encouragement from the Distance Education Council". The records, therefore, reveal that before the State Government, the stand taken by the University in its communication dated 27th August, 2003 was that the Executive

Council had framed the Ordinances and, therefore, permission may be given for starting the Distance Education Programme. It is on this basis that the University succeeded in obtaining the no objection from the Government for starting the diploma/certificate courses through the letter dated 17th March, 2004 even though the Chancellor of the University had by the letter dated 20th January, 2004 clearly pointed out that as the First Ordinances had not yet been framed by the State Government, the Ordinances in relation to Distance Education could only be framed by the State Government. Not only this, what further transpires is that when the State Government asked the University to seek approval from the Distance Education Council for starting degree courses and by a separate communication the Distance Education, Council had also asked the University to take its approval before starting the courses, the University intimated the Distance Education Council that it must not examine the records as the State Government had already granted its approval. It is, therefore, clear that the University kept on shifting its stand before the Authorities to suit its purpose. This clearly leads us to believe that the University was bent upon establishing the Study Centres under any circumstances quite oblivious of the directions issued by the various authorities, and it did succeed to a certain extent till the letters dated 15th April, (2005 and 3rd June, 2005 were sent by the Chancellor.

42. It is, therefore, clear that the Rohilkhand University acted in clear defiance of the directions issued by the State Government and the Chancellor with total indifference to the interest and welfare of the candidates. It has played havoc with the careers of thousands of students and jeopardized their future. Obviously the so called establishment of the Study Centre was in the nature of a financial adventure with a view to make money from gullible candidates anxious to obtain admission but an educational misadventure for the students.

43. It must also not be forgotten that the University was intending to start the Study Centres for granting certificate/diploma/degree courses in Engineering, Information Technology, Management, Para-Medical and Fashion Designing through the medium of Institution/Societies/Trust. It was not setting up a Primary School or a Junior High School. It was, therefore, obligatory upon it to have ensured that such Study Centres, were setup strictly in accordance with the provisions of the Act, the Statutes and the other directions issued by the relevant Authorities. We had earlier so elaborately dealt with the resolutions of the Board of the various Faculties, the Academic Council and the Executive Council only for the purposes of examining that the Degree Courses which were intended to be started in the Study Centres were professional courses in the field of Engineering, Information Technology and diploma courses in Management, Para-Medical, and Fashion Designing. Such Study Centres could not have been started on the mere asking and a number of factors were required to be examined. There is nothing on the record to indicate as to whether the Study Centres had adequate financial resources, suitable and sufficient building, adequate library, furniture, stationary equipments and laboratory facilities

and whether the University had made any efforts at all to ascertain these factors. In fact, the petitioners through the supplementary affidavit have brought on record a communication dated 28th June, 2004 sent by the Institute of Engineering and Rural Technology, Allahabad providing for some sort of authorization to the petitioner Study Centre to conduct laboratory classes. This clearly indicates that there are no facilities at all regarding the laboratory classes in the petitioner Study Centre.

44. A list containing the names of the Study Centres for Distance Education established by the Rohilkhand University has also been placed before us and from the same we find that there are some Study Centres which are situated on the first floor or the second floor of markets. These Study Centres are:-

"(1). Asia Institute of Engineering & Management. C/o Asia Technical Institute 1st Floor, Near Radio Station Chowk Nagar Sudhar Mandal, Rohtak (Haryana).

(2). Ramanujan Institute of Engg. & Management. 7, III Floor, Krishna Palace, Ajronda Chowk, Faridabad.

(3). Compulink Engg. & Management College. Behind PNB Gali No. 2, Jawahar Nagar, Hissar.

(4). APIC Institute of Health Care Studies, D-62, 1st Floor, South Extn. Part 1, New Delhi.

(5). Trimurti Institute of Mgmt. & Tech. II Floor, Sharma Market, Sector-27 Atta, Noida."

45. It has also been pointed out to us by Sri Sudhir Agarwal the learned Additional Advocate General that apart from the Rohilkhand University such Study Centres have also been established by other Universities and the details are as follows:-

"(1). Veer Bahadur Singh Purvanchal University, Jaunpur.	809
(2). Bundelkhand University, Jhansi.	60
(3). Ch. Charan Singh University, Meerut	70
(4). MJP Rohilkhand University, Bareilly.	55
(5). Narendra Dev University of Agriculture & Technology Kumarganj, Faizabad	287
(6). Sardar Ballabh Bhai Patel University of Agriculture and Technology, Meerut	130
(7). Chandra Shekhar Azad University of Agriculture and Technology, Kanpur	160

46. The figures indicated above clearly reveal that such Study Centres have mushroomed all over the places like Shopping Centres for degree/diploma/certificate courses. As observed by the Supreme Court in the case of Prof. Yashpal (supra) a degree conferred by a University is a proof of the fact that

a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. An academic degree is, therefore, of great significance and the interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the which the degree certifies. This apart, it is imperative that at places where instructions are provided for Graduate and Post-graduate level of studies there must be a campus, classrooms, lecture theatre, library, laboratory and the like^ The University and the State Government have completely failed to discharge the heavy burden cast upon them to ensure that the Study Centres possess the basic infrastructure and are well equipped to teach the students. In the present case it appears that on the basis of the advertisement issued by the "I University, the Study Centre submitted an application to the University whereupon the authorization letter dated 20th July, 2004 was issued. Though it has merely been mentioned that the said letter was issued after inspection of the Centre but the present petition is delightfully silent about the availability of the infrastructure.

47. Having said so, we now propose to examine the basic contention of the learned Additional Advocate General that in the absence of any provision in the Act for establishing such Study Centres, the same cannot be established under the Ordinances of the University. Elaborating his submissions he submits that u/s 51 of the Act, the Ordinances can provide for any matter which by the Act or the Statutes is to be provided for by the Ordinances and, therefore, there has to be a provision in the Act or the Statutes of the University for the purposes of Distance Education Programme and in the absence of such provisions the State Government or the University cannot frame Ordinances. Sri Shashi Nandan learned Senior Counsel for the petitioners, however, submitted that the same relates to admissions of the students and, therefore, the Ordinances can be framed in this regard.

48. We have given our thoughtful consideration to the submissions advanced by the learned counsel for the parties. The provisions of the Act and the First Statutes of the Rohilkhand University have been elaborately dealt with by us in the earlier part of the judgment and we had done so only to ascertain whether it was permissible for the University to introduce the system of Distance Learning. The various provisions referred to by us clearly show that the powers conferred on each University shall be exercisable only in respect of the area defined in the Schedule and it is only the State Government which can either increase the area of the University or diminish the area of the University. u/s 7 of the Act, it has been provided that the University shall have the power to hold examinations for such persons who have pursued a course of study by correspondence whether residing within the area of the University or not. However, in cases of private studies only women who are residing within the area of the University and have carried on private studies can be permitted to appear at the examination. Even persons who are blind and residing within the area of the University and have carried on private

studies can only be permitted to appear at the examination. Power has further been given to the University to hold examinations for and to grant the degree of Bachelor of Arts or Commerce, or Master of Arts or Commerce, to persons residing within the area of the University but have carried on private studies. The Act deals with Affiliated Colleges, Associated Colleges, Constituent Colleges or an Institute maintained by the University and a detailed procedure has been prescribed for inspection or enquiry and as to under what circumstances the said Colleges shall be admitted to the privileges of affiliation or recognition. We have not been able to find out any provision in the Act, which, deals with Distance Learning. This is presumably for the reason that when the Act was enacted there did not exist any concept about distance learning. We have also examined the First Statutes of the Rohilkhand University more than once but are unable to find anything which can even remotely suggest that such Study Centres can be established by the University.

49. Under the Distance Education Programme, the Rohilkhand University and the other Universities have established Study Centres not only beyond the territorial jurisdiction over which they have the powers u/s 5 of the Act but even beyond the territorial jurisdiction of the State of Uttar Pradesh. Section 4(1-A) of the Act clearly provides that the State Government may by notification in the Gazette establish a University of Rohilkhand at Bareilly for the areas specified in the Schedule. Section 5 of the Act stipulates that the powers conferred on each University shall be exercisable in respect of the area for the time being specified in the Schedule. In view of these specific provisions the Rohilkhand University could not have established Study Centres in the State beyond its territorial jurisdiction. Such action, therefore, cannot be justified so long as the Act is not amended. This apart, the setting up of Study Centres beyond the territorial jurisdiction of the State of Uttar Pradesh cannot also be justified even if the State Act is amended in view of the decision of the Supreme Court in the case of Prof. Yashpal (supra) wherein it was observed:-

"Dr. Dhawan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State enactment an extra territorial operation. Section 2(f) of the amended Act defines "off-campus centre" which means a centre of the University established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. Section 2(g) defines "off-shore campus" and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. Section 3(7) says that the object of the University shall be to establish main campus in Chhattisgarh and to have the study centres at different places in India and other countries. In view of Article 245(1) of the Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The

impugned Act which specifically makes a provision enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence of the Chhattisgarh legislature."

50. The question, therefore, that arises for our consideration is whether even in the absence of any provision in the Act, the State Government or the Executive Council can frame Ordinances u/s 52 of the Act. Before to proceed to discuss this issue, we propose to examine the submission of the learned Senior Counsel for the petitioners that since the matter relates to the admissions of the students in the University the Ordinances relating to Distance Education can be framed and in support of his contention he placed reliance upon the provisions of Section 51(2) (a) of the Act. Under the Distance Learning, the candidates are enrolled with the respective Study Centres and, therefore, they cannot be treated to be students of the University. On a close examination of Section 51 (2) of the Act, we find that Section 51 (2) (h) deals with all matters relating to correspondence courses and private candidates. When the Act was framed in the year 1973, there was no concept of Distance Education and it is for this reason that there does not exist any provision in Section 51 (2) for conducting courses through Distance Education. Thus it cannot by any stretch of imagination, be contended that clause 51 (2) (a) is exhaustive and covers all cases of admission of students. A specific provision relating to Distance Education had to exist in Section 51 (2) of the Act. We, therefore, do not find any substance in the submission advanced by the learned Senior Counsel for the petitioners.

51. This brings us to the main issue as to whether the Ordinances dealing with Distance Education can be framed by the University even in the absence of any provision relating to Distance Education in the Act or the Statutes of the University. Fortunately for us this matter was examined at length by the Supreme Court in the case of Dr. Rashmi Srivastava v. Vikram University & JT 1995 (4) SC 51. In this case in exercise of the powers conferred under the provisions of the University Grants Commission Act, 1956, the Commission recommended implementation of Merit Promotion Scheme for University. This Scheme was accepted by the University and various promotions were made. The question that was to be determined was whether a Merit Promotee Reader or Professor in the service of the University could be treated at par with directly recruited Reader or Professor for the purposes of fixing inter-se seniority. The Supreme Court examined as to whether there was any provision in the Act dealing with promotion under the Merit Promotion Scheme and in paragraph 38 of the judgment, the relevant portion of which is reproduced below, the Supreme Court observed as follows:-

"A resume of relevant provisions of the merit promotion scheme and the relevant provisions of the Vikram University Act to which we have made reference earlier clearly shows that when the Act was enacted in 1973 the State Legislature had not contemplated any promotion of a Lecturer as Reader or Reader as Professor as the

case may be. All the relevant Ordinances and Statutes will therefore have to be read in that light. It is not possible to agree with the contention of the learned counsel for appellants that Section 49 as enacted can take in its sweep even departmental promotees.

...

...

It is also pertinent to note that in the year 1973 the subsequent merit promotion scheme of 1982 would never have been under contemplation of the Legislature. It must therefore be held on a conjoint reading of the relevant provisions of the Act that only one source of recruitment of University teachers namely, Professors and Readers and even of Lecturers is contemplated and that source is by way of direct recruitment. If that is so and if under merit promotion scheme as recommended by the Commission which was adopted by the respondent no. 1 University, any departmental candidate is to be promoted, he would be so promoted *dehors* Section 49 and would obviously be an *ex-cadre* Reader or Professor as the case may be.

...

...

Unless Section 49 is suitably amended and a separate source of recruitment by way of internal promotion is contemplated by the Act there would remain no occasion of undertaking any exercise of fixing *inter se* seniority between *ex cadre* employees and *cadre* employees. It is not in dispute between the parties that neither the Act nor any Ordinances or Statutes of respondent no. 1 University even remotely whisper about creation of a separate recognized source of recruitment of Professors and Readers by way of departmental promotions. It is of course true as indicated by Dr. Dhavan appearing for the interveners that in some of the Universities even Ordinances have been issued accepting such new source of promotion of University teachers under the merit promotion scheme. But even if it is so that would make no difference as it is the parent Act, namely, University Act concerned which should contemplate creation of new source of recruitment by way of departmental promotions of University teachers. Unless that is done mere issuance of Ordinances or Statutes to that effect which to that extent would conflict with the parent Act would be of no avail and would be an exercise in futility. They would also be *ultra vires* the Act. It must therefore be held that unless the concerned University Acts under which the Universities are functioning, by suitable amendments provided for an additional source of recruitment of Readers and Professors by way of departmental promotions, mere adoption of merit promotion scheme recommended by the Commission or mere decision of the Coordination Committee or Executive Committee not to discriminate between merit promotees and direct recruit University teachers and even issuance of Ordinances or Statutes to that

effect would be of no avail and will not have any legal effect nor would they permit the concerned Universities to fuse the cadre employees with ex-cadre employees and to prepare a combined seniority list on that basis."

52. In the present case also when the Act was enacted in the year 1973 there was no concept of Distance Education and, therefore, a provision for Distance Education did not exist. The provisions of the Act and the Statutes have to be read in that light as has been observed by the Supreme Court in the case of Dr. Rashmi Srivastava (supra). The parties have also not placed before us any amendment in the Act which deals with distance learning. We are, therefore, of the firm opinion that unless the Act and the Statutes of the University are suitably amended, the Ordinances cannot provide for an additional source of conducting courses through the Distance Education. At this stage we would like to point out that we have not expressed any view this way or the other regarding the necessity of establishing Study Centres for conducting courses through Distance Learning. We have only emphasised that it is permissible for the Universities to undertake this exercise only in accordance with the procedure prescribed by law. It is for the various Bodies under the Act to examine the feasibility of requiring the Universities to conduct courses through Distance Learning and then make suitable amendments in the Act and the Statutes and then frame the Ordinances.

53. Sri Shashi Nandan learned Senior Counsel for the petitioners then submitted that in due exercise of the powers conferred upon it, the University Grants Commission had framed the Regulations called as " The University Grants Commission (the minimum standards of instructions for the grant of first degree through non-formal/distance education in the Faculties of Arts, Humanities, Fine-Arts, Music, Social Sciences, Commerce and Sciences) Regulations 1985, and once these Regulations had been framed and Entry 66 of List 1 deals with Co-ordination and Determination of standards in Institutions for Higher Education or research and scientific and technical Institutions, the Universities were bound to implement and no law could be framed which was contrary to the law framed by the Central Government. Thus what the learned Senior Counsel for the petitioners contends is that in view of the aforesaid Regulation which have been framed by the University Grants Commission, the provisions of the State Act namely the U.P. State Universities Act, 1973 would have no effect. This submission of the learned Senior Counsel for the petitioners cannot be accepted. In the first instance even in the case of Dr. Rashmi Srivastava (supra) the University Grants Commission had formulated the Merit Promotion Scheme which had been adopted by all the Universities but still the Supreme Court held that unless the concerned State Universities Act is suitably amended by providing for an additional source of recruitment of Reader and Professor by way of departmental promotions, mere adoption of the Merit Promotion Scheme would be of no avail and will not have any legal effect, Secondly, even under the provisions of the University Grants Commission Act, 1956, the Commission had merely made recommendations regarding minimum standard and

it was for the State Government to make such amendments in the concerned Act for implementation of such recommendations.

54. In the case of Govt. of A.P. and Anr. v. J.B. Educational Society and Anr., etc. AIR 2005 SC 1138, the Supreme Court considered whether Section 20(3) (a) (i) of the Andhra Pradesh Education Act, 1982 was void and inoperative and the State Government had no legislative competence to pass such a legislation as the State provision was in the field already occupied by the enactment made by the Parliament, namely, All India Council of Technical Education, Act, 1987. The source of legislation of the Andhra Pradesh Act was traced to Entry 25 of the concurrent List while the source of entry of the Technical Education Act was traced to Entry 66 of the Union List. In this context the Supreme Court observed as follows:-

"It is in this background that the provisions contained in the two legislative enactments have to be scrutinized. The provisions of the AICTE Act are intended to improve the technical education and the various authorities under the Act have been given exclusive responsibility to co-ordinate and determine the standards of higher education. It is a general power given to. evaluate, harmonise and secure proper relationship to any project of national importance. Such a co-ordinate action in higher education with proper standard is of paramount importance to national progress. Section 20 of the AP Act does not in any way encroach upon the powers of the authorities under the Central Act. Section 20 says that the competent authority shall from time to time, conduce a survey to identify the educational needs of the locality under its jurisdiction notified through the local newspapers calling for applications from the educational agencies. Section 20 (3) (a) (i) says that before permission is granted, the authority concerned must be satisfied that there is need for providing educational facilities to the people in the locality. The State authorities alone can decide about the educational facilities and needs of the locality. If there are more colleges in a particular area, the State would not be justified in granting permission to one more college in that locality. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including technical education. Of course, this is subject to the provisions of Entries 63, 64, 65 and 66 of List I. Entry 66 of List I to which the legislative source is traced for the AICTE Act deals with the general power of the Parliament for coordination, determination of standards in institutions for higher education or research and scientific and technical educational institutions and Entry 65 deals with the union agencies and institutions for professional, vocational and technical training, including the training of police officers, etc. The State has certainly the legislative competence to pass the legislation in respect of education including technical education and Section 20 of the Act is intended for general welfare of the citizens of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution."

55. In view of the aforesaid decision, the State Government has the legislative competence to pass legislation in respect of education including technical education. We, therefore, do not find any merit in the contention of the learned Senior Counsel for the petitioners.

56. This brings us to the next submission of the learned Senior Counsel for the petitioners that the order of the Chancellor of the University is liable to be quashed since it is in the nature of a general order and does not take into account the individual cases of the Universities and in any event the Chancellor does not have the power to issue such an order u/s 68 of the Act.

57. In order to appreciate this submission it would be necessary to refer to the order dated 3rd June, 2005 passed by the Chancellor of the University. The order of the Chancellor starts by referring to the earlier order dated 16th April, 2005 a copy of which has also been placed on record by the petitioners. A perusal of the order dated 16th April, 2005 indicates that it had been brought to the notice of the Chancellor that various Universities established under the provisions of the Act had been conducting courses under the Distance Education Programme without there being any Ordinances in this regard and that many Universities had even established Study Centres in which courses were going on where it was imperative to have practical classes and they could not be conducted through correspondence. A direction was, therefore, issued for stopping such courses which were being run without following the procedure prescribed by law and Universities were directed to furnish information within a week. In the order dated 13th June, 2005 it has been stated that in spite of the specific directions contained in the order dated 16th April, 2005 some of the Universities not only continued with the courses but others had even issued fresh advertisements. According to the learned Chancellor, this was a serious matter and so he ordered that the running of such courses should be immediately stopped and the Study Centres should also be closed. The Chancellor of the University also noticed that the Purvanchal University and the Chandrashekhar Azad, Agricultural University had established about 800 and 100 Study Centres respectively. It was in these circumstances, it was mentioned in the order, that the Chancellor had to take this extreme step of issuing a general order under the provisions of the Act. In any view of the matter we have carefully examined the contentions raised by the petitioners and the various documents that have been placed on record by the petitioners. The petitioners can, therefore, have no grievance in this regard.

58. A bare perusal of Section 68 of the Act clearly shows that the Chancellor has the power to act suo motu in exceptional circumstances. We have no manner of doubt that exceptional circumstances did exist in the present case and immediate action was required as continuance of such courses was detrimental to the interest of all concerned. The Chancellor had noticed that a number of Study Centres had been established by the various Universities in total disregard to the provisions of the Act,

the Statutes and the Ordinances and, therefore, it cannot be said that suo motu exercise of powers by the Chancellor could be said to be bad in law. Enough opportunity had been given by the Chancellor to all the Universities by the order dated 16th April, 2005 to make available the documents but the Universities instead of producing the documents before the Chancellor continued to not only the run the existing i Centres but also kept on adding more Study Centres. The Chancellor was, therefore, justified in issuing a general direction to the Universities for immediately suspending the running of the courses in such Study Centres. Section 68 of the Act empowers the Chancellor of the University to examine whether a decision of any authority or officer of the University is in conformity with the Act or the Statutes or the Ordinances. In the present case, the Board of Faculties, the Academic Council and the Executive Council of the University had all passed resolutions in respect of Distance Education and such Bodies are Authorities of the University u/s 19 of the Act. It cannot, therefore, be submitted that the Chancellor of the University could not examine the matter u/s 68 of the Act.

59. In the end, learned Senior Counsel for the petitioners submitted that the career of many students who have already undergone the study in the first semester examination and in the second semester would be ruined if the Study Centres are closed. Sri Sudhir Agarwal learned Additional Advocate General submitted that the University had established the Study Centre and, therefore, the fate of the students would entirely depend upon whether the Universities could legally establish such Study Centres and if the Court were to arrive at the conclusion that such Study Centres have not been established in accordance with law then the necessary consequence would be that such Study Centres would have to be closed. We are conscious of the fact that closure of such Study Centres would effect those students who have already pursued their courses to some extent, but we cannot by our order compel the Universities to permit them to continue their courses. The Supreme Court has repeatedly held that this would tantamount to subversion of law and there should be no implicit sympathy in such cases. This would also be subversive of academic discipline. In [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), , the Supreme Court observed:

"We cannot by our fiat direct "the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

60. In N.M. Nageshwaramma v. State of A.P. 1986 Supp SCC 166, the Supreme Court held that the private institutions unauthorisedly established were invariably ill-housed, ill-staffed and ill-equipped.-If the Government is directed to permit the students admitted into those institutions, to appear in the examination, we will practically be encouraging and condoning the establishment of unauthorised institutions. It is not appropriate that the jurisdiction of the court either under

Article 32 or Article 226 of the Constitution should be frittered away for such a purpose. So the request to permit the students who had training in unrecognised schools was deprecated by this Court.

61. The aforesaid decisions were considered by the Supreme Court in the case of *State of Tamil Nadu and Ors. v. St. Joseph Teachers Training Institute and Anr.*, (1991) 3 SC 87 and in paragraph 6 of the judgment it was observed:-

"The practice of admitting students by unauthorised educational institutions and then seeking permission for permitting the students to appear at the examination has been looked with disfavour by this Court. In [N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another](#), this, Court observed that if permission was granted to the students of an unrecognised institution to appear at the examination, it would amount to encouraging and condoning the establishment of unauthorised institutions. The Court declared that the jurisdiction of this Court under Article 32 or of the High Court under Article 226 of the Constitution should not be frittered away for such a purpose, In [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), a similar request made on behalf of the institution and the students for permitting them to appear at the examination even though affiliation had not been granted, was rejected by this Court. The court observed that any direction of the nature sought for permitting the students to appear at the examination without the institution being affiliated or recognized would be in clear transgression of the provision of the Act and the regulations. The court cannot be a party, to direct the students to disobey the statute as that would be destructive of the rule of law. The Full Bench noted these decisions and observations and yet it granted relief to the students on humanitarian grounds. Courts cannot grant relief to a party on humanitarian grounds contrary to law. Since the students of unrecognised institutions were legally not entitled to appear at the examination held by the Education Department of the government, the High Court acted in violation of law in granting permission to such students for appearing at the public examination. The directions issued by the Full Bench are destructive of the rule of law. Since the Division Bench issued the impugned orders following the judgment of the Full Bench, the impugned orders are not sustainable in law."

62. In *Student of Dattatraya Adhyapak Vidyalya V. State of Maharashtra*, SLP (C) No. 2067 of 1991, decided on 19.2.1991 the Supreme Court held thus:-

"We are coming across cases of this type very often where allegations are made that innocent students are admitted into unrecognised schools and are made to suffer. Some courts out of compassion occasionally interfere to relieve the hardships. We find that the result of this situation is total indiscipline in the field of regulation."

63. In [State of Maharashtra Vs. Vikas Sahebrao Roundale and others](#), , the Supreme Court observed as follows:-

"For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc."

64. In [C.B.S.E. and Another Vs. P. Sunil Kumar and Others](#), the Supreme Court observed as follows:-

"We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination-* would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

65. In view of the aforesaid decisions of the Supreme Court, we do not consider it appropriate to issue any direction to the respondents to permit the candidates to pursue their courses in the Study Centres. We would, however, like to observe that in the peculiar facts and circumstances of the case, when the candidates have deposited a huge amount of money for securing admission in the Study Centres, it would be open for the learned Chancellor of the University to examine the matter and pass an appropriate order for refund of at least some portion of the amount, if not all, to the candidates.

66. For all the reasons stated above, we are unable to find any infirmity in the order dated 3rd June, 2005 of the learned Chancellor of the University. There is, therefore, no merit in this petition. It is, accordingly dismissed. Let a copy of this judgment be sent by the Registrar General of this Court to the Vice-Chancellors of all the Universities governed by the provisions of the Act.