Ashwani Kumar Shukla and Others Vs Hon''ble Kuladhapati, Narendra Dev University of Agriculture and Technology and Others

C.M.W.P. No''s. 45170, 45357, 45362, 45363, 45731 and 45945 of 2005

Court: Allahabad High Court

Date of Decision: June 27, 2005

Acts Referred:
University Grants Commission Act, 1956 â€" Section 26, 5#Uttar Pradesh Agricultural University Act, 1958 â€" Section 2, 2(3), 23, 28, 29#Uttar Pradesh State Universities Act, 1973 â€" Section 49, 50, 50(4), 51, 52

Citation: (2005) 3 ESC 2129

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: U.N. Sharma, Neeraj Tripathi, Navin Sinha, Ajit Ray, Gajendra Pratap, P.S. Baghel, Ashwani Kumar Mishra and Sudhir Agrawal, for the Appellant;

Final Decision: Disposed Of

Judgement

A.P. Sahi, J.
These writ petitions question the action of His Excellency the Governor as Chancellor of 6 Universities whereby these

Universities have been restrained from running the distance education course and awarding degrees by attempting off campus education in various

courses which are described in the brochure of the Universities which have either been brought on record in these writ petitions or have been

produced before this Court. The directions issued by the Chancellor as a consequence upon the aforesaid restraint order including the return of fee

already realised by the Universities and the Education Centres have also been challenged.

2. There are 2 sets of petitioners before this Court, one in which the students have come up against the orders and the second set in which the

collaborator/co-ordinator/facilitator of the study centres have challenged the impugned order passed by the Chancellor. Three of these writ

petitions .are in respect of the Universities governed by the provisions of U.P. State Universities Act, 1973 whereas the other 3 Universities are

governed by the Uttar Pradesh Agriculture and Technology Universities Act, 1958. All these writ petitions raise a common question of law and,

and such, all of them are being disposed of by this common judgment.

3. The impugned orders passed by the Chancellor directly affects the students who are the petitioners. The other writ petitions have been filed by

the collaborators/co-ordinators/ facilitators, who claim that they have been authorised to run the study Centres under an agreement entered into

between the petitioners and the respective Universities and, as such, they claim that the order of the Chancellor affects their rights as well.

4. The questions, which are to be answered in these writ petitions directly concern the State Government as well as the Universities established by

the State Government, in respect of the policy of higher education to be pursued and regulated by the State. The powers of the Chancellor to

determine such issues and the remedy, which can be provided in such a situation are also the questions which have to be dealt with and considered

qua the relief"s claimed in the writ petition. The petitioners have questioned the authority of the Chancellor to pass the impugned orders and have

also complained of violation of principles of natural justice and non-consideration of the relevant material, which was required to be looked into by

the Chancellor before passing the impugned order.

5. In order to facilitate the correct understanding of facts, the following chart is being incorporated for a bird"s eye-view of the petitions under

consideration :

Writ Petition filed by the Students

Writ Petition No. Concerned University

1. 45363 of 2005 Narendra Dev

University of Agric-

ulture and Technolo-

gy, Faizabad.

2. 45945 of 2005 Bundelkhand

University, Jhansi.

3. 45731 of 2005 M.J.P. Rohilkhand

University, Bareilly.

Writ Petitions filed by the Study Centres

4. 45357 of 2005 Veer Bahadur Singh

Purvanchal University,

Jaunpur.

5. 45170 of 2005 Chandra Shekhar

Azad University of

Agriculture and

Technology, Kanpur.

6. 45362 of 2005 Sardar Ballabh

Bhai Patel University

of Agriculture and

Technology, Modipuram,

Meerut.

6. Before delving any further it would be appropriate to refer to the constitutional scheme in this regard. The power to legislate on the subject of

higher education is broadly contained under 3 heads in our Constitution. Entry 66 of List I of Schedule VII of the Constitution runs as follows :

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions,

7. Entry 32 of List II of 7th Schedule to the Constitution runs as follows :

32. Incorporation, regulation and winding up of Corporations, other than those specified in List I, and Universities; unincorporated trading,

literary, scientific, religious and other societies and associations; co-operative societies.

8. Entry 25 of List III is incorporated as follows :

25. Education, including technical education, medical education and Universities, subject to the provisions of Entries -63, 64, 65 and 66 of List I;

vocational and technical training of labour.

9. A perusal of the aforesaid constitutional scheme, which has been subject matter of consideration in a large number of decisions of the apex

Court, broadly make it clear that a University can be incorporated and established by the State, and the State has the power to legislate in respect

of such an establishment. As per Entry 33 of List II, the State Government has been empowered to legislate on the subjects enumerated therein

subject to the limitations prescribed under Entry 25 of List III However, Entry 66 of List I totally excludes the competence of the State legislature

from making any law in respect of co-ordination and determination of standards in institutions for higher education or research and scientific and

technical institutions. Since the present dispute is with regard to higher education and its dissemination through distance education system, the

question and relevance of any law made by Parliament on the subject has also to be considered and taken note of.

10. Writ Petition No. 45945 of 2005, Writ-Petition No. 45732 of 2005 and Writ Petition No. 45357 of 2005 are in respect of 3 Universities

established, and run under the provisions of the U.P. State Universities Act, 1973 whereas Writ Petition No. 45363 of 2005, Writ Petition No.

45170 of 2005 and Writ Petition No. 45362 of 2005 are in respect of Universities incorporated and established under the Uttar Pradesh

Agriculture and Technology Universities Act, 1958.

11. Coming to the power of the Chancellor and the other authorities of the Universities established under the State Universities Act, 1973, the

following provisions have to be taken note of. Section 49 of 1973 Act provides for framing of a Statute by a University. The Statutes have to

provide for the institution of degrees and diplomas, their conferment and withdrawal; the establishment of faculties and department of teaching

faculties; the conditions of affiliation of institutions to the University and their recognition and manner of registration of Graduate and all other such

matters. A conspectus of the aforesaid provision leaves no room for doubt that a Statute has to be framed in respect of the institution of degrees

and diplomas and other academic distinctions as also the criteria for registration of Graduates and the affiliation of institutions on terms and

conditions as per the Acts and Statutes. Statutes have to be made in accordance with Section 50, which empowers the Executive Council to do so

in the manner prescribed therein. Statutes framed have to be submitted to the Chancellor, who has the power to either assent to it or withhold the

same or remit it for consideration. The Statute can be effective only if assented to by the Chancellor in the manner prescribed under the provisions

of Section 50. The power extends also to the State Government as well as to the Chancellor in certain contingencies and in case such Statutes are

framed, the same cannot be amended or repealed by the Executive Council.

12. Section 51 of the Act provides for framing of ordinances and which specifically relate to the courses of study to be laid down for all degrees

and diplomas and other academic distinctions. The conditions under which students can be admitted to the examinations and matters relating to

correspondence course are all to be dealt with under the ordinances. The Executive Council has been empowered under Section. 52 to frame

ordinances and it has been further provided that such an ordinance would be framed only after a draft of the same has been proposed by the

academic council which concerns the admission of students or prescribing examination to be recognised as equivalent to University examinations.

Such an ordinance can be made effective with effect from the date the Executive Council directs and the ordinance will have to be sent to the

Chancellor. The Chancellor has the power to disallow any such ordinance and pending consideration before him the operation of the Ordinance

can remain suspended. The power to frame regulations have been given in Section 53 of the Act.

13. So far as the Chancellor is concerned, the Chancellor has the power u/s 68 to adjudicate on the question of validity of the Statutes, Ordinances

or Regulations. The Chancellor has been further given a suo motu power to proceed with the matter even if it has not been referred to him, u/s 68.

Section 68 of the Act is quoted below for ready reference :

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 there under, 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;

Another notable feature of the Act is that the area of the University has also been defined u/s 2(3) read with Section 4 and Section 5 of the said

Act.

14. The provisions under the U.P. Agriculture and Technology University Act, 1958 are also to the same effect but with a slight distinction with

regard to the object and purpose for which the agricultural Universities were established. A perusal of the preamble indicates that such Universities

have to be established for the development of agriculture and for the benefit of rural people of Uttar Pradesh. The object u/s 4 of the Act clearly

indicates the different branches of study, particularly agriculture and rural industry and business and other allied subjects. The word agriculture has

been defined in Section 2(b) and the territorial jurisdiction of the University, is to be, as provided u/s 6-A. The powers of the Chancellor have been

defined and the Chancellor enjoys the power to take a decision in respect of any decision of the University or any authority subordinate to the

Board as per Section 23 of the 1958 Act. Further Section 28 outlines the matters for which the University shall frame statutes, which includes the

institution of degrees and diplomas, the establishment etc, of the faculties, the admission of students to the University and their enrollment and in

particular the courses of study to be laid down for all degrees and diplomas of the University. The manners of Ã¯Â¿Â½ framing a Statute has been

detailed in Section 29 of the Act and it is the Board, which has the power to frame such Statutes. The Statute requires the previous approval of the

Chancellor, who may sanction, disallow or remit it for further consideration. This is in pari materia to Section 50(4) of the State Universities Act,

which also requires the submission of a Statute to the Chancellor and the Statutes so framed shall have effect only after it is approved by the

Chancellor. With regard to the agricultural Universities, the 1958 contains provisions for framing regulations. The academic council has. been

empowered to lay down the courses of study and which has to be, therefore, framed in conformity with Section 28 (n) by the Board and approved

by the Chancellor.

15. A perusal of the aforesaid provisions leave no room for doubt that both, under the 1973 Act as well as under the 1958 Act referred to herein-

above the Universities have to frame Statutes in conformity with the provisions of the Act and the Ordinances and Regulations have also to be

framed in the mariner provided therein and not otherwise. A Statute or an Ordinance unless framed in accordance with the aforesaid provisions

cannot be given effect to. They can only provide for such matters as arc prescribed under the Act and not beyond the same. The applicability of

such Statutes and Ordinances are also confined to the areas of operation within which the Universities are permitted to operate.

16. The Universities, apart from the aforesaid provisions, have also to abide by such laws as are framed by the Parliament under Entry 66 of List I

of the Constitution. The setting up of the Universities Grants Commission and the Regulations framed by it are binding on all Universities. With

regard to the subject matter in hand i.e. distance education, the Universities Grants Commission in exercise of powers conferred u/s 26 of the

Universities Grant Commission Act, 1956 has framed the UGC (the minimum standards of instructions for the grant of the first degree through non

formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985.

17. The attention of the Court was also drawn to the provisions of Indira Gandhi National Open University Act which is an Act made by

Parliament for opening a University at the national level for the introduction and promotion of distance education system and for the co-ordination

and determination of standards in such systems. A perusal of Section 5 of the said Act indicates that the said University namely IGNOU has the

power to recognise any institution of higher learning study for such students as the University may determine. It also empowers the University to

confer autonomous statutes on a College or regional centre or to admit to its privileges a College, in or outside India, subject to such conditions as

may be laid down by it. Thus, under the aforesaid Act it is the Indira Gandhi National Open University, which has been given the power to

disseminate knowledge by distance education.

18. Having traced the legislative background of this litigation the validity of the impugned orders have to be now tested in the light of the arguments

advanced by learned Counsel for the parties.

19. I have heard Sri U.N. Sharma, learned senior Counsel assisted by Shri Neeraj Tripathi in Writ Petition Nos. 45170 of 2005, 45357 of 2005

and 45362 of 2005 and Sri Navin Sinha, learned senior Counsel, accompanied by Sri Ajit Ray and Sri Gajendra Pratap in Writ Petition No.

45945 of 2005, Sri P.S. Baghel for the petitioner in Writ Petition No. 45731 of 2005 arid Sri Ashwani Kumar Mishra in Writ Petition No. 45363

of 2000. Sri Sudhir Agrawal, learned Addl. Advocate General and Sri Neeraj Tripathi have been heard on behalf of His Excellency-the

Chancellor. Sri Govind Saran has been heard on behalf of M.J.P. Rohilkhand University, Bareilly, Sri N.K, Seth and Sri A.K. Goel have been

heard on behalf of Narendra Dev University of Agriculture and-Technology, Faizabad, Sri Prakash Padia for the Bundelkhand University, Jharisi

and Sardar Ballabh Bhai Patel University of Agriculture and Technology, Meerut, Chandra Shekhar Azad University of Agriculture and

Technology University, Kanpur and Veer Bahadur Singh Purvanchal University, Jaunpur.

20. The first question that has to be answered is with regard to the power of the Chancellor enabling him to pass the orders which are impugned in

the present writ petition. A perusal of the facts indicate that all these Universities were issued notices on 16.4.2005 calling upon the Vice-

Chancellors of all the Universities throughout the State to tender information as to under what provisions the programme of distance education are

being run. This was done on the basis of the information received by the Chancellor to the effect that Universities throughout the State are

conducting distance education programmes without lawful authority and without there being any Statute or Ordinance framed for the said purpose.

The Chancellor had further issued directions by the same letter restraining all Vice-Chancellors from further continuing such programmes and had

called upon them to furnish the information within 7 days. It has been brought on record that the information"s were tendered by the respective

Universities where after the Chancellor passed the order on 3.6.2005 that all distance education programmes shall stand discontinued as they are

not in accordance with Statutes and Ordinances and it was further directed that the fee realised from students should be forthwith remitted back to

the students within 15 days or else non-compliance thereof would entail such penal consequences as are available in law. A perusal of the

aforesaid order would indicate that the Chancellors has proceeded to hold, that since there was no valid Statute or Ordinance framed either under

1973 Act or the 1958 Act nor was there any approval of the Chancellor to the same and, as such, the education programmes in question could not

have been either instituted or continued. The distance education programmes are a consequence of decisions taken by the University. A perusal of

the records indicate that resolutions have been passed by the academic council, executive council, the Board of Management and the Vice-

Chancellor for executing such programmes. Thus, the authorities of the University have taken decisions with regard to which the Chancellor has

passed the order. The provisions of Section 68 of 1973 Act and Section 23 of 1958 Act empowers the Chancellor to decide any matter which

arises out of a decision taken by the authority of the University. The contention of the learned Counsel for the petitioners that the Chancellor did

not have, the power to pass such an order, therefore, deserves to be rejected in view of the provisions referred to herein above.

21. The next contention on behalf of the petitioners is that the decision taken by the Chancellor has been processed hastily and without looking to

the material on record. It has been further urged that the decision taken by the authorities of the University including the Executive Council, the

Board and the Academic Council as the case may be, amounted to a valid decision by the University to establish and run the distance education

programme. The learned Counsel for the petitioners have urged that in spite of the fact that the action of the authorities of the Universities

amounted to a valid action and the resolutions amounted to framing a valid Statute/Ordinance/Regulation, the Chancellor has erred in recording a

conclusion otherwise. A perusal of the facts as brought on record would indicate that except in Writ Petition No. 45731 of 2005, which pertains to

Rohilkhand University, none of the other Universities have come up with a defence of having framed any Statute or Ordinance in accordance with

the provisions of the Act applicable, as the case may be. In the case of Rohilkhand University, the Ordinance is stated to have been framed in the

year 2003 as stated in paras 12 to 17 of the said writ petition. The petitioners in the other writ petitions have relied upon the No Objection

Certificate issued in this regard. A perusal of the No Objection Certificate indicates that the Chancellor''s office had no objection to the

introduction of such programmes in accordance with rules. This naturally entails, that Statutes and the Ordinances have to be framed in accordance

with the Act and only then the Universities are entitled to run such a programme. The Universities were nowhere permitted to run the programme

without framing any Statute or Ordinance. ''

22. A perusal of the order of the Chancellor indicates that respective contentions of the Universities were not dealt with individually and the

decision dated 3.6.2005 has been taken as a collective decision on a general over all view that was perceived by the Chancellor in this regard. The

individual cases of each University, therefore, did require a further examination as to whether the Universities had framed a proper rule in

accordance with the Act to enable them to run the distance education programmes. The Chancellor''s office having realised this to be an on going

problem, issued a notice dated 6.6.2005 i.e. after the passing of the impugned order, which letter has been brought on record by way of an

Affidavit in Writ Petition No. 45362 of 2005. This letter discloses the setting of an inquiry to collect all such material from the respective

Universities and to obtain a report in this regard, The Principal Secretary, Department of Agriculture, has been appointed as the Inquiry Officer in

respect of the Agriculture Universities to conduct the inquiry, as it is desirable to hold a detailed investigation into the matter. The Court has been

informed that such a notice has been issued setting up an inquiry in respect of the other Universities as well. Sri Sudhir Agarwal, learned Addl.

Advocate General, emphasised that this inquiry was only to take stock of the further continuance of the distance education centres in spite of the

order dated 3.6.2005. A perusal of the said letter indicates that the emphasis of the Chancellor''s office is on the holding of a fuller and detailed

inquiry into the running of distance education centres by the Universities. Once this exercise has been undertaken by the Chancellor himself, it

would be appropriate that the order dated 3.6.2005 may not be treated to be a final order in this regard. This is also desirable as the order dated

3.6.2005 does not take notice of the individual cases of the Universities and the evidence filed by them in their support. For example as pointed

out in the case of Rohilkhand University, the impugned order does not refer to the ordinance stated to have been already framed and the impact

thereof. The order of the Chancellor dated 3.6.2005 simply records its conclusion and does not contain detailed reasons as would be desirable in

such a situation.

23. It would be, therefore, appropriate that the Chancellor re-examines the matter after getting the inquiry conducted and considering the entire

material with regard to as desired by the Chancellor himself vide letter dated 6.6.2005.

24. The question now that comes up for consideration is as to what reliefs are the petitioners entitled to in the circumstances of this case. It is to be

noted that the petitioners in Writ Petition Nos. 45363 of 2005, 45731 of 2005 and 45945 of 2005 are the students who have obtained admission

in the courses run by the respective Universities under the distance education programme. They claim that their future shall be jeopardised as they

are nowhere at fault and, as such, they cannot be penalised for any shortcoming, if any, of the Universities. The aforesaid question as to whether

the courses are being validly run or not have to be decided again in view of the observations made herein above. The decision has to be taken by

the Chancellor objectively and independently and the Chancellor cannot be compelled to treat the subject matter to be one of subjectivity or

expediency merely because the University has instituted the courses and invited the petitioner students for admission. In my opinion, the Chancellor

has rightly taken up the issue and the matter does require investigation as it involves not only the future of students but also the running of the

administration as the action of the Universities in setting up study centers under the distance education programme and awarding degrees may result

in serious consequences. In such a situation, it is not only the rights of the petitioners which have to be looked into but also the consequences which

the State and the Chancellor may have to face in future. The students have sought admission on the basis of some expectation as projected by the

Universities. The programme of distance education runs the risk of being struck down in case it is found by the Chancellor that the University did

not have the authority to run the said programme. On the other hand the action of the Universities could be upheld looking to the needs of

education and also if they substantially comply the provisions of law. In such a situation, the students also run the risk of the consequences of such

a situation. However, in these circumstances in view of the fact that the matter is yet to be decided by the Chancellor, it would be appropriate that

the students if they so desire may continue with the programme but the same shall be at their own risk and subject to any final decision being taken

by the Chancellor. The relief to the petitioner students, if any, could be considered only after the decision is rendered by the Chancellor.

25. So far as the Collaborators/Coordinators/Facilitators in Writ Petition Nos. 45357 of. 2005, 45170 of 2005 and 45362 of 2005 are

concerned, their continuance or non-continuance is also dependent on the decision of the Chancellor. A mere agreement with the University on the

basis whereof the said petitioners are claiming rights cannot confer a right better than that of the University itself. If the University was competent in

law to set up such a distance education centre, it is only then the petitioners could be stated to have some semblance of claim in respect of the

subject matter. They are mere agents under the agreement on behalf of the Universities to simply manage the so called education centre. Thus, they

cannot claim to have any independent right of their own as on date unless and until the matter is finally decided by the Chancellor. Accordingly, it.

would be open to the petitioners of these writ petitions either to retain the fees realised by them or remit it to the students, which shall be at their

own risk and subject, to any final decision to be taken by the Chancellor in this regard.

26. In the aforesaid facts and circumstances, till the matter is decided by the Chancellor finally, no penal action need be taken against the students

who are the petitioners before us or in the other writ petitions. It is expected that the Chancellor''s office shall now proceed without any further

delay to collect the entire material from the respective Vice-Chancellor of the Universities as per the notice dated 6.6.2005 and thereafter proceed

to complete the inquiry and place it before the Chancellor at the earliest. All the Vice Chancellors of the Universities are also expected to fully and

unhesitatingly co-operate with the Chancellor in providing, the information as desired by the Chancellor in the notice dated 16.4.2005 as also the

notice dated 6.6,2005 and all such further information that may be desirable in this regard. The speed and alacrity with which the Chancellor''s

office had proceeded in coming to the grips of the problem within a couple of months, is commendable and at the same time it is observed that the

Chancellor''s office shall with the same zeal and endeavor proceed to deal with the issues objectively by taking steps and measures to enable His

Excellency the Chancellor to take a decision individually in respect of each University after identifying its individual problem and deal with its own

objections and recording reasons therefor. The decision has to be taken by the Chancellor within the para meters of 1973 Universities Act and

1958 Act read with the relevant laws on the issue as may be applicable from time to time. The consideration is expected to be an exhaustive

consideration and not a peripheral one.

27. Having dealt with the immediate problem which has arisen before the Court, it is desirable that the attention of the State Government should

also be drawn to this problem faced by the students and the educational institutions alike. The Court has been informed across the Bar that an "

approximate 8 Lac students have cleared the intermediate examination conducted by the U.P. Board this year and simultaneously an approximate

number of 4 Lac students from Uttar Pradesh have cleared the Central Board of secondary education Class 12 examination. This army of over a

million students would now be on the search for a seat in some educational institution or a comfortable berth in some course like the distance

education programme. Judicial notice can be taken of the fact that various Universities throughout the country are running the distance education

programme. It is the same trend, which is sought to be introduced in the State of Uttar Pradesh. This trend is for the simple reason that there is a

very limited accommodation available for these teeming millions who have passed out their Class 12 examinations. It has been stated by the

learned Counsel for the University that the budgetary allocation for running the course by the University still continue to be the same as they were

several years ago. There is no change or addition in the budgetary allocation as a result whereof it has become difficult for the Universities to

survive in the present existing financial conditions. This is also one of the reasons disclosed in the pleadings as also in the brochures for undertaking

such courses under the distance education programme. It has been stated that these programmes are also a resource for refurbishing the

deteriorating financial status of the Universities. In addition to this, the running of such programmes, is also providing for a place to a student who

has not been able to find admission as a regular student. This according to students as well as according to the Universities adds to the advantage

of . Universities and the Society at large. Prohibiting the running of such courses would be shutting out a large number of genuine students who

otherwise are entitled to pursue higher studies. It can be argued that higher education cannot be claimed as a matter of right but the other side of

the coin is that such an opportunity to an individual to enable him to register further growth cannot be denied in case the same can be made

available through a valid programme run by the University. Inaction or apathy by the State Agency should not defeat the expectation of a citizen of

this State who desires to achieve higher education by pursuing a legitimate course. The learned Addl. Advocate General rightly pointed out, that

the problem of setting up of an education centre unauthorisedly, has to be countered at its very inception and it has to be prevented from becoming

an atrocious and growing menace. The facts and figures as given by him and which was also place before the Chancellor justify such an

apprehension. The off campus study centres set up by the respective Universities presently in question are as follows :

Number of Off-campus study centres of various Universities

1. Veer Bahadur Singh Purvanchal University, Jaunpur ...809

2. Bundelkhand University, Jhansi ...60

3. Ch. Charan Singh University, Meerut ...70

4. M.J.P. Rohilkhand University, Bareilly ...56

5. Narendra Dev University of Agriculture and Technology Kumar Ganj, 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

28. The brochures which have been brought on record and which have also been supplied by the learned Addl. Advocate General issued by the

respective Universities indicate the various diverse courses of study with which these Universities are purporting to deal. It is the duty of the State

Government to examine as to whether such courses are desirable to be run by the University looking to the availability of infrastructure and also the

resources of the University. The learned Addl. Advocate General rightly suggested that higher education should be within the reach of those who

are talented in order to enable them to develop their own faculties, which they possess by reason of their competence. He has rightly suggested

that centres of higher education should not be mere selling counters of degrees and diplomas. The learned Addl. Advocate General invited the

attention of the Court towards the fee structure indicated in the brochures, which demonstrate that there is a definite sharing of funds between the

University and an education center. The brochures also indicate that these centres are being established in collaboration with some agency, which

according to learned Addl. Advocate General has neither any infrastructure nor any such resources. The learned Addl. Advocate General on the

basis of the instructions received stated that these education centres have been set up in the same fashion as the Universities have been set up

which became subject matter of scrutiny by the apex Court in the case of Professor Yoshpal v. State of Chhatisgarh, 2005 AIR SCW 1168. The

learned Addl. Advocate General took the Court to the various paragraphs of the judgment to emphasise as to what distance

education/correspondence course meant and that the Universities are expected to examine on the same footing the infrastructure and resources

before allowing a distance education centre to be set up, that too only after framing relevant Statutes and Ordinances in this regard. This according

to Shri Agarwal is required to ensure that no such situation is created as was the apprehension expressed by the apex Court in the case of Prof.

Yashpal (supra) in para 39 of the said judgment.

29. The aforesaid competing interest of the students and the problems faced by the State as expressed herein above have also to be thrashed out

in order to provide a solution to this ever growing continuous problem. It is for the State Government to devise such methods so as to tackle this

problem, may be by way of appropriate legislation.

30. This educative process of higher education requires a whole some thinking keeping in view the fact that social influences are stimulating

education. The school population is on the increase every year and the demand for more variety in the content of instruction is making itself f . The

problem, therefore, has to be scientifically guided by social and local needs rather than the tradition alone. In the opinion of the Court it would not

be appropriate to simply stick to the existing legislation and not think any further. Education, like any other field, has to be developed with rhythm

and co-ordination keeping in view the influences created by distance education courses being run by the Universities throughout the country and

even abroad. Every newspaper is replete with advertisement of thus sort. This, however, has to be done by creating centres, which in reality are

centres of research and instruction and not mere ""shopping centres of degrees and diplomas"". Education involves the discovery of mental process

to achieve knowledge and higher education involves development of a particular discipline. This is because modern living conditions have started

modulating education in order to provide and cater to the need of the changes in Society. This may include provisions for technical, medical,

paramedical, management etc. facilities. The public at large, of a welfare state, looks up to the State agencies for making provisions for the said

need, as the State is the recognised official agent of education. At the same time, the State also cannot be expected to remain under an intolerable

strain of maintaining institutions. It is in order to relieve the State from this problem that the distance education centres and such other programmes

have to be necessarily introduced. It is not possible for the State to provide tax supported and publically controlled education to its teeming millions

with its limited financial resources. At the same time, the State Government has to regulate this machinery by stepping in and making appropriate

provisions either itself or by encouraging the Universities to regulate and maintain themselves with self financing schemes. There is no doubt that the

number of students going to Universities is increasing in immense proportions. In these days on account of crisis of identity, the bias of education is

shifting, in making the pupil an active co-operator in his own development and, therefore, a lateral expansion in the horizon of opportunity for

higher education is eminently desirable.

31. While examining such problems it is also appropriate that the standard of such extension programmes be regulated by the State, so as to give,

not only financial support but also an educational return, which may ultimately benefit the students in particular, and the Society at large. The

concept of a school coupled with a workshop without getting into daily physical contact with teachers appears to be one of the factors informing

distance education. It is a platform for a combination of simultaneously earning and learning. The courses offered should be such that are typical

and representative of community occupation. While doing so emphasis and balance, both have to be maintained according to standards set up by

expert bodies like the All India Council for Technical Education and such other bodies which are enjoined with the duty of maintaining arid co-

ordinating the standard of education. The State should endeavour to encourage the Universities, by not simply introducing courses, but by first

deliberating upon the needs and requirement of society as also of the University and then proceed to introduce a course or a programme. The

Universities are not expected to become trading and commercial centres of education. They have to remain centres of learning and development of

the personality of an individual for learning and earning both. In this process it is not necessary that they themselves should become a centre of

earning. The. State Government by taking appropriate steps can dispel the situation by issuing appropriate directions in this regard. The Court

would suggest that the State Government should set up a high powered Committee chaired by an Officer not below the rank of Principal

Secretary, Higher Education, with eminent educationists and scholars as its members to forthwith tackle this problem. The reason for the

suggestion is the problem at large in the backdrop of what has been stated herein above. -The problem is already at the doorsteps and a little

slackness in this regard would probably bring about a monstrous situation, which might entail serious constitutional problems. The Universities,

which are temples of academics, do not require simple policing, but also substantial support and encouragement by the State to meet such

situations. Shutting down the courses which are subject matter of these petitions is not a remedy as it inheres in it more problems. A solution is long

awaited and a swift and safe decision is immediately warranted.

32. The future of several thousand students who have already opted for the distance education programme, with which we are concerned in the

present writ petition, is already at stake. His Excellency, the Chancellor has rightly taken up the issue at the appropriate moment so that the

problem does not grow any further. But at the same time a solution has to be provided for keeping in view the needs of the students community at

large. This litigation, in my opinion, is not a simple Adversary litigation and is a genuine problem starting at the face of the public at large. History is

replete with such situations where the frustration of youth has ventilated itself through violence. The problem in the present case is more severe as

we are dealing with educated youth at the threshold of their future struggling to find a career for themselves. The problem cannot be sidelined and,

as such, the authorities of the respective Universities should also keep in mind that .no problems are created by drawing huge crowds of students

and compel them to undertake a litigative pursuit. It is for this reason that the Court has suggested for setting up of a high powered Committee to

redeem this situation. His Excellency-the Chancellor cannot travel beyond the field of legislation which governs the problem at hand. It is only the

State Government, which can proceed any further in order to minimise this problem and also can take up the matter with the Central Government

and such other agencies for putting at rest this situation and the turmoil that has been set into motion in the circumstances of this case. His

Excellency the Chancellor will also explore the possibilities of providing an opportunity to the Universities of rectifying any error in case found after

deliberation so that the running of distance education centres within the permissible limits of law are regularised.

33. The learned Addl. Advocate General Sri Sudhir Agarwal urged that the Universities had travelled beyond their territorial jurisdiction to set up

the distance education centres and are even otherwise not capable of offering the course of study as has been done by them because the

Universities do not have either the faculties or the infrastructure for offering conformant of such degrees and diplomas. This aspect shall also be

considered by the Chancellor while deciding the issues in view of the observations made herein above. The State Government in case it chooses to

take-up the aforesaid issue as suggested by the Court, it would be appropriate that the matter is co-ordinated with all the agencies which are

associated with the limb of maintaining standards of higher education. The State Government shall endeavour to undertake and complete such an

exercise as expeditiously as possible and should not wait for any direction from this Court or for that matter for any judicial intervention.

34. In view of the aforesaid observations and keeping in view the seriousness of the nature of the present litigation, it is hereby required that his

Excellency the Chancellor will proceed with the matter as per the letter dated 6.6.2005 and take a decision in the matter as expeditiously as

possible preferably within a period of 6 weeks from today. The Vice-Chancellors of the respective Universities are directed to co-operate with the

Chancellor and submit whatever material is required for consideration by the Chancellor as soon as possible without any further delay.

35. The directions issued by the Chancellor in the impugned order shall attain finality only after fresh orders are passed as directed herein above

and no penal action shall be taken against the students of the study centres/co-ordinators who are the petitioners before this Court till then. His

Excellency-the Chancellor shall proceed to decide the matter and it is expected that the decision shall be taken by a speaking and reasoned order

in respect of individual Universities in the light of the observations made herein above. The orders impugned shall be subject to the orders passed

by His Excellency the Chancellor hereinafter.

36. A copy of this order shall be made available free of costs to the learned Addl. Advocate General to be forwarded to the State Government as

well as the Chancellor''s office for appropriate action.

37. With the aforesaid observations and directions, all the writ petitions are disposed of.