

Anupam Sharma and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-06-2009

Reported in : RLW2009(1)Raj790

Judge : Prem Shanker Asopa, J.

Appellant : Anupam Sharma and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

ORDER

WHEREAS there has arisen an urgent need for the Nims University Rajasthan, Jaipur to exercise its powers and perform Its functions pursuant to Section 5 of the Nims University Rajasthan, Jaipur A ct, 2008 in respect of the admissions to the programmes of professional study being conducted by the NIMS Institutions imparting Medical and Dental Education and other allied programmes of study being conducted, by NIMS Institutions of Indian Medical Trust, Jaipur.

AND WHEREAS special provisions are required to be made to enable the Nims University Rajasthan, Jaipur to remove difficulties in admitting the students to the said courses conducted by the NIMS Institutions of Indian Medical Trust, Jaipur.

Now, therefore, to facilitate the functioning of the Nims University, Rajasthan, Jaipur, the Government of The State of Rajasthan does hereby notify that:

(1) The programmes of the studies of all the batches of Medical (M.B.B.S.), Dental (B.D.S.) and other professional courses are hereby transferred from NIMS Institutions of Indian Medical Trust to the Nims University Rajasthan, Jaipur by terminating their affiliation from the Rajasthan University of Health Sciences, Jaipur.

(2) the enrolment of the students for the study to the aforesaid courses, and test for their admission to the first year of the aforesaid courses, will be made by the NIMS UNIVERSITY subject to the following stipulations:

i) The said programmes of study shall hereinafter be deemed to be conducted by the NIMS University, Rajasthan, Jaipur subject to such Statutes, Ordinances and Regulations, as the said University may establish from time to time,

ii) The said students shall be deemed to be the students of the Nims University Rajasthan, Jaipur till completion of their respective programmes in accordance with the Statutes, Ordinances and Regulations of the said University; and

iii) The said University will not charge additional fee of any type from the students who are already enrolled during the earlier sessions. The Nims University Rajasthan, Jaipur is hereby authorised to take any action as it may deem appropriate, to give effect to this order. By order,

Sd/-

(Atul Kumar Garg)

Pr. Secretary, Hr. Education

University of Rajasthan Act. 1946

Section 4A The University shall have the following powers, namely:

(1) to (4)....

(4A) to admit colleges and institutions to the privileges of the University and to withdraw such privileges;

(5) to (15)....

Section 32. The affiliated colleges shall be such as may after the commencement of this Act, be recognised by the Syndicate in accordance with this Act and Statutes, but shall include all colleges recognised at the commencement of this Act as colleges of the University so long as such recognition continues.

Ordinance 83 of the University of Rajasthan

Ordinance 83. A student shall be recognised as member of a college as soon as he has been accepted by the Principal and has paid the college fees. Ordinance 92 of the University of Rajasthan

Ordinance 92. The application for enrolment together with the enrolment fee and the migration certificate from the University/Board concerned (wherever necessary) shall be submitted by a college student through the Principal of the college concerned so as to reach the Registrar by the 1st of September in the academic year in which he first joins an affiliated college and by a private candidate directly to the Registrar along with the application form for the examination so as to reach him by the 15th September in the year preceding in which he takes his first examination in the University. Candidates migrating from the Board of Secondary Examination, Rajasthan shall not be required to produce the migration certificate.

Students seeking admission to a college affiliated to the University and private candidates seeking admission to an examination of the University after having been admitted as members of another University incorporated by any law for the time being in force, will not be enrolled unless their applications for enrolment are accompanied by a migration certificate from the previous University.

Candidates who are enrolled after the date fixed under this Ordinance on account of late submission of application or the fee or both or for want of a Migration Certificate shall be required to pay a further fee of Rs. 3/- in each case.

Candidates who fail to get themselves enrolled even on payment of a late fee of Rs.3/- upto 1st December may be enrolled on payment of a special late fee of Rs. 25/- upto 31st January, after which the admission will automatically stand cancelled and the candidate shall not be permitted to sit for any of the next ensuing examinations of the University and no refund of any fee paid by the candidate till then will be permissible.

Notes: - (1) The last dates for submission of applications for enrolment by the students of correspondence studies will be the same as for college students. If, however, the students of a particular correspondence course are examined along with the non-collegiate candidates, then in that case the last dates shall be the same as prescribed above for non-collegiate candidates.

(2) In the case of (i) students admitted to the Medical Colleges, and (ii) students having been declared supplementary admitted provisionally to the next higher class in the beginning of the session under the provisions of Order 198 and subsequently declared successful at the supplementary examinations, the last date for submission of application for enrolment shall be 15th October without late fee and 1st December with a late fee of Rs. 3/-.

Ordinance 143 of the University of Rajasthan

Ordinance 143. Every candidate for an examination of the University shall, except when exempted by any of the Ordinances, be enrolled as a member of an affiliated college before entering upon the course prescribed for such examination and should have undergone a regular course of study at that college. Rajasthan University of Health Sciences Act. 2005

Section 6 Jurisdiction.- (1) Notwithstanding anything contained in any other law for the time being in force, the jurisdiction of the Rajasthan University of Health Sciences shall extend to all the Medical, Dental, Pharmacy and Nursing Colleges, Imparting education in these disciplines and any other disciplines of health sciences within the State of Rajasthan and also to such other constituent affiliated or autonomous colleges, institutes, institutions within the State of Rajasthan as may be specified by notification in the Official Gazette, by the State Government.

(2) the State Government may by order in writing-

(a) require any Institute, institution or college within the territorial limits of the University to terminate, with effect from such date as may be specified in the order, its association with, or its admission to the privileges of any other University incorporated by law to such extent as may be considered necessary and proper, or

(b) exclude to such extent as may be considered necessary and proper from association with or from admission to the privileges of the University constituted by this Act any institute, institution or college specified in the order which in the opinion of the State Government, is required to be self governing or to be, associated with or admitted to the privileges of any other University or body.

(3) The State Government may in consultation with the University, by notification published in the Official Gazette, enumerate any Government college situated in the jurisdiction of the University to be a constituent college of the University. The land, buildings, laboratories, equipments, books and any other properties of such college shall then vest in the University and the officers, teachers and employees of such college, after being found suitable through screening and on fulfilling such terms and conditions as may be laid down In the notification, shall be deemed to be the officers, teachers or as the case may be employees of the University.

S.O. No. 208 and 209

S.O. 208

Consequent upon promulgation of the Rajasthan University of Health Sciences Act, 2005 (act No. 1 of 2005), the State Government hereby orders that:

All medical and dental colleges and institutions notified vide this department Notification No. F.27(41)ME/Gr.I/91 Pt.I dated 22.09.2006 affiliated with the University of Rajasthan Jaipur and Rajasthan Technical University, Kota shall be deemed to have been temporarily affiliated with the Rajasthan University of Health Sciences, Jaipur with effect from 01.10.2006 with the same state of affiliation in which they were affiliated with the University of Rajasthan and, Rajasthan

Technical University, Jaipur prior to termination of their affiliation. The terms and conditions regarding affiliation of medical and dental colleges and institutions with the University of Rajasthan and Rajasthan Technical University shall stand automatically modified/amended as per enactment of the Rajasthan University of Health Sciences Act. All such colleges and institutions shall seek affiliation as per provisions of the said act. The Rajasthan University of Health Sciences will conduct examinations and declare results for students enrolled in various courses in all the colleges and institutions affiliated to it.

S.O. 209

In exercise of the powers conferred by Sub-section (2) of Section 6 of the Rajasthan University of Health Sciences Act, 2005 (Act No. 1 of 2005), the State Government hereby terminates the territorial jurisdiction of University of Rajasthan over the Medical and Dental Colleges and Institutions specified in column No. 2 of the following table for the purposes of operation of the said Act, with effect from 01.10.2006, namely:

TABLE A. S. No. Names of Government Medical and Dental Colleges-- -----B. S. No. Names of Private Medical Colleges

S. No.	Names of Government Medical and Dental Colleges	S. No.	Names of Private Medical Colleges
1	Mahatma Gandhi National Institute of Medical Sciences, Sitapura Industrial Area, Jaipur	1	Mahatma Gandhi National Institute of Medical Sciences, Sitapura Industrial Area, Jaipur
2	National Institute of Medical Sciences, Jaipur	2	National Institute of Medical Sciences (NIMS), College of Nursing Shobha Nagar, Jaipur (B.Sc. Nursing)
3	Delhi National Highway, Jaipur	3	Nims University Rajasthan, Jaipur

C. S. No. Names of Private Dental Colleges-- ----D. S. No. Names of Government Nursing Colleges-- ----E. S. No. Names of Private Nursing/Pharmacy/Physiotherapy Institutions

S. No.	Names of Private Nursing/Pharmacy/Physiotherapy Institutions
1	Mahatma Gandhi National Institute of Medical Sciences, RIICO Institutional Area, Sitapura, Jaipur. (B.Sc. Nursing)
2	National Institute of Medical Sciences (NIMS), College of Nursing Shobha Nagar, Jaipur (B.Sc. Nursing)

Nims University Rajasthan, Jaipur Act. 2008

Section 1

1. Short title, extent and commencement. - (1) This Act may be called the Nims University Rajasthan, Jaipur Act, 2008.

(2)....

(3) It shall be deemed to have come into force on and from 19th January, 2008.

Section 2

(2) Definitions.- In this Act, unless the context otherwise requires,-

(a) to (q)....

(r) 'regulating body' means a body established or constituted by or under any law for the time being In force laying down norms and conditions for ensuring academic standards of higher education, such as UGC, AICTE, NCTE, MQ, PCI, NAAC, ICAR, DEC, CSIR etc. and includes the State Government;

(s) to (u)....

(v) 'Statutes', 'Ordinances' and 'Regulations' mean respectively, the Statutes, Ordinances and Regulations of the University made under this Act;

(w) to (za)....

Section 3

3. Incorporation.- (1)....

(2) The movable and Immovable property specified in the Schedule I shall be vested in the University and the Sponsoring Body shall, immediately after commencement of this Act, take steps for such vesting.

(3) and (4)....

Section 4

4. The objects of the University.- The objects of the University shall be to undertake research and studies in the disciplines specified in Schedule II and such other disciplines as the University may with the prior approval of the State Government, determine from time to time and to achieve excellence and Impart and disseminate knowledge in the said disciplines.

Section 5

5. Powers and functions of the University.- The University shall have the following powers and functions, namely:

(a)....

(b) to grant, subject to such conditions as the University may determine, diplomas or certificates, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(e) to (m)....

(n) to determine standards for admission into the University which may include examination, evaluation or any other method of testing;

(o) to (w)....

(x) to ensure that the standard of degrees, diplomas, certificates and other academic distinctions are not lower than those laid down by AICTE, NCTE, UGC, MCI.PCI and other similar bodies established by or under any law for the time being in force for the regulation of education'

(y) to (z)....

Section 7

7. No power of affiliation.- The University shall have no power to affiliate or otherwise admit to its privileges any other institution.

Section 11

11. Officers of the University.- The following shall be the officers of the University, namely:

(i) the Chancellor;

(ii) the Vice-chancellor;

(iii) the Pro-Vice-chancellor;

(iv) the Provost;

(v) the Proctor;

(vi) the Deans of Faculties;

(vii) the Registrar;

(viii) the Chief Finance and Accounts Officer; and

(ix) such other officers as may be declared by the Statutes to be the officers of the University.

Section 13

13. The Vice chancellor:

(1) to (5)....

(6) If, in the opinion of the Vice-chancellor, any decision of any authority of the University is outside the powers conferred by this Act or Statutes, Ordinances, Regulations, or rules made thereunder or is likely to be prejudicial to the interests of the University, he shall direct the concerned authority to revise its decision within fifteen days from the date of its decision and in case the authority refuses or fails to revise such decision, then such matter shall be referred to the Chancellor and his decision thereon shall be final.

(7) and (8)....

Section 22

22. The Board of Management.- (1) The Board of Management of the University shall consist of the following, namely:

(a) to (c)....

(d) one expert of management or information technology from outside the University, nominated by the Chancellor; (e) to (g)....

(2) The Board of Management shall be the principal executive body of the University. All the movable and Immovable property of the University shall vest In the Board of Management. It shall have the following powers, namely:

(a) to provide general superintendence and directions and to control the functioning of the University by using all such powers as are provided by this Act or the Statutes, Ordinances, Regulations or rules made thereunder;

(b) to (e)....

(f) such other powers as may be prescribed by the Statutes.

(3) to (4)....

Section 23

23. The Academic Council-

(1) and (2)....

(3) The Academic Council shall be the principal academic body of the University and shall, subject to the provisions of this Act and the rules, Regulations, Statutes or Ordinances, made thereunder, co-ordinate and exercise general supervision over the academic policies of the University.

(4)....

Section 29

29. The Statutes.- (1) Subject to the provisions of this Act, the Statutes of the University may provide for all or any of the following matters, namely:

(a) to (j).....

(k), provisions regarding the policy of admissions, including regulation of reservation of seats;

(l) to (u)....

(2) The Statutes of the University shall be made by the Board of Management and shall be submitted to the State Government for its approval.

(3) The State Government shall consider the Statutes, submitted by the University and shall give its approval thereon within two months from the date of its receipt with such modifications, If any, as It may deem necessary.

(4) The University shall communicate its agreement to the Statutes as approved by the State Government, and If it desires not to give effect to any or all of the modifications made by the State Government under Sub-section (3), It may give reasons therefor and after considering such reason, the State Government may Or may not accept the suggestions made by the University.

(5) The State Government shall publish the Statutes, as finally approved by it, in the Official Gazette, and thereafter, the statutes shall come into force from the date of such publication.

Section 30

30. The Ordinances. - (1) Subject to the provisions of this Act or Statutes made thereunder, the Ordinances may provide for all or any of the following matters, namely:

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for the degrees, diplomas and certificates of the University;

(c) the award of the degrees, diplomas, certificates and other academic distinctions, the minimum qualifications for the same and the measures to be taken relating to the granting and obtaining of the same.

(d)....

(e) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(f) to (k)....

(2) The Ordinances of the University shall be made by the Academic Council which after being approved by the Board of Management, shall be submitted to the State Government for its approval.

(3) The State Government shall consider the Ordinances submitted under Sub-section (2) within two months from the date of their receipt and shall either approve them or give suggestions for modifications therein.

(4) The Academic Council shall either modify the Ordinances incorporating the suggestion of the State Government or give reasons for not incorporating any of the suggestions made by the State Government, and shall return the Ordinances along with such reasons, if any, to the State Government and on receipt of the same, the State Government shall consider the comments of the Academic Council and shall approve the Ordinances of the University with or without such modifications.

Section 31

31. Regulations. - The authorities of the University may, subject to the prior approval of the Board of Management, make regulations, consistent with this Act and the rules, Statutes and the Ordinances made thereunder, for the conduct of their own business and that of the committees appointed by them.

Section 34

34. Examinations. - At the beginning of each academic session and in any case not later than 30th of August of every calendar year, the University shall prepare and publish a schedule of examinations for each and every course conducted by it and shall strictly, adhere to the schedule.

Explanation.- 'Schedule of Examination' means a table giving details about the time, day and date of the commencement of each paper which is a part of a scheme of examinations and shall also include the details about the practical examinations:

Provided that if, for any reason whatsoever, the University has been unable to follow this Schedule, it shall, as soon as practicable, submit a report to the State Government incorporating the reasons for making a departure from the published schedule. The Government may, thereon issue such directions as it may deem fit for the compliance of the schedule.

Section 35

35. Declaration of results.- (1) The University shall strive to declare the results of every examination conducted by it within thirty days from the last date of the examination for that particular course and shall in any case declare the results latest within forty-five days from such date:

Provided that if, for any reason whatsoever, the University is unable to finally declare the results of any examination within the aforesaid period of forty-five days, it shall submit a report incorporating the reasons for such delay to the State Government. The State Government may, thereon issue such directions as it may deem fit.

(2) No examination or the results of an examination shall be held invalid only for the reasons that the University has not followed the time schedule as stipulated in Section 34 or, as the case may be, in Section 35.

Section 38

38. University to follow rules, regulations, norms, etc. of the regulating bodies. - Notwithstanding anything contained in this Act, the University shall be bound to comply with all the rules, regulations, norms, etc. of the regulating bodies and provide all such facilities and assistance to such bodies as are required by them to discharge their duties and carry out their functions.

Section 41

41. Powers of the State Government to inspect the University. - (1) For the purpose of ascertaining the standards of teaching, examination and research or any other matter relating to the University, the State Government may cause an inspection, to be made in such manner as may be prescribed, by such person or persons as it may deem fit.

(2) The State Government shall communicate to the University its recommendations in regard to the result of such inspection for corrective action. The University shall adopt such corrective measures and make efforts so as to ensure the compliance of the recommendations.

(3) If the University has failed to comply with the recommendations made under Sub-section (2) within a reasonable time, the State Government may give such directions as it may deem fit for such compliance.

Section 42

42. Powers of the State Government to call for information. - (1) The State Government may call for information from the University relating to its working, functions, achievements, standard of teaching, examination and research or any other matters as it may consider necessary to judge the efficiency of the University in such form and within such time as may be prescribed by rules.

(2) The University shall be bound to furnish the information as required by the State Government under Sub-section (1) within the prescribed time.

Section 44

44. Special powers of the State Government in certain circumstances. - (1) If it appears to the State Government that the University has contravened any of the provisions of this Act or the rules, Statutes or Ordinances made thereunder or has violated any of the directions issued by it under this Act or has ceased to carry out any undertakings given by it to the State Government or a situation of financial mismanagement or mal-administration has arisen in the University, it shall issue

notice requiring the University to show cause within forty-five days as to why an order of its liquidation should not be made.

(2) If the State Government, on receipt of reply of the University on the notice issued under Sub-section (1), is satisfied that there is a prima facie case of contravening any of the provisions of this Act or the rules, Statutes or Ordinances made thereunder or of violating directions issued by it under this Act or of ceasing to carry out the undertakings given by it or of financial mismanagement or mal-administration, it shall make an order of such enquiry as it may consider necessary.

(3) to (9)....

Section 45

45. Power to make rules. - (1) The State Government may by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any such rules or resolves that any such rules should not be made, such rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

Section 46

46. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order under this section shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, shall be laid before the house of the State Legislature.

Section 47

47. The Act to have overriding effect. - The provisions of this Act and the rules, Statutes, Ordinances made thereunder shall have effect notwithstanding anything to the contrary contained in any other law, for the time being in force, relating to the matters in respect of which the State Legislature has exclusive power to make laws.

Section 48

48. Repeal and savings. - (1) The Nims University Rajasthan, Jaipur Ordinance, 2007 (Ordinance No. 1j of 2008) is hereby repealed.

(2) Notwithstanding such repeal, all things done, actions taken or orders made under the said Ordinance shall be deemed to have been done, taken or made under this Act.

Indian Medical Council Act. 1956

Section 10B(1)

10B. Non-recognition of medical qualifications in certain cases. - (1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

Section 11(1)

11, Recognition of medical qualifications granted by Universities or medical institutions in India. - (1) The medical qualifications granted by any University or

medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to Include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

22. A bare reading of the aforesaid provisions Of the Act of 2008 would reveal that the very functioning of the University is to be regulated by framing of the statute, ordinance, regulations with the approval of the State Government. In the instant case, the record was called by the Court on 5.12.2008 and the same was produced wherein the title of the file has been referred as 'Migration of the Students to the NIMS University' and further the Ordinance framed by the NIMS University Under Section 30(e) of the Act of 2008 was pending for approval of the State Government. In Para No. 13/N there is reference of Page 47/C relating to receipt of the letter from the Chairman of the Indian Medical Trust, Jaipur (which is the sponsoring body of the NIMS Medical College) of transferring the courses run by the NIMS Institution under the RUHS and vide Para No. 19/N the opinion of the Law Department has been sought for issuing administrative order which culminated in passing the impugned order dated 5.5.2008. Thereafter, there is note sheet dated 8.5.2008 at para 22/N of receipt of the Ordinance framed under Section 30(1)(e) for approval of the State Government Under Section 30(2) of the Act of 2008. Paras 13/N, 19/N and 22/N are reproduced below:

Para 13/N

Kindly peruse at 47/C, the letter received from the Chairman, Indian Medical Trust, Jaipur vide which request has been made to pass an order to transfer courses run by NIMS Institutions under the Indian Medical Trust from the Rajasthan University of Health Sciences, Jaipur.

Para 19/N

19- fof/k foHkkx us ppkZ esa dgk Fkk fd pwafd fo/kku ds vuqlkj dk;Zokgh djus ds dksbZ dfBukbZ ugh gS vr% ,d lk/kkj.k iz'kklfud vkns'k iz'kklfud foHkkx }kjk tkjh fd;k tkuk gS A fof/k foHkkx dk rdZ Fkk fd pwafd fo'o fo|ky; vf/kfu;e rFkk ifj;kstuk fjiKS ZV esa iwoZ esa py jgs egkfo|ky; ,oa ikB~;dze dk mYys[k ugh gS vr% dksbZ oS/kkfud dk;Zokgh visf{kr ugh gS A iz'kklfud funsZ'k }kjk iwoZ Nk=ks dks fuel fo'ofu|ky; dk fgLlk cuk;s tkus gsrq vkns'k gLrk{kjFkZ izLrqr g SA

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Issued on 5.5.08(56-57/C)

PARA 22/N

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22- d`i;k dqy lfpo fuel ;wfu- jktLFkku t;iqj ls izklr i= dk lk`- 105@lh ij voyksdu djs ftlds lkFk vf/kfu;e dh /kkjk 301e ds rgr fo'ofu|ky; ds vkWfMZusal layXu dj fHktok;s x;s gS tks lk`- 106@lh ls 132@lh ij layXu g SA ,DV dh /kkjk 302 esa vkfMZusal jkT; ljdkj ds vuqeksnu gsrq fHktokus dk izko/kku gS vr% vuqefr gks rks izklr vkWfMZUksal fof/k foHkkx dks jk; gsrq fHktok fn;s tkos A fopkFkZ@vkns'kkFkZ izLrqr g SA

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23. Subsequently, there is no note sheet of approval of the aforesaid Ordinance framed under Section 30(e) of the Act of 2008 relating to conduct of examination including the terms and conditions, manner of appointment and the duties of the examining bodies.

24. In the instant case, the stand has been taken by the NIMS authorities that the Ordinance stands adopted from the University of Rajasthan through the RUHS with which the NIMS Medical College was earlier affiliated is also not correct as there is no such order/letter on record. Even for adoption, the same procedure of framing the ordinance/statute is to be followed but there is nothing on record that any letter of adoption has been written by the competent authority of the University to the State Government for approval, which is the mandatory requirement of the provisions of the Act of 2008.

25. Apart from the above, there is no provision of incorporation of some of the provisions of the Act of 2005 nor any provision for issuing transitional order in the Act of 2008 till the University frame its own statute, ordinance, etc. nor the State Government had framed any rules. The impugned order dated 5.5.2008 has been issued by the State Government to meet out the urgent need for the NIMS University Rajasthan, Jaipur to exercise its powers and perform its functions pursuant to Section 5 of the Act of 2008 without considering the fact of pending approval of the Ordinance. Even if the said order dated 5.5.2008 is said to have been issued in exercise of powers Under Section 46 of the Act of 2008 to remove the difficulties, then also, its publication in the official gazette is necessary, which has not been made, therefore, the order dated 5.5.2008 is without jurisdiction. The order dated 1.4.2008 is absolutely without jurisdiction as the Principal and Controller has not been notified as an officer of the University Under Section 11 to exercise any power under the Act of 2008, therefore, he has no right to ask the students to be enrolled with the NIMS University. Otherwise also, the Principal is having control over the college only and not over the affairs of the NIMS University and further, it is surprising that the process of enrolment and migration was initiated vide impugned order dated 1.4.2008 by the Principal prior to the Issuance of order dated 5.5.2008 and sending the Ordinance for approval to the State Government, as would be evident from the reference of the same in the note sheet dated 8.5.2008.

26. The law is well settled on the issue that when a particular thing is to be done in a particular manner, then the same mode is to be followed and all other modes are prohibited. Therefore, even if the Ordinances and Statutes are said to be adopted,

then for the same also, the approval of the State Government is necessary which is lacking in the instant case.

27. The continuous correspondence for recognition of the degree and further submission of consumption of long time in recognition of the degree of RUHS is of no consequence as start of an University without right of conferring recognised degree is a wrong practice which is required to be not repeated and further, the correction has to be made in the same by allowing the NIMS University to start functioning and taking examination of Final Year MBBS or any other year, of the students admitted prior to 19.1.2008 after recognition of the degree. There is no provision of automatic recognition under Section 10B(1) of the Act of 1956, of the qualification/degree of the University unless specified in the Schedule-I Under Section 11 of the Act of 1956 and both the provisions are to be read together in the matter of recognition of degree, otherwise the provision of consultation with the Medical Council of India for recognition of the degree for the purpose of inclusion in Schedule-I attached to Section 11 of the Act of 1956 would become redundant. The degree to be granted by the NIMS University has not been included in the aforesaid Schedule-I Under Section 10B(1) of the Act of 1956 so far.

28. The aforesaid aspect of the matter which relates to the conduct of examination, declaration of result and conferment of the recognised degree by the University is very important aspect of the matter. Unless the degree granted by the University is recognised, the same would be a piece of paper only till it is recognised. The Supreme Court in Prof. Yashpal and Anr. v. State of Chhattisgarh and Ors. : AIR 2005 SC2026 has emphasised for the recognition and value of the degree. Paras 33, 34, 37, 38 and 39 of the aforesaid judgment read as under:

33. The consistent and settled view of this Court, therefore, is that inspite 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 coordination 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.

34. In order to achieve the aforesaid purpose, the Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short 'UGC Act') is Illustrative and consequently it is being reproduced below:

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 Government has also become more urgent on this account.

37. It is important to note that in view of Section 22 of UGC Act, the right of conferring or granting degree can be exercised only by University or an institution deemed to be University Under Section 3 of the aforesaid Act or institution especially empowered by an Act of Parliament to confer or grant degrees. What is a 'degree' and what it connotes is not given in the UGC Act but the meaning of the word as given in 'dictionaries and standard books is as under:

Webster's Third New International Dictionary:

1. a title conferred upon students by a college, university, or professional school upon completion of a unified programme of study carrying a specified minimum of credits, passing of certain examinations, and often completion of a thesis or other independent research project.

2. a grade or class of membership attained in a ritualistic order or society denoting a stage of proficiency often after a set ordeal or examination.

Wharton's Law Lexicon:

the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University.

Chambers's Twentieth Century Dictionary:

a mark of distinction conferred by universities, whether earned by examination or granted as a mark of honour.' P. Ramanatha Aiyar Law Lexicon (2nd Edn):

a mark of distinction conferred upon a student for proficiency in some art or science; University diploma of specified proficiency.

Encyclopedia Americana

'Degree' - the title conferred by a college or university, signifying that a certain step or grade has been attained in an area of learning. The award of a diploma conferring the bachelor's degree marks completion of undergraduate study. The master's and doctor's degrees reward graduate study. Other degrees constitute evidence of preparation for professional work # the M.D. (doctor of medicine) for example.

In the 20th century, however, the M.A. is granted in American universities and in those of England and the Commonwealth of Nations (apart from Oxford and Cambridge) on the basis of study beyond the B.A. and the presentation (usually) of a thesis. An exception is Scotland, where the M.A. has been the first degree conferred in all sue universities ever since their founding. The bachelor of philosophy and bachelor of letters degrees are given for work beyond the M-A.

The New Encyclopedia Britannica

'Degree' - in education, any of several titles conferred by colleges and universities to indicate the extent of academic achievement. The hierarchy of decrees, dating from the 13th century, once resembled the medieval guild system. In the United

States and Great Britain, the modern gradation of academic degrees is usually bachelor (or baccalaureate), master, and doctor. With some exceptions, intermediate degrees, such as those of bachelor and master, have been abandoned in the universities of continental Europe.

38. 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, postgraduate 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.

39. 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 under Section 22 of 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 under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that 'degree' 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 v. Union of India* : [1968]1SCR833 .

29. The State Government has completely ignored this aspect of the matter that the degree granted by the RUHS is recognised whereas the degree now would be granted in this year by the NIMS University would not be recognised decree which may mar the future prospects of the students.

30. In view of the aforesaid discussion of facts and legal position, my conclusions are as under:

(a) As per the Scheme of the Act of 2008 and the pari materia Act of the Universities, the Statutes, Ordinances and Regulations are the soul of the University Act. The Act of 2008 is unworkable unless the Statutes, Ordinances and Regulations are framed for exercise of the power as well as the manner in which the power is to be exercised by the officer/authority of the University. The said statute, ordinance and regulation which are yet to be framed under the provisions of the Act of 2008 relating to admission, examination, enrolment and migration are required to be approved by the State Government and the said approval is mandatory as would be evident from the various provisions of the Act of 2008 reproduced hereinabove.

(b) The Statute, Ordinance, Regulations also deal's with the powers to be exercised by the officers/authorities of the University as defined under Section 11 of the Act of 2008 but the same are not as yet either framed or adopted, therefore, the NIMS University has no power to enrol/migrate the students and to take the examination and further declare result of the same.

(c) The Principal of the NIMS medical college of the NIMS University has not been notified as an officer of the University, and further the said order has been issued prior to the passing of the order dated 5.5.2008 therefore, he has no right to ask the students to fill the enrolment forms. Therefore, the impugned order dated 1.4.2008 is without jurisdiction. Otherwise also, it is the job of the office of the Registrar of the University. Equally, the order of the State Govt. dated 5.5.2008 is

without jurisdiction as the Ordinance is pending for approval of the State Government. No such type of order can be issued and enforced by the State Government under Section 46 of the Act of 2008 without publishing the same in the official gazette.

(d) The degree(s) granted by the NIMS University are yet to be included in Schedule-I attached to the Act of 1956, therefore, the degree(s) to be granted by the NIMS University will be un-recognised.

(e) That the past practice followed while establishing the RUHS without recognition of the degree will not set a right precedent to be followed in future. The law is well settled that only the right practice supported by law is to be followed.

(f) That in Rajasthan the admissions in the medical Colleges are made through RPMT and only the vacant seats after exhausting the RPMT list, are to be filled from the list of PC-PMT, therefore, the students who have come through the common selection process in the entire State of Rajasthan would be discriminated on account of the fact of grant of un-recognised degree by the' NIMS University and grant of recognised degree by the RUHS.

(g) The impugned orders dated 1.4.2008 (Anx.4) and 5.5.2008 (Anx.1) in Writ Petition No. 5946/2008, even if are to be taken as administrative orders, then also, the same are neither in the interest of students nor in the interest of the University nor in the interest of the State Government nor in public interest till the degree is recognised.

31. Resultantly, my answer to the questions is as under:

(1) The impugned orders dated 1.4.2008 and 5.5.2008 are without jurisdiction.

(2) As per the Scheme of the Act of 2008, the statutes ordinances regulations are required to be framed by the NIMS University with the approval of the State Govt. or adopted or saved, of the earlier University by approving the adoption order and enacting law for the saving clause for making the NIMS University functional, therefore, there was no question of termination of affiliation and transfer of the students as well as their migration and enrolment in the NIMS University.

(3) The State Legislature has failed to incorporate any transitional provision and there is no letter/order of adoption of the statute, ordinance of the University of Rajasthan with the approval of the State Government which permits termination of affiliation, transfer/migration of the students and their enrolment. Under the provisions of the Act of 2005 after issuing S.O. No. 208 and 209 Under Section 6 of the Act of 2005 and publishing the same in the official gazette the aforesaid termination of affiliation and transfer of enrolment to RUHS was made.

32. In view of the aforesaid conclusions, there is no need to deal with the arguments of Mr. Gopal Garg and Mr. Ashok Gaur and the same are left open.

Accordingly-

(i) all the aforesaid writ petitions are allowed, the impugned orders dated 1.4.2008 and 5.5.2008 are quashed and set aside;

(ii) RUHS is directed to hold the examination of all the students admitted in the NIMS medical college prior to 19.1.2008 i.e. the date of enforcement of the Act of 2008 till the qualification/degree of MBBS is recognised and the statute, ordinance and regulations are framed/adopted from the University of Rajasthan with the approval of the State Government as per the Act of 2008 for enrolment/migration/transfer of the students to the new University; and

(iii) the RUHS will continue to hold the examinations and declare result of the students of MBBS who have been admitted prior to 19.1.2008 till the degree of MBBS of NIMS University is recognised.

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