B.N. Devadas Vs. University Grants Commission Rep. by Its Secretary and ors.

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Court : Chennai

Decided On : Oct-01-2007

Reported in : 2008(1)CTC644; (2008)3MLJ325

Judge : A.P. Shah, C.J. and ;P. Jyothimani, J.

Acts : Andhra Pradesh (Telungana Area) Public Societies Registration Act, 1350F; Institute of Chartered Financial Analyst India University, Tripura Act, 2004; Institute of Chartered Financial Analysts of India University Sikkim Act, 2004; Institute of Chartered Financial Analysts of India University Act, 2005; University Grants Commission Act, 1956 - Sections 2, 5, 6 and 22; Maharashtra Educational Institutions (Transfer of management) Act, 1976; All India Council for Technical Education Act; National Council for Teacher Education Act; Bar Council of India Act; Private Universities Act; Companies Act, 1956 - Sections 25; Constitution of India - Article 246; University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003; Chhattisg

Appeal No. : Writ Petition Nos. 30664 of 2006 and 28389 of 2007

Appellant : B.N. Devadas;b.R. Hari

Respondent : University Grants Commission Rep. by Its Secretary and ors.;all India Council for Technical Educatio

Advocate for Def. : P.R. Gopinathan, Adv. for R.1, ;N. Muralikumaran, Adv. for R.2, ;D. Krishnakumar, Adv. for R.3, ;Rajakalifulla, Government Pleader for R.4 and R.5, ;Manisundara Gopal, Adv. for ;G.M. Mani Associates f

Advocate for Pet/Ap. : P. Jayaraman, Sr. Counsel in WP. No. 30664/06 and ;K.M. Vijayan, Sr. Counsel for ;La Law in WP. 28389/07

Judgement :
Acts/Rules/Orders:

Andhra Pradesh (Telungana Area) Public Societies Registration Act, 1350F; Institute of Chartered Financial Analyst India University, Tripura Act, 2004; Institute of Chartered Financial Analysts of India University Sikkim Act, 2004; Institute of Chartered Financial Analysts of India University Act, 2005; University Grants Commission Act, 1956 - Sections 2, 5, 6 and 22; Maharashtra Educational Institutions (Transfer of management) Act, 1976; All India Council for Technical Education Act; National Council for Teacher Education Act; Bar Council of India Act; Private Universities Act; Companies Act, 1956 - Section 25; Constitution of India - Article 246; University Grants Commission (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003; Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Santhodhan Adhiniyam, 2002; Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) (Sanshodhan) Adhiniyam, 2004

Cases Referred:

Prof. Yashpal v. State of Chhattisgarh (2005) 5 SCC 420; Rai University v. State of Chhattisgarh (2005) 7 SCC 330; Dinesh D. Kamat v. The State of Maharastra and Ors. PIL. No. 117 of 2005

P. Jyothimani, J.

1. The prayer in the writ petition which is filed as Public Interest Litigation is for directing the respondents 1 to 9 to initiate appropriate action against the respondents 10 and 11 for closure of the 22 ICFAI National College, ICFAI Business School conducting full time academic programs and ICFAI Study Centre

for 3600 Flexible Education, constituted by the 10th and 11th respondent and offering program, granting degree by the 11th respondent throughout State of Tamil Nadu and safeguard the interest of students who were pursuing their studies with the 10th and 11th respondents.

2. The institute of Chartered Financial Analysts of India (ICFAI) Society which is the 10th respondent in the writ petition is a Society registered under Andhra Pradesh (Telungana Area) Public Societies Registration Act, and established in the year 1984.

3. ICFAI Private University was established under the Uttaranchal State Act, 2003 (Act No. 16/03) with the following objects:

To establish and incorporate an University in the State, with emphasis on providing high quality and industry relevant education in the areas of Applied Financial Management, General Management, Applied Sciences and Technology, sponsored by the Institute of Chartered Financial Analysts of India (ICFAI), Hydrabad, Andhra Pradesh and to provide for matters connected therewith or incidental thereto.

4. Section 3(1) of the Act reads as follows:

ICFAI shall have the right to establish the University in accordance with the provisions of this Act

Therefore it is clear that the 10th respondent is the Sponsoring body enabled by the said Act, 16 of 2003 of Uttaranchal State to establish a University under the Act. The term, 'University' is defined under the said Act in Section 2(p) to mean the ICFAI University, Dehradun. Therefore, the 10th respondent Society, which is a Sponsoring body has a right to establish ICFAI University, Dehradun. It is stated that pursuant to the said enabling provision, the 10th respondent Society has established ICFAI University at Dehradun which is the 11th respondent University and the same has been recognised by Uttaranchal State.

5. It is also relevant that 10th respondent ICFAI is defined under Section 2(g) of the Act as 'ICFAI' to mean an Institute of Chartered Financial Analysts of India, the

sponsoring body of ICFAI University which is a registered Society at Hyderabad, Andhra Pradesh. Some of the provisions of the said Act which are relevant are extracted as follows:

Section 2(d): 'Distance Education System' means the system of imparting education through any means of information technology and communication such as multimedia, broadcasting, telecasting, online over internet, other interactive methods, e-mail, internet, computer, interactive talk back, e-learning, correspondence course, seminar, contact program or a combination of any two or more of such means

Section 2(m): 'Study Centre' means a centre established, maintained or recognised by the University for the purpose of advising, counseling or for rendering any other assistance required by the students.

Section 2(b): 'Constituent College' means a college or institution maintained by the University.

Section 2(j): 'Regional Center' means a center established or maintained by the University for the purpose of co-ordinating and supervising the work of Study Centres in any region and for performing such other functions as may be conferred on such centre by the Board of Management.

Section-5: The University shall be self-financing and shall neither make a demand nor, shall be entitled to any grant in aid or any other financial assistance from the State Government or any other body or corporation owned or controlled by the State Government.

Section-6: The University may have constituent colleges, Regional Centers and Study Centres but shall have no power to admit any other college or institution to the privileges of affiliation.

6. One of the objects of the University as enshrined under Section 7(b) of the said Act is as under:

To establish a campus in the State of Uttaranchal, and to have study centers at different places in India and other countries.

As found in Section 8(1)(a) and (b), the powers of the University include,

8(1)(a): to establish, maintain and recognise such Regional Centres and Study Centres as may be determined by the University from time to time in the manner laid down by the statutes.

8(1)(b): to carry out all such other activities as may be necessary or feasible in furtherance of the object of the University.

7. A similar Act was passed by the State of Tripura called, the Institute of Chartered Financial Analyst India University, Tripura Act, 2004. Likewise, the State of Sikkim has also passed the Institute of Chartered Financial Analysts of India University Sikkim Act, 2004. Likewise, the State of Mizoram has also passed the Mizoram Institute of Chartered Financial Analysts of India University (Mizoram) Ordinance, 2005 and the Meghalaya Government has passed the Institute of Chartered Financial Analysts of India University Act, 2005 with similar provisions enabling the 10th respondent Society to establish University.

8. We are also informed that the Government of Chattisgarh has passed a similar Act called, the Chhattisgarh Niji Kshetra Vishwavidhyalaya (SthapanaAur Viniyaman) Santhodhan Adhiniyam, 2002 (Act 2 of 2002) and Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Sanshodhan Adhiniyam, 2004 by which private Universities were established. There, a question arose as to whether the Act which has not established an University, but conferring legal status of a University to a project report is sustainable. Taking into consideration Section 22 of UGC Act, 1956, while striking down the said Act as ultra vires, a three Judge Bench of the Supreme Court in Prof. Yashpal v. State of Chhattisgarh : AIR 2005 SC2026 held as follows:

44. As shown earlier, a university is a whole body of teachers and scholars engaged at a particular place in giving and receiving instruction in higher branches of learning; and as such persons associated together as a society or corporate

body, with definite organisation and acknowledged powers and privileges and forming an institution for promotion of education in higher or more important branches of learning and also the colleges, building and other property belonging to such body. Other necessary attributes of a university are plurality of teachers teaching more than one higher faculties and other facilities for imparting instruction and research, provision for residence and must have certain standard of instruction providing for graduate and postgraduate levels of study. It presupposes existence of a campus, classrooms, lecture theatres, libraries, laboratories, offices, besides some playgrounds and also sports facility for overall development of personality of the students. However, under the provisions of the impugned Act, a proposal which is on paper and merely gives some kind of a plan or scheme to be done in future is notified as a university. When the Constitution has conferred power on the State to legislate on incorporation of university, any Act providing for establishment of the university must make such provisions that only an institution in the sense of university as it is generally understood with all the infrastructural facilities, where teaching and research on a wide range of subjects and of a particular level are actually done, acquires the status of a university. The impugned Act does not at all establish a university, yet by issuing a notification conferring the legal status of a university to a project report (which is on paper only) bestows upon it a right to confer a degree, which right it gets by virtue of Section 22 of the UGC Act. The manner in which a university is notified by issuance of a gazette notification under Section 5 and conferment of a juristic personality under Section 6 of the Act is clearly contrary to the constitutional scheme and is not contemplated by Article 246 of the Constitution.

9. The Supreme Court in a subsequent judgment in Rai University v. State of Chhattisgarh : AIR 2005 SC3859 by way of clarification to the judgment in Prof.Yashpal v. State of Chhattisgarh : AIR 2005 SC2026 in respect of law course conducted by ICFAI University, held that neither can directions be issued (1) to State Governments concerned (of Chhattisgarh and Andhra Pradesh) to ensure affiliation of students studying in such institutions, nor (2) to university concerned having territorial jurisdiction in the area in which the institutes concerned are situate, to affiliate such institutes, nor (3) to State Government of Maharashtra to appoint an Administrator under Maharashtra Educational Institutions (Transfer of

management) Act 1976 (13 of 1976) such institution(s) situate in Maharashtra and it is for the institutions to make appropriate applications to the University/State Government concerned, and also dismissing the application regarding 5 year law course in paras 23 and 24 held as follows:

23. This application has been moved by certain students of the erstwhile ICFAI University (Respondent 73 to the writ petition), who claim to have been studying in a five-year law course. The first prayer made in the application is that a clarification may be issued that the direction contained in paras 45 and 46 of the judgment would apply to all the existing students who are studying in the off campus law school of the erstwhile ICFAI University at Hyderabad. For the reasons given in Special Leave Petition (Civil) No. 10506 of 2005, such a prayer cannot be granted.

24. In the alternative, the learned Counsel has submitted that the law school of the erstwhile ICFAI University may be affiliated to any university in Andhra Pradesh. It is not possible to issue such a direction as the State of Andhra Pradesh or any university in the said State were not even a party to the writ petition. It is always open to the law school to move an appropriate application seeking affiliation to a university which has jurisdiction and is empowered under the relevant Rules and Regulations and other provisions of law applicable to the said university. The application is accordingly dismissed.

10. The contention of the petitioner in this writ petition is that respondents 10 and 11 are issuing advertisements in newspapers in various names, including ICFAI National College, ICFAI Business School, ICFAI Distance Education/360 Flexible Education, ICFAI University, stating that they are offering full-time course in M.B.A., M.C.A., M.S., programmes in the State of Tamil Nadu and also issuing prospectus disclosing that ICFAI University under the said specific Act confers degree of Bachelor, Master and Doctorate level and are recognised by the University Grants Commission Act and other authorities created for maintaining and co-ordinating standard of education.

11. According to the petitioner, the ICFAI National College prospectus reveals that 23 National Colleges have been established throughout the State of Tamil Nadu

and Pondicherry and in various parts of Tamil Nadu, including Chennai, Coimbatore, Madurai, Ooty, Salem, Thanjavur, Tiruchirappalli, Tirunelveli, Dindigul, Erode, Hosur, Kancheepuram, Karur, Nagercoil, Pollachi, Rajapalayam, Tiruppur, Tuticorin and Vellore. That apart, various Business Schools are created by the 10th respondent Society.

12. According to the petitioner, various courses conducted either by the 10th respondent or 11th respondent within the State of Tamil Nadu are in violation of the judgements of the Supreme Court, including : AIR 2005 SC2026 (cited supra) and against the provisions of the University Grants Commission Act, AICTE Act and NCTE Act, etc.

13. The University Grants Commission has filed a counter affidavit, which states that in furtherance of Act 16/2003 of the Uttaranchal State, the 10th respondent Society has constituted the 11th respondent ICFAI University and the State Government by its notification dated 23.09.2003 has accorded sanction to the establishment of the said University and ultimately, the University Grants Commission has included the 11th respondent University in the list of Universities mentioned by the UGC under Section 2(f) of the UGC Act, 1956.

14. It is also stated by the UGC that, so far as Study Centres and Off Campus Centres of the 11th respondent University is concerned, the same has not been approved by the UGC and it is their case that the private University established under the State Act shall operate ordinarily within the boundary of the State concerned and after development of the main campus, in exceptional circumstances, such Universities may be permitted to open off campus centres, off shore campuses and Study Centres after five years of its coming into existence subject to various conditions. The 11th respondent University was established on 23.09.2003 and only after lapse of five years, the question of permitting it to have the Study Centres etc. outside the State of Uttaranchal will arise.

15. The third respondent, Distance Education Council, New Delhi in the counter affidavit has stated that the 11th respondent University, which is a private University is not authorised to impart education through distance mode of learning at present because the norms and guidelines issued by the UGC provide that any

new University cannot impart education through distance mode of learning within the period of 5 years from the date of inception. It is also stated that even after completion of 5 years, no Institute can impart education through distance mode without getting permission from the Distance Education Council and the third respondent Distance Education Council has not granted any such permission to the 10th or 11th respondent.

16. The 8th respondent, Bar Council of India has filed its counter stating that no off campus study centres for the Law course can be opened in any other part of the Country except within the University campus of ICFAI University, viz., State of Uttranchal and the Bar Council of India has not granted such permission. It is also the further case of the Bar Council of India that those law degrees conferred by the 11th respondent are not in conformity with the educational qualifications prescribed for enrolment as Advocates for any State Bar Council and that the Bar Council of India cannot have any control over the ICFAI University, Dehradun.

17. The 10th respondent in the counter affidavit has stated that it is a non-profitable charitable Organisation rendering education by launching the programme of Chartered Financial Analysts (CFA) in 1985, based on the public need for competent Financial Analysts and Investment Managers and these programmes have been receiving overwhelming response from the cross section of students, professionals and working executives and recognised by the Universities and Government Institutions, quoting that Bharathidasan University, Tiruchirappalli, Tamil Nadu has issued a letter of approval, the National Law School, Bangalore has entered into a Memorandum of Understanding with ICFAI whereby ICFAI would encourage its students to pursue the Masters in Business Law programmes, the Indira Gandhi National Open University, New Delhi and the Jawaharlal Nehru Technological University, Hyderabad have recognised the CFA qualification as equivalent to Master's Degree for admission to Specialisation Diplomas and Ph.D. Programmes, Reserve Bank of India, Unit Trust of India, National Bank for Agricultural and Rural Development, etc. have recognised and approved the CFA programme, apart from many other financial institutions.

17 (a). It is also the case of the 10th respondent that ICFAI also has an 'Earn-while-you-learn scheme', under which currently 750 students are benefited. It is their further case that the University offer a number of educational programmes in Finance, Banking, Insurance, Accounting, Law, Management, Information Technology, Arts, Commerce, Education and Science and Technology at Bachelor's and Master's levels on full-time campus and distance learning formats. According to them, currently there are over 50,000 students from different states pursuing various campus-based and distance learning programmes. It is also admitted by the 10th respondent that ICFAI has several constituent units, viz.,

. The ICFAI Business School

. The ICFAI National College

. The ICFAI Centre for Management Research

. The ICFAI Centre for Distance Education

. The ICFAI School of Human Resource Development

. The ICFAI Knowledge Centre

. The ICFAI Centre for Entrepreneurship Development

. The ICFAI Publications

. The ICFAI Education Lanka

. The ICFAI Institute for Management Teachers

. The ICFAI School of Financial Studies

. The ICFAI School of Information Technology

. The ICFAI Institute of Science & Technology

. The ICFAI School of Public Policy

. The Association of Certified Treasury Managers

. The Society of Certified Investment Bankers

. The Council for Portfolio Management and Research

. The Institute of Certified Risk & Insurance Managers

. The Society of Certified Public Accountants

. The Institute of Bank Management & Research

17 (b). It is also the case of the 10th respondent that the Board of Governors comprises of eminent persons in the field of Management, Industry, etc. and each University also consist of eminent academicians as Chancellors, Vice-Chancellors, etc. It is also specifically stated by the 10th respondent as follows:

47. The 10th respondent is a not for profit Education Society, regd. Under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350F. The 10th respondent initially launched the CFA programme and developed a new cadre of Finance Professionals in India. The 10th respondent has sponsored the private University in the State of Chattisgarh. The same ceased to exist in view of the judgment of the Supreme Court in Prof. Yashpal's case reported in : AIR 2005 SC2026 . The 10th respondent has also sponsored Universities in five different States, all of which Universities have been established under a separate enactments passed by the Legislature of respective States. The five Universities are located in State of Uttaranchal, Tripura, Sikkim, Meghalaya & Mizoram. The University Grants Commission vide its letter dt.22.07.2005, have included ICFAI University, Dehradun in the list of Universities under the Section 2(f) of UGC Act, 1956. These Universities confer degrees only within the territorial jurisdiction of their respective States and have no study centres, constituent colleges, off campus centres, etc. beyond the territory of the respective States. Therefore, there is no question of the 10th respondent's ill-design to exploit the unwary student community.17 (c). In respect of Distance Education Programme relating 360 Flexible Learning Programme, it is the case of the 10th respondent in the counter affidavit as follows:

52. The 360 Flexible Learning Programme offered by the 10th respondent is not a Distance Education Programme and thus is not violating the DEC Guidelines 2006, Bar Council of India Act & NCTE Act. The Flexible Learning Programme has been designed for the students who registered with ICFAI University, Dehradun to take its examinations as private candidates. It is in the nature of a tutorial class to help interested students.17 (d). It is also their case that no law prohibits either a University or a Private Educational Institution from conducting Distance Learning Programmes. It is also admitted that the 10th respondent has various branches for Flexible Education in various States as follows.

57. Since September, 2005 the 10th respondent has no such association with the ICFAI University Dehradun. From September, 2005 to March, 2006 the 10th respondent conducted the ICFAI Distance Education programs. The 10th respondent has from April, 2006 introduced a new program which is far more comprehensive and flexible than distance learning, called '360 Flexible Learning Program.' For this purpose, a constituent of this respondent, the ICFAI Centre for Flexible Education, based at Hyderabad, through the Branch Offices of this respondent located at several places around the country, is conducting the said '360 Flexible Learning Program'. Under this program, students appearing for the 11th respondent University's examination as private candidates take the advantage of the several flexible and optimal solutions provided by the ICFAI Centre for Flexible Education. The program is a unique one designed and developed to facilitate today's students in becoming well- educated, knowledgeable and thereby become achievers and leaders in various fields of business and financial activities. Students and working executives are encouraged to pursue the programs in a flexible manner customised to their convenience, thereby enhancing their career prospects.17 (e). It is their further case that 360 Flexible Learning Program is that of the 10th respondent and not that of 11th respondent University and the coaching offered in that regard is only by the 10th respondent. It is also their case that the 10th respondent is conducting such support programs for the students appearing as private candidates for the examinations of the 11th respondent University and according to them the coaching given by the 10th respondent in respect of Flexible Learning Program is treated as a private coaching to the students, who are given coaching for

appearing in the examination conducted by the 11th respondent University.

18. The 11th respondent University has also filed a counter affidavit in the line of the counter filed by the 10th respondent. It is also the specific case of the 11th respondent University that it has no study centre, constituent college outside the territorial jurisdiction of its State and the ICFAI National School, Business School are the constituents of the 10th respondent and not forming part of the 11th respondent University in the following words.

13. The contentions of the petitioner in paras 13, 14 and 15 relates to establishment of ICFAI University, Dehradun and its recognition and the Regulations of UGC under the Private Universities Act. There is no violation of UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, in view of the fact that the 11th respondent has no Study Centre, Constituent Colleges outside the territorial jurisdiction of its state and consequently the permission of the Visitor of the State Government as stipulated under ICFAI Act needs no compliance. The 11th respondent once again reiterates that ICFAI National School, ICFAI Business School are its constituent units of the 10th respondent herein. Further, there is no violation of the laws in the State of Tamil Nadu as stated above.

19. The ICFAI University, Tripura made as 12th respondent in the writ petition has also filed a counter affidavit in the same line.

20. Mr. Vijaynarayan, learned senior counsel appearing for the 10th respondent would also submit that, in fact under similar circumstance, the Government of Bombay has appointed a Seven Member Expert Committee headed by Dr. V.N. Gupehup as Chairman and the said Committee has studied in respect of unapproved/unauthorised Institutions operating in the State of Maharashtra and considering the present scenario of higher education in the country, has submitted a detailed report/representation to the Government and the same was recorded in the High Court of Judicature at Bombay in a Public Interest Litigation in PIL. No. 117 of 2005 (Dinesh D. Kamat v. The State of Maharastra and Ors.). The Expert Committee has found the present plight of the unauthorised institutions in the country in that detailed report, which reads as under:

1.4 Committee deliberated on the present scenario of higher education in the country and noted the following points:

1.4.1 The system of higher education is regulated at several levels in the country. At the All India level we have

(a) The university Grants Commission which regulates the Universities and deemed to be Universities.

(b) The All India Council for Technical Education which lays down norms and standards for and regulates the technical education.

(c) The Medical Council of India, the Dental Council of India and the Nursing Council of India which regulate education in the fields of medicine, and dentistry and nursing respectively.

1.4.2 We have similar bodies at the National level which regulate education and/or admission to the respective professional bodies. These include the Institute of Chartered Accountants of India, the Institute of Cost & Works Accountant of India, the Indian Institute of Bankers, the Bar Council of India, the Council of Architecture, Indian Institute of Materials Management, Navi Mumbai, and few others.

1.4.3 At the State level we have Universities set up under the State Legislation. These provide a variety of courses. In addition, we have Government agencies like the Directorate of Higher/Technical/Medical Education. We have statutory bodies like the State Board for Technical Education, the Center for Entrepreneurship Development and the Board for Vocational Education. All these bodies regulate the educational opportunities in the State in various filed.

1.4.4 In addition to the above institutions, we have means to provide education by the Distance Learning Mode. This is regulated at the National level by the Distance Learning Council of India. At the National level, we have Indira Gandhi National Open University offering variety of courses in the Distance Learning Mode. At the State level in Maharashtra, we have Yashwantrao Chavan Maharashtra Open University. In addition to this, several Universities in the country offer their formal degree and diploma courses also in the Distance Learning Mode using Study Centres for Contact Sessions.

1.4.5 In addition to these institutions and agencies, we have a number of other initiatives in providing education in society. In 1927, the Indian Merchants' Chamber stepped in to provide commercial education to make available competent staff to man their member-organisations. At that time there was only one commerce college in the country, i.e. Sydenham College of Commerce and Economics. This college produced annually a limited number of graduates who could man the managerial and supervisory cadre in the business houses. What industry needed, however, was people with knowledge and skills to work at lower levels in the organisation. The large number of diploma courses offered by the Chamber was able to fill the vacuum.

1.4.6 Recently, the Confederation of Indian industry has launched a similar initiative to provide educational updates to in-service managers sponsored by the employer. This Center is known as Naoroji Godrej Center of Excellence located at Vikhroli in Mumbai. The Center provides training at international level to improve managerial compentence of global level. If some knowledge and skills are not available within the country, the Center obtains the assistance of foreign trainers to groom Indian managers. This initiative has become very necessary as the world of business is now opened to international competition.

1.4.7 Another initiative we have noticed is the effort of the Indo-German Chamber of Commerce to expose the Indian managers working with organisations having German collaborations acquiring knowledge about the intricacies of business practices in Germany. With this training, the Indian Managers working for German Organisations, are able to effectively interact with their German counterparts.

1.4.8 Over the years, the needs of business and industry have grown. New types of expertise are required everyday by business houses. The conventional systems regulated by AICTE, MSBTE and traditional Universities are unable to cope up with this increasing demand. Besides this, these organisations/agencies tend to be too slow to react to industry needs. Therefore, the industry, along with the NGOs come in to bridge the gap. We see today this kind of initiative in the areas of

Retailing Call Center Management, Business Process Outsourcing, Travel & Tourism, Aviation Sector etc.

1.4.9 Despite all these opportunities available we have noticed that only 7% of the youth in the age group 17 to 23 are in the main stream of higher education in the country. In the U.S.A. The percentage is as high as 80%. The Central Government desires to increase this to 20%, but this is going to call for massive organisational and financial efforts. While India spends 3% of GDP on education, the United States spend about 7.4%. Again, the U.S.A. there is a lot of non-Govt. Private initiative in education. There are both accredited and unaccredited Universities in the U.S.A. and the student is given a chance.

1.4.10 In India while there is a huge demand for higher/vocational education, the system is unable to provide facilities to those seeking the opportunities. It is a sorry state that a student getting 50% marks in a qualifying examination manages to enter the portals of higher education while his less fortunate friend with 49.5% is denied the admission. This leads to frustration on account of lack of proper employment opportunities. If this frustration is not attended to youth could take up activities such as begging, stealing and other anti-social activities. They could even commit suicide. Therefore, there is a need to create educational opportunities outside the formal system that we have in this country today.

1.4.11 The National Knowledge Commission headed by Shri Sam Pitroda has commented that the education system in India is over-regulated. He calls for flexibility and greater freedom for the educationalists to operate. While we agree with this view, we are also of the opinion that the quality of education needs to be monitored so that the students are not given a raw deal by those who would like to commercialise education.

1.4.12 It is also necessary that agencies that provide knowledge and skills to enable the youth to gain employment give a proper account of themselves and not mislead prospective students by misleading advertisements. If the training imparted by them does not lead to the award of a recognised degree or diploma, the prospectus and every advertisement soliciting students must state so in unambiguous systems.

It was based on the said thorough study, the Expert Committee has made various recommendations to the State of Maharastra.

21. While the above writ petition was heard, another writ petition in W.P. No. 28389 of 2007 filed as Public Interest Litigation seeking direction to respondents 1 to 6 therein to take necessary regulatory and restrictive actions against the respondents 7 to 18 stating that the said respondents are offering programmes in Management course in direct contravention of the AICTE Act and are publishing advertisements in leading dailies all over the country canvassing students for admission. It is the further case of the petitioner that some of the institutions are located outside the State, but are having campuses in various States. This is in violation of the law laid down by the Supreme Court and none of the statutory bodies, including the University Grants Commission, Distance Education Council and AICTE are taking steps to enforce the law.

22. On behalf of the 12th respondent, viz., Great Lakes Institute of Management, Saidapet, Chennai 15, counter affidavit is filed. A reference to the counter affidavit shows that it is a Charitable Organisation licenced under Section 25 of the Indian Companies Act, 1956, formed not for profit. It is also admitted in the counter affidavit that the 12th respondent is conducting lectures for MBA., students and the Institute was founded by eminent philanthropists and leading industrialists of the Country. However, it is stated by the 12th respondent in the counter affidavit that it does not conduct or run any course of any foreign University or foreign institution and the entire curiculam and courses are designed and administered independently by the said respondent with the support and participation of leading foreign institutes such as, Illinois Institute of Technology, Chicago, Yale University - USA and Nanyang Technological University - Singapore etc. and according to the 12th respondent the course is not recognised by AICTE.

23. On behalf of the 14th respondent, Indian Institute of Planning & Management (IIPM) Chennai-8, it is brought to our notice that in respect of the said respondent the AICTE has issued a notice dated 23.01.2004 and ultimately passed an order on 20.06.2007 to defer any admission in MBA Course since the AICTE has not granted any approval.

24. Mr. T.V. Ramanujan, learned senior counsel appearing for the 14th respondent states that as against the said order of the AICTE, 14th respondent has already moved Delhi High Court by filing W.P.(Civil) No. 4630 of 2007 and the same is pending and the Delhi High Court has also stayed all further proceedings pursuant to the order of AICTE.

25. The learned Counsel appearing for the 16th respondent CFA Institute, Chennai 40, has also brought to our notice and produced the judgment delivered by the Delhi High Court dated 31.05.2007. It is seen that in respect of the 16th respondent also the AICTE has issued similar order dated 18.05.2007 and the same is challenged in the Delhi High court in W.P.(C). No. 4037 of 2007 and the said order of the AICTE has been stayed by order dated 31.05.2007 on certain conditions and the same is pending.

26. Further, a reference to the list of Institutes unapproved by the AICTE filed by the petitioner himself in the typed set of papers show that the 17th and 18th respondents, viz., Aptech Ltd., Chennai 86 and NIIT Ltd., Chennai 34, have not been shown among the institutes which are not approved by the AICTE.

27. In view of the above said factual position, we dismiss the writ petition in respect of respondents 14, 16, 17 and 18, viz., Indian Institute of Planning & Management (IIPM), CFA Institute, Aptech Ltd., and NIIT Ltd and the following orders are passed in respect of respondents 7 to 13 and respondent No. 15 in W.P. No. 28389 of 2007.,

28. In view of the above, certain factual findings are required for deciding the issues involved in the writ petition, they are:

(i) Whether the 11th respondent ICFAI University created under the 5 Acts stated above have their study centres, distance education system, regional centres, situated within the State of Tamil Nadu, if that is so, whether they are approved by the competent authorities like UGC, AICTE, NCTE, etc.

(ii) Whether ICFAI Business Schools (IBS) is conducting classes in the State of Tamil Nadu and conferring any degrees or acting as an Organ of ICFAI University within the State of Tamil Nadu;

(iii) Whether ICFAI National College (INC) are conducting classes to provide for MBA degree and other degrees or Diplomas in the State of Tamil Nadu and what is the effect of such classes conducted by INC on the 10th and 11th respondents;

(iv) What is the nature of Flexible Learning Programme conducted by the ICFAI University, viz., the 10th respondent within the State of Tamil Nadu and under what authority;

(v) What is the nature of fees collected from the students by the 10th or 11th respondents in respect of their various programs within the State of Tamil Nadu.

(vi) What are the nature of courses conducted by Respondents 7 to 13 and 15 in WP. No. 28389 of 2007, viz., D.B. Jain Institute of Business Management & Research, International Council for Management Studies, National Institute of Business Management, National Institute of Human Resource Development, NIFT-TEA Knitwear Fashion Institute, Great Lakes Institute of Management, RAI University and Stansfield School of Business within the State of Tamil Nadu and as to whether the said courses are approved by the statutory authorities concerned and the nature and fees collected in respect of various programs conducted by them.

29. In order to find out the above said various issues, which are pertinent to decide the points involved in the above Public Interest Litigation, we hereby appoint the following Fact Finding Committee, consisting of Experts, viz.,

(i) Justice K.P. Sivasubramaniam, Retired Judge of High Court as - Chairman and Convenor of the Committee;

(ii) Dr. Vasanthi Devi, Former Vice- Chancellor of Mother Therasa Univrsity as - Member;

(iii) Dr. P. Jagadeesan, Former Vice- Chancellor of Bharathidasan University, Trichy as - Member;

(iv) One of the Officers to be nominated by AICTE from its Regional Office as - Member;

(v) One of the Officers to be nominated by the University Grants Commission from its Regional Office as - Member;

(vi) One of the Officers to be nominated by the Distance Education Council as - Member;

(vii) The Secretary of Higher Education, Government of Tamilnadu as - Coordinator.

30. The Committee constituted above is directed to conduct enquiry and submit its report within a period of three months from the date of receipt of copy of the order.

Post after four months.