

Osmania University Teachers' Association

Vs

State of Andhra Pradesh and Another

Civil Appeals Nos. 1205-06 of 1987

(O. Chinnappa Reddy, M. H. Kania, K. Jagannatha Shetty JJ)

13.08.1987

JUDGMENT

JAGANNATHA SHETTY, J. -

1. This appeal on a certificate raises as short but an important question as to the constitutional validity of the Andhra Pradesh Commissionerate of Higher Education Act, 1986 (Act 26 of 1986) (called shortly "the Commissionerate Act"). The question is whether the enactment falls within Entry 66 List I or Entry 25 List III - Concurrent List of the Seventh Schedule to the Constitution. The High Court of Andhra Pradesh has upheld its validity by holding that the Act falls under the latter entry, but granted a certificate for leave to appeal to this Court Article 133(1) of the Constitution.
2. The said Act was enacted on the basis of the recommendations of a high power committee constituted by the State Government to study the higher education system in the State of Andhra Pradesh with special reference to its curricula, courses of study, finance and management. The Committee in its report submitted to the government on observed, inter alia, that there is no proper co-ordination and academic planning among the various bodies like Universities Directorate of Higher Education and University Grants Commission etc. There is no policy perspective in the development of higher education system. The Committee said that in order to streamline the general working and oversee the development of higher education in the State, there is need to constitute a Commission to advise the government in that matter.
3. The government appears to have accepted the said report of the Committee. That is obvious from the Preamble to the Commissionerate Act. It state that "Act is to provide for the constitution of a Commissionerate to advise the government in matters relating to Higher Education in the State and to oversee its development with perspective planning and for matters connected therewith and incidental thereto".
4. Section 2(e) defines "Higher Education" to mean intermediate education and education leading to a degree or post-graduate degree including professional and technical education.
5. Section 2(c) defines "Commissionerate" to mean the Andhra Pradesh Commissionerate of Higher Education constituted under sub-section (1) of Section 3. Thereunder, the Commissionerate has been constituted as a corporate body. The composition of the Commissionerate is provided under Section-4. The Commissionerate shall consist of Chairman, Vice-Chairman and not more than 10 members [Section 4(1)]. The Chairman and the Vice-Chairman shall be appointed by the government [Section 4(2)]. Of the ten members of the Commission, three are Secretaries to the government : Education

Secretary, Labour Secretary and Finance and Planning Secretary. Four of them shall be representing Professors and Vice-Chancellors of any of the Universities in the State. One shall represent industry and commerce, and another shall represent engineering or legal or medical education. The last one shall be a distinguished educationist. All these persons are to be appointed only by the government. The Chairman and Vice-Chairman shall be wholetime and salaried persons and their terms and conditions are provided under Section 5(1).

6. Section 9 gives overriding effect and power to the Commissionerate over all other authorities and bodies connected with the Higher Education in the State. Section 9(1) provides :

With effect on and from the constitution of the Commissionerate under Section 3 and notwithstanding anything contained in the Andhra Pradesh Intermediate Education Act, 1971, and the Andhra Pradesh Education Act, 1982, the Director of Higher Education, the Secretary, Board of Intermediate Education and the Secretary to the Board of Technical Education shall function under the administrative control of the Commissionerate.

7. Section 9(2) provides power to the government to appoint a Secretary to the Commissionerate. Rest of the officers and employees are to be appointed from time to time by the Commissionerate but with the previous approval of the government.

8. The central power of the Commissionerate has been located in Section 11. We may give the gist of it here. The Commissionerate shall.

- (i) evolve a perspective plan for the development of Higher Education in the State;
- (ii) monitor and evaluate the academic programmes in higher education and enforce accountability in the system;
- (iii) establish and develop resources centre for curriculum materials and continuing education of teachers;
- (iv) co-ordinate the academic activities of various institutions of higher education in the State;
- (v) undertake examination reforms;
- (vi) establish linkages between universities, industries and community development organisations;
- (vii) transfer teachers appointed in aided posts from one aided private college to another such college subject to such rules as may be made by the government in this behalf and generally encourage mobility of teachers; and
- (viii) perform any other functions necessary for the furtherance and maintenance of excellence in the standards of higher education in the State.

9. Section 11(2) provides :

Notwithstanding anything contained in any law relating to Universities in the State, the Board of

Intermediate Education Act, 1971 and the Andhra Pradesh Education Act, 1982, every University or college including a private college in the State shall obtain the prior approval of the Commissionerate in regard to -

- (i) creation of new post;
- (ii) financial management; and
- (iii) starting of new higher educational institutions.

10. Section 13 is another important section. It provides power for inspection for ascertaining the financial needs of a University or its standards of teaching, examination and research. The commissionerate shall communicate to the University its views in regard to the result of any such inspection and may, after ascertaining the opinion of the University, recommend to the University the action to be taken as a result of such inspection and the University shall comply with any such direction.

11. Section 16 states that the Commissionerate shall be guided by such directions issued by the government on questions of policy relating to State purposes or in case of any emergency as may be given to it by the government. Section 18 confers power to the government to make rules to carry out all or any of the purposes of the Act. Section 19 provides power to the Commissionerate to make regulations consistent with the Act and the rules made thereunder.

12. The sole contention of Dr. Chitale, learned counsel for the appellant is that the Commissionerate Act is just a duplicate of the University Grants Commission Act ("the UGC Act") and the State has no legislative power at all to enact it, since it squarely falls under Entry 66 List I. But the contention of Mr. Krishnamurthy Iyer learned counsel for the State of Andhra Pradesh is to the contrary. While supporting the judgment of the High Court, he submitted that the enactment in pith and substance falls within Entry 25 of List III and not under Entry 66 of List I of the Seventh Schedule. For proper consideration of the contentions we may set out these two entries :

Entry 66 List I :

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

Entry 25 List III :

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.

13. Till January 3, 1977, education was a State subject under Entry 11 in List II. By the Forty-second Amendment Act, 1976, Entry 11 was deleted and it was placed in the Concurrent List by enlarging the Entry 25, as set out above.

14. Entry 25 List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entire 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands

of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been distributed between List I and List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.

16. In *Kerala State Electricity Board v. India Aluminium Co.* ((1976) 1 SCR 552 : (1976) 1 SCC 466) this Court said : (SCC p. 475, para 5)

The power of Parliament to legislate with respect to matters included in List I is supreme notwithstanding anything contained in clauses (3) (of Article 254 of the Constitution) [again leaving out of consideration the provisions of clause (2) (of Article 254 of the Constitution)]. Now what is the meaning of the words "notwithstanding" in clauses (1) and "subject to" in clause (3) ? They mean that where an entry is in general terms in List II and part of that entry is in specific terms in List I, the entry in List I takes effect notwithstanding the entry in List II. This is also on the principle that the 'special' excludes the 'general' and the general entry in List II is subject to the special entry in List I.

17. We may now refer to some of the decisions dealing with the interaction of Entry 66 List I and entry 25 List III. In *Gujarat University, Ahmedabad v. Krishna Ranganath* (1963 Supp 1 SCR 112 : AIR 1963 SC 703) Shah, J. speaking for the majority view of the Constitution Bench observed :

Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State legislatures. In *Hingir-Rampur Coal Co, Ltd. v. State of Orissa* ((1961) 2 SCR 537 : AIR 1961 SC 459) this Court in considering the import of the expression "subject to" used in an entry in List II, in relation to an entry in List I observed that to the extent of the restriction imposed by the use of the expression "subject to" in an entry in List II, the power is taken away from the State legislature. Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must lie with the Parliament.

18. This decision turned on the interpretation of Section 4(27) of Gujarat University Act, and it was held that the University has no power to prescribe Gujarati or Hindi as exclusive medium of instruction in higher education. The principles enunciated in the *Krishna Ranganath* case (1963 Supp 1 SCR 112 : AIR 1963 SC 703) have been reiterated in *D. A.V. College, Bhatinda v. State of Punjab* (1971 Supp SCR 677 : (1971) 2 SCC 261).

19. The power of the State to prescribe certain norms for admission to colleges came for consideration before this Court in *R. Chitrlekha v. State of Mysore* ((1964) 6 SCR 368 : AIR 1964

SC 1823) where Subba Rao, J., as he then was, observed :

... that if the law made by the States by virtue of Entry 11 of List 11 of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in such case.

20. The learned Judge, however, upheld the impugned scheme of the State in that case for selection of students to colleges maintained by the State since it was found that that scheme only prescribed criteria for making admissions to colleges from among students who secured the minimum qualifying marks prescribed by the University. It was held that the scheme did not encroach upon the field covered by Entry 66 List I of the Seventh Schedule to the Constitution. Similar was the view expressed by this Court in *State of Andhra Pradesh v. Lavu Narendranath* ((1971) 3 SCR 699 : (1971) 1 SCC 607 : AIR 1971 SC 2560) and in *Dr. Ambesh Kumar v. Principal, LLRM College, Meerut* (AIR 1987 SC 400 : 1986 Supp SCC 543).

21. What do we have in the present case ? There is no scheme for admission to colleges. There is a corporate body established under the State enactment with powers supreme in regard to all matters pertaining to higher education. To mention a few, the Commissionerate constituted thereunder shall evolve a perspective plan for the development of higher education in the State. It must monitor and evaluate of the academic programmes. It must co-ordinate the academic activities of various institutions and universities. It must oversee the development and streamline the higher education in the entire State. It shall perform all functions necessary for the furtherance and maintenance of excellence in the standards of higher education in the State. It also controls the entire fund meant for the universities including grants given by the Central Government for higher education.

22. Since it was argued that both these enactments are in parimateria, it will be useful to compare the UGC Act with the corresponding provisions of the Commissionerate Act by keeping them side by side;

UGC Act, 1956 The Commissioners Act1. Statement of Objects and reasons :The Constitution of India vests In order to bring a changeParliament with exclusive authority in the higher education system inin regard to "co-ordination and the State so as to make the coursesdetermination of standards in insti- of study more relevant to the needstutions for higher education or of the modern society and toresearch and scientific and technical provide opportunities of earning andinstitutions". It is obvious that learning simultaneously at collegeneither co-ordination nor deter- level to all the students in themination of standards is possible State, a four man committee wasunless the Central Government has appointed in February 1986 by thesome voice in the determination State, Government to study theof standards of teaching and higher education system in theexamination in Universities, both State with special reference toand new curricula and course of studies, Finance and Management in the Higher Education system.2. It is, therefore, proposed to The Committee in its reportestablish a University Grants submitted to Government observedCommission

as a corporate body that there is no proper which will inquire into the financial co-ordination and academic planning needs of University and allocate among the various bodies like and disburse grants to Universities university; the Directorate offer any general or specified purpose.. Higher Education and the The Commission will act as an expert University Grants Commission body to advise the Central Government etc. and there is no policy on problems connected with the perspective in the development co-ordination of facilities and of the Higher Education system maintenance of standards in in the State and in order Universities. to streamline the general working The Commission, in consultation of the Higher Education system with the University concerned, will in the State the Committee also have the power to cause an suggested to constitute a commission inspection or inquiry to be made to advise the Government in matters of any university established by relating to higher education in law in India and to advise the the State and to oversee its university on any matter which development. The Government have has been the subject of an inquiry examined the above recommendations or inspection. The Commission and suggestions and decided to shall also advice, whenever such constitute a Commissionerate of advise is sought, on the establishment Higher Education. of new Universities. * * * Section 4. Establishment of the Section 3. Constitution of Commission. - (1) With effect from Commissionerate of Higher Education. such date as the Central Government - (1) The government may, by may, by notification in the official notification, and with effect gazette, appoint, there shall be on and from such date as may be established a Commission by the specified therein constitute a name of the University Grants Commissionerate for the purpose Commission. of this Act to be called the Andhra Pradesh Commissionerate of Higher Education. (2) The said Commission shall (2) (a) The Commissionerate shall be a body corporate having be a body corporate having perpetual succession and a perpetual succession and a common commensal, and shall by the said seal and shall sue and be sued by name sue and be sued. the said corporate name. (b) * * * Section 5. Composition of the Section 4. Composition of the Commission. - (1) The Commission Commissionerate - (1) The shall consist of - Commissionerate shall consist of :- (i) a Chairman (i) a Chairman (ii) a Vice-Chairman, and (ii) a Vice-Chairman, and (iii) ten other members, (iii) not more than ten members to be appointed by the to be appointed by the Central Government. State Government Section 9. Temporary association Section 8. Temporary association of persons with the Commission for of persons with the Commissionerate particular purposes. - for particular purpose. (Both these sections are similar) Section 12. Functions of the Section 11. Powers and Functions Commission. - It shall be the general of the Commissionerate. - It shall duty of the Commission to take, in be the general duty of the consultation with the Universities Commissionerate to : or other bodies concerned, all such (a) evolve a perspective steps as it may think fit for the plan for the development promotion and co-ordination of of higher education in the University Education and for the State; determination and maintenance of standards of teaching, examination (b) administer and release and research in Universities, and grants-in-aid to Universities for the purpose of performing its and private colleges functions under this Act, the in the State and report Commission may- the same to the government. (c) * * * (a) inquire into the financial needs of Universities; (b) allocate and disburse, (d) monitor and evaluate the out of the Fund of the academic programmes in Commission, grants to higher education and

Universities established or enforce accountability incorporated by or under a in the system. Central Act for the maintenance and development of such Universit- (e) * * * ies or for any other general or specified purpose. (f) * * *(c) allocate and disburse, out (g) co-ordinate the academic of the Fund of the Commission, activities of various such grants to other Universities institutions of higher as it may deem necessary or education in the State. appropriate for the development of such Universities or for the * * * maintenance, or development, or both, of any specified activities of such Universities or for any other general of specified purpose (p) perform any other recommended to any University functions necessary to the measure necessary for the the furtherance improvement of University Education and maintenance of and advise the University upon the excellence in the action to be taken for the purpose standards of of implementing such recommendations. higher education in the State. Section 13. Inspection. - (1) For the Section 13. Inspection. - (1) purpose of ascertaining the financial For the purpose of ascertaining needs of a University or its standard the financial needs of a of teaching, examination and research, University or its standards of the Commission may, after consultation teaching, examination and with the University, cause an research, the Commissionerate inspection of any department or may, after consultation with departments thereof to be made in the University, cause an such manner as may be prescribed inspection of any department and by such person or persons as it or departments thereof to be may direct. made in such manner as may be prescribed and by such person or persons as it may direct.(2) The Commission shall communicate (2) The Commissionerate shallto the University the date on which any communicate to the Universityinspection under sub-section (1) is to date on which any inspection under sub-section (1) shall be made and the University shall be made and the University shallentitled to be associated with the entitled to be associated withinspection in such manner as may be the inspection in such mannerprescribed. as may be prescribed. * * * (3) The Commissionerate shall communicate to the University its views in regard to the result of any such inspection and may, after ascertaining the opinion of the University, recommend to the University, the action to be as a result of such inspection, and the University shall comply with any such direction.Section 16. Fund of the Commission. Section 12. Fund of the Com-- (1) The Commission shall have its missionerate. - (1) The Commis-own Fund and all sums which may, sionerate shall have its ownfrom time to time, be paid to it by fund consisting of the grantsthe Central Government and all the from governments voted by thereceipts of the Commission (including Legislative Assembly of theany sum which any State Government or State towards grants to Univer-any other authority or person may sities, and aided Junior andhand over to the Commission) shall Degree Colleges and grantsbe carried to the Fund and all paymentsby the Commission shall be made therefrom. received from Central Government for higher education.(2) All moneys belonging to the Fund (2) All moneys belonging to theshall be deposited in such banks or fund shall be deposited in suchinvested in such manner as may, banks or invested in such mannersubject to the approval of the Central as may, subject to the approvalGovernment, be decided by the Commission. of the government be decided by the Commissionerate.(3) The Commission may spend such (3) The Commissionerate may spendsums as it thinks fit for performing such sums as it thinks fit forits functions under this Act, and such performing its functions undersums shall be treated as expenditure this Act, and such sums shallpayable out of the Funds of the Commission. treated as expenditure

payable out of the fund of the Commissionerate. Section 18. Annual report. - Section 14. Annual report. - The Commission shall prepare, once The Commissionerate shall prepare every year, in such form at such time as may be once in every year, in such form prescribed, an annual report giving and at such time as may be prescribed a true and full account of its activities during the previous year; and copies true and full account of its thereof shall be forwarded to the activities during the previous Central Government and the Government year, and copies thereof shall cause the same to be laid before be forwarded to the government both Houses of Parliament. and the government shall cause the same to be laid before the Legislative Assembly of the State Section 19. Accounts and Audit. Section 15. Accounts and Audit. Section 20. Directions by the Section 16. Directions by the Central Government. - (1) In the Government. - (1) In the discharge of its functions under of its functions under this Act, this Act, the Commission shall be the Commissionerate shall be guided by such directions on guided by such directions on questions of policy relating to question of policy relating to national purposes as may be given State purposes or in case of any to it by the Central Government. emergency as may be given to it by the Government. (2) If any dispute arises between (2) If any dispute arises between the Central Government and the the government and the Commission as to whether a question operate as to whether a question is or is not a question of policy relating to national is or is not a question of policy purposes, the decision of the Central relating to State purpose, or whether an emergency has arisen, Government shall be final. the decision of the government thereon shall be final. Section 25. Power to make rules. Section 18. Power to make rules. Section 26. Power to make regulations. Section 19. Power to make regulations.##

23. We have extracted only such of the provisions similar to those contained in the UGC Act. That is not all. The Commissionerate Act yet contains sweeping provisions encroaching on the autonomy of the Universities. Under Section 11(1)(c) it is for the Commissionerate to decide on the need for, and location of new colleges and courses of study including Engineering Colleges. Section 11(1)(f) provides power to the Commissionerate to establish and develop resources centers for curriculum materials and continuing education of teachers. Section 11(1)(g) confers power on the Commissionerate to co-ordinate the academic activities of various institutions of higher education in the State. It is also the duty of the Commissionerate to undertake examination reforms and assume accreditation functions [Section 11(1)(h) and (i)]. Section 11(1)(j) states that it is the duty of the Commissionerate to organise entrance test for University admission. Section 11(1)(k) states that it shall administer and grant scholarship and organise work study programmes. Section 11(1)(o) provides power to transfer teachers from one aided private college to another such college, subject to the rules made by the government. There is yet a devastating provision on the autonomy of Universities. Section 11(2) states that every University or college including the private college shall obtain the prior approval of the Commissionerate in regard to : (i) certain of new posts; (ii) financial management; and (iii) stating of new higher educational institutions. This 'Super Power' has been preserved to the Commissionerate notwithstanding anything contained in any law relating to Universities in the State, the Board of Intermediate Education Act, 1971 and the Andhra Pradesh Education Act, 1982.

24. It will be seen that the Commissionerate has practically taken over the academic programmes and activities of the Universities. The Universities have been rendered irrelevant if not non-entities.

25. It is apparent from this discussion that the Commissionerate Act has been drawn by and large in the same terms as those of the UGC Act. The Commissionerate Act, as we have earlier seen also contains some more provisions. Both the enactments, however, deal with the same subject matter. Both deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the words and sentences used in the Commissionerate Act may be different from those used in the UGC Act, but nevertheless, they convey the same meaning. It is just like referring to the same person with (sic by) different descriptions and names. The intention of the legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the purpose of construction of statutes. The High Court appears to have gone on a tangent. The High Court would not have fallen into an error if it has perused the UGC Act as a whole and compared it with the Commissionerate Act or vice versa.

26. In *Prem Chand Jain v. R. K. Chhabra* ((1984) 2 SCR 883 : (1984) 2 SCC 302 : 1984 SCC (Cri) 233) this Court has held that the UGC Act falls under Entry 66 of List I. It is then unthinkable as to how the State could pass a parallel enactment under Entry 25 of List III, unless it encroaches Entry 66 of List I. Such an encroachment is patent and obvious. The Commissionerate Act is beyond the legislative competence of the State legislature and is hereby declared void and inoperative.

27. In the result, these appeals are allowed with costs. The judgment of the of the High Court is reversed. There shall be a direction to the State not to enforce the provisions of the impugned Act.

28. Before parting with the case we may say a word more. The impugned Act was the result of a report from a High Power Committee constituted by the State Government. The Committee went into the affairs of the higher education in the State. The Committee examined among other things, the curricula and courses of studies. The Committee found as a fact that there is no proper co-ordination and academic planning among the various bodies. It recommended to the State Government the need to pass a proper legislation to streamline the higher education. The State Government accepted the recommendations and passed the Act in question. The Act now disappears for want of legislative competence. What about the need to enact that Act ? It will not vanish into thin air. The defects and deficiencies pointed out by the High Power Committee in regard to higher education may continue to remain to the detriment of the interest of the State and the Nation. Such defects in the higher education may not be an isolated future only in the State of Andhra Pradesh. It may be a common feature in some other States as well.

29. That apart, we often hear and read in newspapers with disgust about the question papers leakage and mass copying in the University examinations. It has stripped the university degrees of all its credibility. He indeed must be blind who does not see what is all happening in some of the Universities.

30. The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education. The Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the Universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the Universities.

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