

# Osmania University Teachers ... vs State Of Andhra Pradesh & Anr on 13 August, 1987

**Equivalent citations: 1987 AIR 2034, 1987 SCR (3) 949, AIR 1987 SUPREME COURT 2034, 1987 (4) SCC 671, (1987) 3 JT 424 (SC), (1987) 3 SCJ 294, (1987) 2 SUPREME 189, (1987) 2 APLJ 44**

**Author: K.J. Shetty**

**Bench: K.J. Shetty, O. Chinnappa Reddy, M.H. Kania**

PETITIONER:

OSMANIA UNIVERSITY TEACHERS ASSOCIATION

Vs.

RESPONDENT:

STATE OF ANDHRA PRADESH & ANR.

DATE OF JUDGMENT 13/08/1987

BENCH:

SHETTY, K.J. (J)

BENCH:

SHETTY, K.J. (J)

REDDY, O. CHINNAPPA (J)

KANIA, M.H.

CITATION:

1987 AIR 2034                      1987 SCR (3) 949

1987 SCC (4) 671                JT 1987 (3) 424

1987 SCALE (2) 289

CITATOR INFO :

R                      1991 SC2230 (4)

ACT:

Constitution of India, 1950---Entry 66 List I and Entry 25 List III--Seventh Schedule--Education--Whether State competent to legislate on subject falling within List I.

Andhra Pradesh Commissionerate of Higher Education Act, 1986---Validity of--Whether Act within legislative competence of State Legislature.

HEADNOTE:

The Andhra Pradesh Commissionerate of Higher Education Act, 1986 (Act No. 26 of 1986) providing for the constitu-

tion 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 and to perform all functions necessary for the furtherance and maintenance of excellence in the standards of higher education in the State 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 with special reference to its curricula, courses of study, finance and management.

The validity of the aforesaid Act was challenged in the High Court which, while upholding it, held that the Act fell under Entry 25 List III--Concurrent List of the Seventh Schedule to the Constitution of India.

In the appeals to this Court, it was contended on behalf of the appellant that the Act was just a duplicate of the University Grants Commission Act and the State had no legislative power at all to enact it since it squarely fell under Entry 66 List I. On behalf of the State respondent it was submitted that the enactment in pith and substance fell within Entry 25 of List III and not under Entry 66 of List I of the Seventh Schedule.

Allowing the appeals, this Court,  
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HELD: 1.1 Entry 25 List III relating to education including technical education, medical education and Universities had been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. [955F-G]

1.2 Entry 66 gives power to the 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. 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 coordinate 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. [955G-H; 956A-B]

1.3 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. [956B]

1.4 The Commissionerate Act has been drawn by and large in the same terms as that of the U.G.C. Act. Both the enact-

ments 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 the same person with different descriptions and names. [966B-D]

1.5 The High Court has gone on a tangent, and would not have fallen into an error if it had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice-versa. [966D]

1.6 The Commissionerate Act contains sweeping provisions encroaching on the autonomy of the Universities. The Commissionerate has practically taken over the academic programme and activities of the universities. The universities have been rendered irrelevant if not nonentities. [965D; 966A-B]

1.7 It is unthinkable as to how the State could pass a parallel

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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. [966E-F]

1.8 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 high standards of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. [967D-E]

The University Grants Commission, it is hoped 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. [967E-F]

Kerala State Electricity Board v. Indian Aluminium Company, [1976] 1 SCR 552; Gujarat University, Ahmedabad v. Krishna Ranganath, [1963] Suppl. 1 SCR 112; DAV College, Bhatinda etc. v. State of Punjab & Ors., [1971] Suppl. SCR 677; R. Chitrlekha & Ant. v. State of Mysore & Ors., [1964] 6 SCR 368; State of Andhra Pradesh v. Lavu Narendranath & Ors, etc., [1971] 3 SCR 699; Ambesh Kumar v. Principal, LLRM College, Meerut, AIR 1987 SC 400 and Prem Chand Jain v. R.K. Chhabra, [1984] 2 SCR 883, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1205-06 of 1987.

From the Judgment and Order dated 24.3. 1987 of the Andhra Pradesh High Court in Writ Petition No. 15582 of 1986.

Dr. Y.S. Chitale, B. Parthasarathy and K.V. Sreekumar for the Appellant.

T.S. Krishnamurthy Iyer, T.V.S.N. Chari, Ms. V. Grover and Ms. Sunita M. for the Respondents.

The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. This appeal on a certificate raises a short but an important question as to the Constitutional validity of the Andhra Pradesh Commissionerate of Higher Education Act, 1986 (Act No. 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 under Article 133(1) of the Constitution. 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 observed, inter-alia, that there is no proper coordination 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. The Government appears to have accepted the said report of the Committee. That is obvious from the Preamble to the Commissionerate Act. It states 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." 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.

Section 2(c) defines "Commissionerate" to mean the Andhra Pradesh Commissionerate of Higher Education constituted under subsection (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 educationalist. All these persons are to be appointed only by the Government. The Chairman and ViceChairman shall be whole time and salaried persons and their terms and conditions are provided under Section 5(1).

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."

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.

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.

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

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.

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. 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 judgement 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 institution 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 & 66 of List I, vocational and technical training of labour."

Till January 3, 1977, Education was a State subject under Entry 11 in List II. By the 42nd Amendment Act, 1976, Entry 11 was deleted and it was placed in the Concurrent List by enlarging the Entry 25, as set out above. 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 Entries 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 coordinate 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.

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.

In Kerala State Electricity Board v. Indian Aluminium Company, [1976] 1 SCR 552 this Court said:

"The power of Parliament to legislate with respect to matters included in List I is supreme notwithstanding any thing contained in clause (3) (again leaving out of consideration the provision of clause 2). Now what is the meaning of the words "notwithstanding" in clause (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 takes effect notwithstanding the entry in List II. This is also on the principle that the 'special' excludes the 'general' entry in List II is subject to the special entry in List I."

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] Suppl. 1 SCR 112, 137. Shah J. speaking for the majority view of the Constitution Bench observed:

"Item 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. v. State of Orissa [1961] 2 SCR 537, 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."

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 Rangnath case have been reiterated in D.A.V. College, Bhatinda etc. v. State of Punjab & Ors., [1971] Suppl. SCR 677.

The power of the State to prescribe certain norms for admission to colleges came for consideration before this Court in R. Chitralekha & Anr. v. State of Mysore & Ors., [1964] 6 SCR 368 where Subba Rao J., as he then was, observed:

"that if the law made by the States by virtue of Entry 11 of List II 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 each case."

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 & Ors. etc., [1971] 3 SCR 699 and in Ambesh Kumar v. Principal, LLRM College, Meerut, AIR 1987 SC 400. 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 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.

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:

#### U.G.C. Act, 1956 The Commissionerate Act

##### 1. Statement of Objects and reasons:



"The Constitution of India In order to bring a change vests Parliament with in the higher education exclusive authority in system in the State so as regard to Co-ordination to make the courses of and determination of study more relevant to the standards in institutions needs of the modern society for higher education or and to provide opportu- research and scientific nities of earning and and technical instituti- learning simultaneously ons. It is obvious at college level to all the that neither coordination students in the State, a nor determination of four man committee was standards is possible appointed in February, 1986 unless the Central by the State Government to Government has some voice study the higher education in the determination of system in the State with standards of teaching special reference to curri- and examination in cula and courses of studies, Universities, both old Finance and Management in and new. the Higher Education system.

2. It is, therefore, The Committee in its proposed to establish report submitted to a University Grants Government observed Commission as a that there is no proper corporate body which co-ordination and academic will inquire into the planning among the various financial needs of bodies like universities; universities and the Directorate of Higher allocate and disburse Education and the Univer- grants to Universities sity Grants Commission etc. for any general or and there is no policy specified purpose. The perspective in the Commission will act as an development of the expert body to advise Higher Education system the Central Government in the State and in order on problems connected to streamline the general with the coordination of working of the higher facilities and Education system in the maintenance of standards State the Committee in Universities. suggested to constitute The Commission, in consul- a commission to advise tation with the University the Government in connected, will also have matters relating to the power to cause an higher education in the inspection or inquiry to State and to oversee be made of any university its development. The established by law in Government have examined India and to advise the the above recommendations university on any matter and suggestions and which has been the decided to constitute subject of an inquiry or a Commissionerate of inspection. The Commi- Higher Education. ssion shall also advise, whenever such advise is sought, on the establish-

ment of new Universities.

Sec. 4 Establishment of Sec. 3. Constitution of the Commission: Commissionerate of Higher Education:

(1) With effect from such The Government may, by date as the Central Govern- notification, and with ment may, by notification effect on and from such in the official Gazettee, date as may be specified appoint, there shall be therein constitute a established a Commission Commissionerate for the by the name of the Univer- purpose of this Act sity Grants Commission. to be called The Andhra Pradesh Commissionerate of Higher Education.

(2) The said Commission (2) The Commissionerate shall be a body corporate shall be a body corporate having perpetual having perpetual success-

succession and a common ion and a common seal and seal, and shall by the shall sue and be used said name sue and be sued. by the said corporate name.

Sec. 5 Composition of the Commission:	(2) (b) xxx      xxx      xxx Sec. 4 Composition of the Commissionerate:
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(1) The Commission shall (1) The Commissionerate consist of:-- shall consist of:--

(i) A Chairman, and (i) A Chairman

(ii) A Vice-Chairman, and (ii) A Vice-Chairman, and

(iii) ten other members, to (iii) not more than ten be appointed by the members to be appointed by Central Government the State Government Sec. 9 Temporary Associa- Sec. 8 Temporary Associa-

tion of person with the tion of persons with the Commission for particular Commissionerate for purpose particular purpose (Both these Sections are similar) Sec. 12 Functions of the Sec. 11 Powers and Functions Commission: of the Commissionerate It shall be the general duty It shall be the general duty of the Commission to take, of the Commissionerate to:

in consultation with the Universities or other a) evolve a prospective bodies. concerned, all plan for the development such steps as it may of higher education in the think fit for the State;

promotion and co-ordi-

nation of University b) administer and release Education and for the grants-in-aid to Univer-

determination and main- tenance of standards of teaching, examina- tion and research in University and for the purpose of performing its functions under	sities as private colleges in the State and report the same to the Government.  c) xxx      xxx      xxx
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this Act, the Commission d) monitor and evaluate may:-- the academic programmes in higher education and enforce accountability in the system.

a) Inquire into the finan- e) xxx xxx cial needs of Universities

f) xxx xxx

b) Allocate and disburse, out of the fund of the g) co-ordinate the Commission, grants to academic activities of Universities established various institutions of or incorporated by or higher education in the under a Central Act for State.

the maintenance and development of such xxx xxx universities or for any other general or p) Perform any other specified purpose. functions necessary to the furtherance and

c) Allocate and disburse maintenance of excell- out of the fund of the ence in the standards of Commission, such grants higher education in the to other Universities as State, it may deem necessary or 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 or specified purpose recommended to any University the measure necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendations.

Sec. 13 Inspection: Sec. 13 Inspection:

(1) For the purpose of (1) For the purpose of ascertaining the finan- ascertrining the financial cial needs of a Univer- needs of a University or its sity or its standards of standards of teaching, exami-

teaching, examination and nation and research. the research, the Commission Commissionerate may, after may, after consultation with consultation with the Uni- the University cause an versity, cause an inspection inspection of any department of any department or depart- or departments thereof to ments thereof to be made in be made in such manner as such manner as may be may be prescribed and by prescribed and by such such person or persons as person or persons as it may it may direct. direct.

(2) The Commission (2) The Commissionerate shall shall communicate to communicate to the University the University the date the date on which any inspec- on which any inspection tion under sub-section (1) under sub-section (1) is shall be made and the Univer- to be made and the sity shall be entitled to be University shall be associate with inspection entitled to be associa- in such manner as may be ted with the inspection prescribed.

in such manner 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 taken as a result of such inspection, and the University shall comply with any such direction.

Sec. 16 Fund of the  
Commission

(1) The Commission shall

Sec. 12 Fund of the  
Commissionerate:

(1) The Commissionerate shall

have its own fund and have its own fund consisting all sum which may, from of the grants from Government time to time, be paid voted by the Legislative Ass- to it by the Central embly of the State towards Government and all the grants to Universities, and receipts of the Commi- aided Junior and Degree ssion (including any Colleges and grants received sum which any State from Central Government for Government or any other higher education. authority or person may handover to the Commi- (2) All moneys belonging to ssion) shall be carried the Fund shall be deposited to the fund and all in such banks or invested in payments by the such manner as may, subject Commission shall be to the approval of the made therefrom. Government, be decided by the Commissionerate.

(2) All moneys belong-

ing to the fund shall (3) The Commissionerate may be deposited in such spend such sums as it thinks banks or invested in fit for performing its such manner as may, functions under this Act, subject to the approval and such sums shall be of the Central Govern- treated as expenditure ment be decided by payable out of the fund the Commission. of the Commissionerate. (3) The Commission may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Commission.

Sec. 18 Annual Report Sec. 14 Annual Report The Commission shall The Commissionerate shall prepare, once in every prepare once in every year, year in such form and at in such form and at such time such time as may be as may be prescribed an Annual prescribed, an annual Report giving a true and full report giving a true and account of its activities full account of its acti- during the previous year, vities during the previous and copies thereof shall be year, and copies thereof forwarded to the Government shah be forwarded to the and the Government shall Central Government and the cause the same to be laid Government shall cause the before the Legislative same to be laid before Assembly of the State. both Houses of Parliament.

Sec. 19 Accounts & Audit Sec. 15 Accounts & Audit Sec. 20 Directions by Sec. 16 Directions by the the Central Government Governments (1) In the discharge of (1) In the discharge of its functions under this its functions under this Act, Act. the Commission shall the Commissionerate shall be be guided by such direc- guided by such directions tions on questions of on question of policy policy relating to relating to State purposes national purposes as may or in case of any emergency as be given to it by the may be given to it by the Central Government. Government.

(2) If any dispute arises (2) If any dispute arises between the Central between the Government Government and the Commi- and the Commissionerate ssion as to whether a as to whether a question question is or is not a is or is not a question of question of policy policy relating to State relating to national purposes, or whether an purposes the decision of emergency has arisen, the the Central Government decision of the Government shall be final. thereon shall be final. Sec. 25 Power to make Rules Sec. 18 Power to make Rules Sec. 26 Power to make Sec. 19 Power to make Regulations. Regulations."

We have extracted only such of the provisions similar to those contained in the UGC Act. That is not all. The Commis- sionerate 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 centre for curriculum materials and continuing education of teachers. Section 11(1)(g) confers power on the Commissionerate to coordinate 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) & (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) creation of new posts; (ii) financial management; and (iii) starting 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. 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.

It is apparent from this discussion that the Commissionerate Act has been drawn by and large in the same terms as that of the U.G.C. 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 the same person with 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 had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice-versa.

In *Prem Chand Jain v. R.K. Chhabra*, [1984] 2 SCR 883 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. In the result, these appeals are allowed with costs. The judgment of the High Court is reversed. There shall be a direction to the State not to enforce the provisions of the impugned Act.

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 coordination

and academic planning among the various bodies. It recommended to the State Government the need to pass a proper legislation to stream-

line the higher education. The State Government accepted the recommendations and passed the Act in question. The Act now disappears for want of legislation competence. What about the need to enact that Act? It will not vanish to the thin air. The defects and deficiency 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 feature only in the State of Andhra Pradesh. It may be a common feature in some other States as well. That apart, we often hear and read in news papers 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.

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 standards 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 bring about the needed transformation in the academic life of the Universities.

N. P. V.  
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