

P A R T I I I

CHAPTER VII

Structure of Educational Institutions and Control over them

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The case law relating to the educational institutions may be broadly categorised under two headings: (i) institutions for higher studies; and (ii) institutions imparting school education. In the area of higher studies the case law is separately dealt with in respect of the university and the colleges. The case law relating to school education is considered in Chapter IX.

I

University: Whether "state"

The words "educational institutions" are of very wide import and include a university also. Both university and colleges have students and teachers but a university confers degrees of its own while the other institutions cannot do so.¹ However, there are certain institutions which are deemed to be university and are allowed to confer degrees under the University Grants Commission Act, 1956.

1. Azeez Saha v. Union of India, A.I.R. 1968 S.C. 662; R.C. Chatterjee v. B.S.B. of Homeopathic Medicine, A.I.R. 1975 Pat. 100.

In dealing with the university two questions arise: Is the university "state" under article 12 of the Constitution? And secondly, is the university an industry? The second question has been dealt with above.²

The question whether university is a "State" is an important one. Once it is accepted that the university is "state" within the meaning of article 12, then all its actions must be in conformity with the fundamental rights which could be enforced directly through either the Supreme Court of India or the High Court. For sometime some High Courts had held that the university was not "state" nor "other authorities" so as to constitute "state",³ but others took the view that the university came within the term "state".⁴ The Supreme Court in the Rajasthan Electricity Board,⁵ by way of obiter, had said that the university was covered by the term "state" under article 12. Since a university is a statutory body it is beyond doubt that it is a state.⁶ Another character of the

2, See supra part II, chapter VI, ..

3. Univ. of Mad. v. Shantha Pai, A.I.R. 1954 Mad.67; Krishan Gopal v. Punj.Univ., A.I.R.1966 Punj.34.

4. G.V.Sundaresh v. Bangalore University, [1967]2 Mys.L.J. 592; Prabhakar R. Godh v. A.L.Pande, (1965) J.L.J.513.

5. Raj,State Electricity Board v. Mohan Lal, A.I.R. 1967 S.C. 1857.

6. See Ajai Hasia v. Khalid Mujib, A.I.R.1981 S.C.487.

university is that it is a corporate body and no suit can be filed by or against the university in the name of the officers of the university, say, the registrar or the deputy registrar. The suit must be filed in the name of the university.⁷

II

University officers

University officers consist of the Visitor or Chancellor, the Vice-Chancellor, and other officers. The cases decided by the Supreme Court and various High Courts in this area may be classified as follows:

(i) The Visitor

In the case of central universities, the President of India is the Visitor who has the right to cause an inspection to be made, by such person as he may direct, of the university. He has also the power to annul any proceeding of the university which is in contravention of the university law.

In Dr. G.Trivedi v. Dr. S.Varshney,⁸ the respondent was appointed as the Principal of the

7. University of Kashmir v. Ghulam Nabi Mir, A.I.R. 1978 NOC 114 (J. & K.)

8. 1970 All. L.J. 1015.

Women's College, Banaras Hindu University. A representation was made to the Visitor for annulment of the said appointment. This was in turn referred to the Ministry of Education. It sought an explanation from the university and after considering it a note was put to the Visitor recommending annulment. The Visitor wrote on the note "approved". It was argued that section 5(7) of the Banaras Hindu University Act, 1915 required "by order in writing" which meant detailed and not a monomial order. The Allahabad High Court accepted the argument as valid and set aside the order. The court came to this conclusion mainly on two grounds: firstly, in such matter the Visitor was performing a quasi-judicial function which imposed on him a duty to act judicially. He was required to consider the explanation of the university and to give a detailed order; secondly, the Visitor in this case was not performing the function as the "President of India and he was "not bound to accept advice of Council of Ministers" and if no detailed order was handed down the injured party might be left guessing whether the Visitor passed the order independently or on the advice of the Council of Ministers.

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(ii) The Chancellor

The Chancellor is the head of the university and the President of the university court. As the head of the university he has ^{the} power of annulling any proceedings of any officer or authority of the university which is in contravention of the university law. In the case of state universities, the Governor of the State is ex-officio the Chancellor of the University but that does not make the university a department of the government. Thus, a writ application against the State of Punjab through the Registrar, Punjab University, was held bad.⁹

The Chancellor has the power to appoint and in exceptional cases to suspend or remove the Vice-Chancellor and other teachers.¹⁰ He has also the power to review the cases of appointment, termination or dismissal of teachers. In the Bihar state universities there were unnecessary appointments and removals etc., during the period between November, 1961 to 1st day of March, 1962. Section 4 of the Bihar State Universities Act, 1962 gave power to the Chancellor to pass such orders as he deemed fit with respect to.

9. Jai Chand Rai v. State of Punjab, A. I.R. 1955 H.P. 9.

10. Jagdish Pandey v. Chancellor, Bihar University, A.I.R. 1968 S.C. 353.

every appointment, dismissal, removal or termination of services and reduction in rank during this period. It was challenged that the said section conferred upon the Chancellor arbitrary and uncanalised power. The court held that there was no question of uncanalised power¹¹ as any action was to be in accordance with the Act. In case the Chancellor violated the provision of the Act¹² such an action would attract nullity.

(iii) The Vice-Chancellor

The Vice-Chancellor is the principal executive and academic officer of the university. He is generally selected from a panel recommended by a committee appointed by either the Visitor or the Chancellor.

Appointment: As regards his selection for appointment it is necessary that the procedure for the selection of Vice-Chancellor prescribed by the university law should be followed. However, if on a particular point the law¹³ is silent then the fair procedure should be adopted. Moreover, the selection committee should be validly constituted. Where the statute empowered the Chief.

11. Ibid.

12. Chetkar v. Vishwanath, A.I.R. 1970 S.C.1832.

13. Poona University v. S.N. Agashe, A.I.R. 1971 S.C. 1783.

Justice of the state to nominate a Judge on the selection committee for appointing a Vice-Chancellor, it was held that it would be wrong for the Chief Justice to nominate himself as he was a member of the executive council of the university and under the statute a person connected with the university could not be a member of the committee.¹⁴ But the mere fact that out of three members of the panel-committee only two were present would not make the selection bad. The Supreme Court has pointed out that as there was no quorum prescribed by the statute, the presence of majority constituted the quorum.¹⁵ If the meeting of the committee is fixed at a very short notice it would vitiate the selection. The Himachal Pradesh High Court turned down the appointment of the Vice-Chancellor where the panel-committee consisted of a disqualified member who sat in the committee¹⁶ and took part in the deliberations of the committee. Under the concerned university Act, the Chancellor could

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14. Kashi Nath Misra v. Allahabad University, A.I.R. 1967 All. 101; Dr. Shabbir Fatima v. Allahabad University, A.I.R. 1966 All.45. In this case the High Court held that the Chief Justice can nominate himself.
 15. Ishwar Chandra v. Satyanarain Sinha, A.I.R. 1972 S.C. 1812.
 16. Dr. Het Ram Kalia v. Himachal Pradesh Univ., A.I.R. 1977 NOC 246 (H.P.).

appoint an interim Vice-Chancellor for a maximum period of six months in case of emergency or where the vacancy could not be conveniently and expeditiously filled up. Where the person to whom Vice-Chancellorship was offered did not accept it, it was held that the Chancellor could appoint an interim Vice-Chancellor.¹⁷ Normally the university Act does not prescribe any qualifications for the office of Vice-Chancellor. If the Act is silent with regard to such qualifications,¹⁸ it will be wrong to provide them by the statutes.

Removal: The Visitor or the Chancellor has the power to appoint the Vice-Chancellor, and, therefore, the same authority gets the power to terminate, remove or suspend the Vice-Chancellor.¹⁹ But it has been held²⁰ that such power should be used in exceptional cases

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17. Chancellor, V.S.V.V. v. Jagdish Narain, A.I.R. 1969 All. 378.
 18. D.Rudiah v. Chancellor U.A.S.Bangalore, A.I.R. 1971 Mys. 84.
 19. Boal Chand v. Kurukshetra University, A.I.R. 1968 S.C. 292; Hardwari Lal v. Chancellor, M.D. University, Chandigarh, A.I.R. 1980 N.O.C. 117 (P. & H.); Bhagat Singh v. The Chancellor, Punjabi University, A.I.R. 1981 N.O.C.234 (P.& H.) - where the court held that premature termination amounted to punishment.
 20. Hardwari Lal v. Chancellor, M.D. Univ, Chandigarh, Ibid.

and that too only where some grave and serious allegations of misconduct, corruption or immorality have been successfully levelled against him.

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In Bool Chand v. Kurukshetra University,²¹ there were allegations that the appellant who was appointed as the Vice-Chancellor was found guilty of gross misconduct and indiscipline while working as a district collector and he was charged for removing official property illegally and for these acts he was compulsorily retired. The Chancellor after due enquiry terminated the tenure of office of Vice-Chancellor. The appellant took the plea that once he was appointed for a fixed period he could not be terminated before the said period as there was no such provision in the statute; and secondly, there was violation of natural justice. The Supreme Court rejected both the arguments and held that once the power to terminate employment was with the Chancellor he could remove him even before the expiry of the fixed period,^{and} that there was due enquiry before the such termination. In Vice-Chancellor, Osmania University v. Chancellor,²² while the petitioner

21. Supra note 19.

22. A.I.R. 1967 S.C. 1305.

Vice-Chancellor was in office the university Act was amended. By this amendment his term was to come to an end within ninety days. There was a provision in the Act which provided certain procedural safeguards against the removal of a Vice-Chancellor from office. In other words, the future Vice-Chancellors enjoyed this procedural protection but the existing Vice-Chancellor was denied this protection. It was held that the statutory provision which had the effect of removing the existing Vice-Chancellor within 90 days was violative of article 14 of the Constitution. The court did not find any rational basis for differential treatment being accorded to the existing and the future Vice-Chancellor.

The Principal of a College

In Digambar College, Dibai v. Vice-Chancellor, Meerut University,²³ the college management committee terminated the services of the principal who was on probation as his work was not satisfactory. The management forwarded the resolution of the committee to the Vice-Chancellor for his approval. The Vice-Chancellor refused to give permission to terminate the service of the Principal. Management filed a writ petition against the Vice-Chancellor. It was also contended that there was no reasoned order and it,

23. A.I.R. 1975 All. 445.

should be held bad. But the Allahabad High Court held that the granting of or refusal to grant the termination or removal was an internal matter and not a quasi-judicial function and, therefore, there was no question of application of natural justice.

III

Emergency Powers

The statutes provide for emergency power of the Vice-Chancellor. This power is an extraordinary one given to the Vice-Chancellor and he should use it within the four corners of the statute. A capricious use of the emergency power would be bad.²⁴ Normally under the Act the emergency power exercised by the Vice-Chancellor has to be approved by the Executive Council of the University. His action is only tentative and could be reversed by the council. The operative decision will be that of the council.²⁵ The court may examine whether there really existed the situation warranting the exercise of the emergency powers by the Vice-Chancellor.²⁶

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24. Rajendra Singh Negi v. Deputy Inspector, (1979)1 Cal L.J. 77.
25. V.S. Vishwavidyalaya v. Rajkishore, A.I.R. 1977 S.C. 615.
26. Ibid. In H.G. Pant v. Raj. University, A.I.R. 1978 Raj. 72, however, the court adopted a different approach.

IV

Authorities of University

The authorities of university include the university court, the executive council, academic council, etc.

The university court is the supreme authority of the university with the powers of making, amending and repealing the university law (delegated legislation) and of revising the acts of the executive and academic councils. The university court has also power to pass a no-confidence motion against the Vice-Chancellor and when it is submitted to the Chancellor, he may pass an order of removal of the Vice-Chancellor. In order to pass the motion it should follow the procedure prescribed under the statute. In one case a member of the court gave a notice to the assistant registrar of his intention to move a no-confidence motion against the Vice-Chancellor. The statutory provision required that such delivery of notice should be made to the registrar. The question was whether such delivery of notice could be considered as valid. The Madhya Pradesh High Court²⁷ declared such delivery as valid. The court pointed out that the receipt of the notice in the office of the registrar was merely a ministerial or executive act, its sole

27. Bhagwati Dhar v. Jabalpur University, A.I.R. 1967 M.P. 239.

purpose being to bring to the notice of the Vice-Chancellor the said matter. In the present case when the member of the university court went to deliver the notice, the registrar was not available and he delivered it in the office of the assistant registrar. In such circumstances, the High Court held that there was no question of non-servicing of the notice.

The election of a member to the university court was challenged in Babulal Sharma v. Vice-Chancellor.²⁸ One Mr. Mishra who claimed to be a graduate of a university got registered with the university as a registered graduate and was elected as a member of the university court. The election was challenged on the ground that as the respondent No. 3, was not a graduate of any university his registration should be cancelled and his election should be set aside. In this case the person concerned was having the Sahityaratna degree of Hindi Sahitya Sammelan, Prayag. The Madhya Pradesh High Court held that as the said institution was not incorporated as a university by any statute he was not a graduate of a university. The election of the said respondent as a member of the court was declared²⁹ illegal. In A.Sankaranarayanan v. Madras University,

28. A.I.R. 1976 M.P. 98; Rameshchandra v. G.N.Tondon, A.I.R. 1974 M.P. 1.

29. A.I.R. 1971 Mad. 322. Also see K.S.Siddalingaiah v. State, A. I.R. 1979 Karn, 190.

consequent upon the creation of the Madurai University, the Madras University Act was amended under which statutes were framed. This imposed certain restrictions on graduates of the university for being registered for the purposes of elections to the Senate. Previously a graduate was registered for life for the purpose. Now the restrictions imposed were that the registration would be for five years and that the graduate must reside within the Madras University area. The court found the statutes to be valid and not ultra vires the Act.³⁰ However, in Satish Chander v. Rajasthan University, the university Act provided for the election of two non-teaching members of the Senate to the Syndicate. But by the university ordinances a restriction was placed prohibiting an employee of the university from seeking the election. The court held the ordinances to be ultra vires as the Act did not impose any such restriction.

The executive council is the executive body of the university having power to make university ordinances, appoint teaching and other staff and is entrusted with the financial affairs of the university. On the other hand, the academic council is the academic body of the university having responsibility of maintaining the

standards of education, research and examinations within the university.

The litigation in this area mainly centred round the membership of the council and particularly the executive council. One of the questions before the High Courts of Allahabad³¹ and Bombay³² was whether a teacher after his retirement could still continue as the member of the executive council. It was held that he was entitled to continue for his term period.

In the case of election disputes the Chancellor is the final authority to decide the matter. Section 38 of the Punjab University Act, 1947 provided that if any question arose as to whether any person had been duly elected or appointed as, "or is entitled to be", a member of any authority or other body of the university, the matter would be referred to the Chancellor, whose decision thereon would be final. The question was whether under section 38 of the Act the Chancellor had power to declare any one candidate elected out of the two. Where the returning officer did not declare the result in accordance with the rules and failed in the discharge of his duties as laid down in the regulations,

31. Ishwari Prasad v. Allahabad University, A.I.R. 1955 All. 131.

32. Malini v. Hansraj, A.I.R. 1979 Bom. 230.

the court interpreted section 38 as giving power to the Chancellor to declare any person who should have been declared as elected according to the rules to have been duly elected.³³ The power of the Chancellor was also interpreted to include the power to set aside an election where irregularities and illegalities³⁴ were committed and to order a fresh election.

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In T.C. Kanwar v. H.P. University, under the H.P. University Act, the executive council in making a statute affecting the constitution of a university body was required to give an opportunity of expressing an opinion on the proposal by the concerned authority. Here, the amended statute had imposed certain disqualifications for contesting election to the academic council, but the amendment was made without giving an opportunity to the academic council. It was held that the action of the executive council was bad. The court was of the opinion that the word "constitution" covered any disqualification imposed on teachers to contest elections. It was held that it was the duty of the Executive Council to give an opportunity to the Academic Council to express its opinion on the proposal. The court will

33. K.L. Jaura v. G.S. Pathak, A.I.R. 1974 P. & H. 261.

34. Shree Narain Sinha v. Univ. of Bihar, A.I.R. 1966 Pat. 47.

35. A.I.R. 1981 H.P. 39.

invalidate the order of the university if it has set aside the election of a person to a university body in
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contravention of the law.

V

Colleges

The colleges may be university constituent colleges or affiliated colleges. These affiliated colleges may be government or private colleges. The university constituent colleges are part and parcel of the university and their problems are the problems of the university as discussed above and they do not need any separate treatment.

Government and private colleges

The college run by the government is a "state" within article 12 and it should comply with the provisions of Part III of the Constitution dealing with the
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fundamental rights. But the position in case of semi-government colleges is complicated.

What is a government college? Is it a college directly run by the government? Can a college registered

36. H.S.Nagarajiah v. V.C., Mysore University, A.I.R. 1979 Kant. 186. See also K.S.Siddalingaiah v. State, supra note 29.

37. Manju v. State, A.I.R. 1971 H.P. 37.

under the Societies Registration Act be regarded as a government college? This question arose in Regional Engineering College v. Vice-Chancellor.³⁸ The college was registered under the Societies Registration Act. It had government officers on its executive body. The amount required for the construction of the building came from the central government. Fifty per cent of the cost of maintenance was met by the central government and the rest by the state government. Under the university Act the university could exercise certain control only over a private college and not on a government college. It was held that it was a private college. However, for the purposes of the writ jurisdiction such college will now be regarded as "state" in view of Ajay Hasia.³⁹ In Ajay Hasia v. Khalid Mujib the question was whether the Regional Engineering College, Srinagar, could be considered as "state" under article 12. It was argued that the college was established, managed and administered by a society registered under the Jammu and Kashmir Registration of Societies Act, 1898, and, as such it could not be given the label of "state". The Supreme Court in this case, rejecting the argument, held that the college was covered by the term "state".

38. A.I.R. 1976 Ker. 65.

39. Supra note 6.

The court opined that in such a case the approach of the court should not be to find out how the juristic person was born but why it was brought into existence. In the present case the college came into existence to carry out the governmental function, i.e., to impart education. The court also looked to the nature of the college whose composition was dominated by the representatives appointed by the central and the state governments. The amount required for running the college was provided entirely by the central and Jammu and Kashmir governments. Any amount received from any other sources required the approval of both the governments. The society was also required to follow all the directions issued by those governments. No property of the society could be disposed off without approval of both the governments. Looking to this deep and pervasive government control, the court concluded, "the society is an instrumentality or the agency of the State and the Central Governments and it is an 'authority' within the meaning of article 12"⁴⁰. Once it is accepted that such authority is "state" then it shall be guided by the provisions of Part III of the Constitution. The action of such authority will attract the judicial remedies under articles 32 and 226. The decision of the court cannot be treated as to give a semi-government college a status of the government college for other purposes.

40. Id. at 498.

On the other hand private affiliated colleges have not been considered as statutory bodies amenable to writ jurisdiction.⁴¹ These cases are prior to Ajay Hasia. If these college satisfied the criteria laid down by the Supreme Court in Ajay Hasia, namely, pervasive governmental control and/or entire funding by the government, they may be regarded as "state". Even before Ajay Hasia, a few High Courts had held that the private colleges were amenable to the writ jurisdiction.⁴² These cases do not seem to be correctly decided. Of course, an aggrieved employee can claim the remedy of injunction or declaration if a private college violated the university Act or statutes, etc.⁴³ The university authorities have discretion to recognise a college or grant it affiliation, but they have to act in accordance with the fair procedure.⁴⁴

41. Vidya Ram Misra v. S.J.N.College, A.I.R.1972 S.C.1450; Arya Vidya Sabha, Kashi v. K.K.Srivastava, A. I.R. 1976 S.C.1073; Vaish Degree College v. Lakshmi Narain, A. I.R. 1976 S.C.888; Sabhajit v. Union of India, A.I.R. 1975 S.C.1329.
42. Kumkum v. Principal, Jesus Mary College, A.I.R. 1976 Del. 35; Harijander Singh v. K. Medical College, A.I.R. 1975 A.P. 35; Aley Ahmad v. Dist. Inspector of Schools, A.I.R. 1977 All. 539; C.T.College v. Chandra Mohan, A. I.R. 1978 All.93.
43. Vaish Degree College v. Lakshmi Narain, supra note 41.
44. A.N.Parasuraman v. State, A.I.R.1972 Mad.123.

In a case the Rural College of Education was affiliated to the Kurukshetra University. The college did not follow certain directives with regard to admissions issued by the university and for this act of violation the college was duly disaffiliated. The court found that the guidelines could be issued under the university ordinances. The affiliated colleges were bound to observe not only the university law but also any instructions issued by the university authorities from time to time, and the university was justified in disaffiliating the said college for the non-observance of any direction so issued.

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In A.N.Parasuraman v. State the validity of delegated legislation came up before the Madras High Court. The Madras Private Educational Institutions (Regulation) Act, 1966 in section 28 authorised the government "by order, to do anything which appears to them to be necessary for the purpose of removing the difficulty". This power was given to the government to remove doubt or difficulty in giving effect to the provision of the Act. The Madras High Court, striking

45. Kurukshetra Univ. v. Rural College of Edu.,
A.I.R. 1980 P. & H. 103.

46. Supra note 44.

down section 28, held that it was for the legislature to remove the doubt and difficulty, and giving effect to the Act by altering its provision was in substance the exercise of legislative power which could not be delegated to the executive authority.

The management and maintenance of a private affiliated college is not the direct concern of the university; this is the concern of the autonomous educational body which has sponsored it and which has undertaken the task of instituting, managing and maintaining it. This was pointed out by the court in Bishweshwar Dayal v. University of Bihar.⁴⁷ The court stated that the university can impose reasonable conditions for affiliation and exercise the power of supervision to see that the colleges conform to the pattern of management and education in force in the university colleges itself. In this case, the Vice-Chancellor directed the reconstitution of the managing body of an affiliated college and nominated certain persons on it acting under a particular statute of the University. The court found the statute to be ultra vires the University Act. This case depicts that the university has the power to lay down the basis on which a governing body of private college is to be constituted but it cannot nominate its own persons on that body. The supersessor of the

47. AIR. 1965 S.C. 641.

governing body without any show cause notice would be
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violative of natural justice.

The taking over of the management of the private college by the government was challenged in Rangaraya Medical College v. State.⁴⁹ The Government of Andhra Pradesh took over the management of the medical college as there were protests by the public against the exaction of a very high price for a seat in the medical college. This was attacked on the ground that such taking over was nothing but compulsory acquisition of the properties of the college which attracted article 31(2) which inter alia, required public purpose and compensation. The Andhra Pradesh High Court rejected the said plea, holding that the present takeover was for a limited period of five years, such take over being only of the management of the college and, therefore, it came within article 31A(1) (b) which exempted article 31(2) in case the state took over the management of any property for the public purpose for a limited period. The taking over by the state of the management of a college might attract nullity if the order was not a speaking order. The taking over without detailed reasons was not in "judicial spirit" and such order was
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quashed by the court.

It is the governing body which is generally affiliated to a university and it is that body which can sue
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or be sued.

48. Khagenka Nath v. Calcutta University, A.I.R. 1974 Cal. 187.

49. A.I.R. 1977 A.P. 420 (F.B.).

50. State v. Arya Kanya Inter College, A.I.R. 1973 All. 458.

51. Ravi Panje v. Governing Body, T.A.S. College, 1971 MPIT 124.