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IN THE HIGH COURT OF ORISSA AT CUTTACK  
WRIT PETITION (CIVIL) NOs. 33452 and 34257 of 2020  
AND  
W.P.(C) No.12421 of 2021

W.P.(C) No.33452 of 2020

*Kunja Bihari Panda and Others* .... *Petitioners*  
-versus-

*State of Odisha and Others* .... *Opposite Parties*

W.P.(C) No.34257 of 2020

*Ajit Kumar Mohanty* .... *Petitioner*  
-versus-

*State of Odisha and Others* .... *Opposite Parties*

AND

W.P.(C) No.12421 of 2021

*Biswabasu Dash* .... *Petitioner*  
-versus-

*State of Odisha and Others* .... *Opposite Parties*

*For Petitioner(s)* : Mr. S.P. Mishra, Senior Advocate  
Mr. N.K. Hooda, Senior Advocate  
Mr. Iswar Mohanty, Advocate  
(In W.P.(C) No.33452/2020)

Mr. N.K. Hooda, Senior Advocate  
Mr. S.P. Das, Advocate  
(In W.P.(C) No.34257/2020)

Mr. Prabhu Prasanna Behera, Advocate  
(In W.P.(C) No.12421/2021)

*For Opposite Parties* : Mr. Ashok Kumar Parija  
Advocate General  
Mr. P.K. Muduli, Addl. Govt. Advocate  
Mr. P.K. Parhi, Asst. Solicitor General  
Mr. T.K. Satapathy, Advocate  
Mr. Debasis Tripathy, Advocate  
Mr. Pradipta Kumar Mohanty, Senior Advocate

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE A.K. MOHAPATRA**

**JUDGMENT  
24.01.2022**

**Dr. S. Muralidhar, CJ.**

***Introduction***

1. These three writ petitions arise from the same set of facts and raise similar questions of law. They are accordingly being disposed of by this common judgment.

2. In all these writ petitions the central issue concerns the validity of the Odisha Universities (Amendment) Act, 2020 (OUA Act) notified in the Odisha Gazette by a notification dated 9<sup>th</sup> November, 2020. The OUA Act amended several sections of the Odisha Universities Act, 1989 (OU Act).

3. It is contended that the OUA Act violates Article 254 (1) of the Constitution of India and the Regulations of the University Grants Commission (UGC) apart from being arbitrary and without application of mind. The OUA Act to the extent it has repealed the Ravenshaw University Act, 2005 (RU Act) is challenged as being arbitrary, illegal and violative of Article 14 and 16 of the Constitution of India as well as Section 23 of the General Clauses Act, 1897 (GC Act). A further challenge is to an advertisement No.8 of 2020-21 dated 8<sup>th</sup> February, 2021 issued by the Odisha Public Service Commission (OPSC) (Opposite Party No.3) for recruitment to the post of Assistant Professors in different State Public Universities under the administrative control of the Department of Higher Education (DHE), Government of Odisha on the ground that it is in violation of the UGC Regulations, 2018.

4. W.P.(C) No.12421 of 2021 has been filed by Shri Biswabasu Dash, a former Lecturer in Zoology in Choudwar College, an aided non-governmental College in Odisha affiliated to the Utkal University (UU). He is stated to be an office bearer of All India Save Education Committee (Odisha Unit), which is stated to be concerned with matters relating to education.

5. The second writ petition i.e. W.P.(C) No.33452 of 2020 has been filed by Prof. Kunja Bihari Panda and five others who are teaching in different Universities like the Utkal University (UU), Ravenshaw University (RU), the Gangadhar Meher University (GMU) and the North Odisha University (NOU). The third petition, W.P. (C) No.34257 of 2020 has been filed by Shri Ajit Kumar Mohanty, a former Professor in ICSSR, a National Fellow of the Jawaharlal Nehru University, New Delhi (JNU).

6. In all these writ petitions, the common Opposite Parties are the Government of Odisha in the Higher Education Department (HED), the UGC and the Union of India (UOI).

7. Pursuant to the notices issued in all these writ petitions, counter affidavits have been filed by the UGC and the State of Odisha in each of the writ petitions.

### ***Background***

8. The UGC is a body constituted under the University Grants Commission Act, 1956 (UGC Act) as a Regulatory Body entrusted with two responsibilities: (i) for providing funds and (ii) coordination, determination and maintenance of standards of Higher Education Institutions (HEIs). The mandate of the UGC includes (a) promoting and coordinating university education; (b) determining and maintaining standards of teaching,

examination and research in universities; (c) framing regulations on minimum standards of education; (d) monitoring developments in the field of collegiate and university education; disbursing grants to the universities and colleges.

9. The State of Odisha has 11 Universities, managed by the State and recognized by the UGC. Some of these Universities were established prior to independence. For instance, the UU was established in the year 1943. Ravenshaw College which began in 1868, became a University under the RU Act in 2005.

10. In 1989, the OU Act was enacted and 11 State Public Universities in terms thereof came under the administrative control of the HED, Government of Odisha functioning under the OU Act.

***The UGC Regulations, 2018***

11. The UGC has laid down the UGC Regulations on minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2018 ('the UGC Regulations, 2018'). The UGC Regulations, 2018 have been made under Section 26 of the UGC Act.

12. Earlier UGC made Regulations of 2010, Clause 7.4.0 of which stated that the Universities/State Governments shall modify or amend the relevant Act/Statutes within 6 months of adoption of the Regulations. Thus, a State University had to first adopt the UGC Regulations of 2010 and then carry out the amendments within 6 months from the date of such adoption. Clause 1.2 of the UGC Regulations, 2018 states that a University shall as soon as may be, but not later than within 6 months of the coming into force of the UGC Regulations, 2018 take effective steps for the amendment of

the statutes, ordinances or other provisions governing it, so as to bring the same in accordance with the said Regulations. In other words, the UGC Regulations, 2018 do not give an option to the Universities to "adopt" the Regulations which implies that the UGC Regulations, 2018 are mandatorily applicable to all the Universities to which UGC Act applies which includes State Universities.

13. Clause 3.0 of the UGC Regulation, 2018 deals with Recruitment and Qualifications of Teachers of Universities. Clause 3.1 states that direct recruitment of Assistant Professors, Associate Professors and Professors in the Universities shall be on the basis of merit through an all-India advertisement, followed by selection by a duly constituted Selection Committee as per the provisions made under the said Regulations. Clause 3.2 states that the minimum qualifications for these posts shall be as specified by the UGC in the Regulations.

14. Under the UGC Regulations 2018, the eligibility criteria for applying for the post of Professor in a University is as under:

"A: (i) An eminent scholar having a Ph.D. degree in the concerned/allied/relevant discipline, and published work of high quality, actively engaged in research with evidence of published work with, a minimum of 10 research publications in the peer-reviewed or UGC-listed journals and a total research score of 120 as per the criteria given in Appendix II, Table 2.

(ii) A minimum of ten years of teaching experience in university/college as Assistant Professor/Associate Professor/Professor, and/or research experience at equivalent level at the University/National Level Institutions with evidence of having successfully guided doctoral candidates.

Or

An outstanding professional, having a Ph.D. degree in the relevant/allied/applied disciplines, from any academic institutions (not included in A above) / industry, who has made significant contribution to the knowledge in the concerned/allied/relevant discipline, support by documentary evidence provided he/she has ten years' experience".

15. Under Clause 5.0 of the UGC Regulations, 2018 Selection Committees are to be constituted for selecting Assistant Professors and Professors. Clause 5.1 (I) deals with the composition of the Selection Committee for the selection of Assistant Professors and reads as under:

"Assistant Professor in the University:

(a) The Selection Committee for the post of Assistant Professor in the University shall consist of the following persons:

(i) The Vice Chancellor or his/her nominee, who has at least ten years of experience as Professor, shall be the Chairperson of the Committee.

(ii) An academician not below the rank of Professor to be nominated by the Visitor/Chancellor, wherever applicable.

(iii) Three experts in the subject concerned nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned.

(iv) Dean of the Faculty concerned, wherever applicable.

(v) Head Chairperson of the Department/School concerned.

(vi) An academician representing SC/ST/ OBC/ Minority/Women/Differently-abled categories to be nominated by the Vice Chancellor, if any of the candidates from any of these categories is an applicant and if any of the above members of the selection committee does not belong to that category.

(b) Four members, including two outside subject experts, shall constitute the quorum".

***The UGC GA Regulations, 2018***

16. The University Grants Commission [Categorization of Universities (only) for Grant of Graded Autonomy] Regulations, 2018 [‘the UGC GA Regulations, 2018’] delineated the framework of the autonomy to be provided to the Universities based on certain categorization. The preamble to the UGC GA Regulations, 2018 *inter alia* reads as under:

"Whereas, UGC recognizes that autonomy is pivotal to promoting and institutionalizing excellence in higher education and that the regulatory framework needs to facilitate better performing institutions towards excellence in higher education."

17. As per Clause 4 of the UGC GA Regulations, 2018, a Category I University shall have the autonomy in case it is starting new courses, departments, schools, centres, recruitment of foreign faculty, research parks, university society linkage centres, or wishes to collaborate with foreign educational institutions etc. A Category I University also has the autonomy to introduce incentive structures to attract talented faculty, while following pay scales as laid down by the UGC with the approval of statutory bodies of the University. It is submitted that UU is a Category I University as per the standards laid down by the UGC.

***NEP 2020***

18. The Ministry of Human Resources Development (HRD Ministry), Government of India issued the National Education Policy, 2020 (NEP) proposing the revision and revamping of all aspects of the educational structure including its regulation and governance. Para 9.2 of the NEP identified certain problems faced by the higher education system including



(a) limited teachers (b) lack of institutional autonomy and (c) inadequate mechanisms for merit-based career management and progression of faculty and institutional leaders. In para 9.3 the NEP accordingly proposed reforms to the current system by, "(e) reaffirming the integrity of faculty and institutional leadership positions through merit appointments and career progression based on teaching, research and service" and (g) governance of Higher Education Institutions by high qualified independent boards having academic and administrative autonomy.”

19. The NEP 2020 is stated to have emphasised maximum autonomy to higher educational institutions by proposing, *inter alia*:

“10.4 A stage-wise mechanism for granting graded autonomy to colleges, through transparent system of graded accreditation, will be established. Colleges will be encouraged, mentored, supported, and incentivized to gradually attain the minimum benchmarks required for each level of accreditation. Over a period of time, it is envisaged that every college would develop into either an Autonomous degree-grant College, or a constituent college of a university – in the latter case, it would be fully a part of the university. With appropriate accreditations, Autonomous degree-granting Colleges could evolve into Research-intensive Universities, if they so aspire.

10.5 It must be clearly stated that these three broad types of institutions are not in any natural way a rigid, exclusionary categorization, but are along a continuum. HEIs will have the autonomy and freedom to move gradually from one category to another, based on their plans, action, and effectiveness. The most salient marker for these categories of institutions will be the focus of their goals and work.

10.11 Single-Stream HEIs will be phased out over time, and all will move towards becoming vibrant multidisciplinary institutions or part of vibrant multidisciplinary HEI clusters, in order to enable and encourage high quality



multidisciplinary and cross disciplinary teaching and research across fields. Single-stream HEIs will, in particular, add departments across different fields that would strengthen the single stream that they currently serve. Through the attainment of suitable accreditations, all HEIs will gradually move towards full autonomy – academic and administrative – in order to enable this vibrant culture. The autonomy of public institutions will be backed by adequate public financial support and stability.

10.12. The new regulatory system envisioned by this Policy will foster this overall culture of empowerment and autonomy to innovate, including by gradually phasing out the system of ‘affiliated colleges’ over a period of fifteen years through a system of graded autonomy, and to be carried out in a challenge mode. Each existing affiliating university will be responsible for mentoring its affiliated colleges so that they can develop their capabilities and achieve minimum benchmarks in academic and curricular matters teaching and assessment; governance of reforms; financial robustness; and administrative efficiency. All colleges currently affiliated to a university shall attain the required benchmarks over time to secure the prescribed accreditation benchmarks and eventually become autonomous degree-granting colleges. This will be achieved through a concerted national effort including suitable mentoring and governmental support for the same”

20. The NEP also proposed the following measures to address the issues around faculty motivation and recruitment in Universities:

“13.1 The most important factor in the success of higher education institutions is the quality and engagement of its faculty. Acknowledging the criticality of faculty in achieving the goals of higher education, various initiatives have been introduced in the past several years to systemize recruitment and career progression, and to ensure equitable representation from various groups in the hiring of faculty...The various factors that lie behind low faculty motivation levels must be addressed to ensure that each

faculty member is happy, enthusiastic, engaged, and motivated towards advancing her/his students, institution, and profession. To this end, the policy recommends the following initiatives to achieve the best motivated and capable faculty in HEIs.

13.3 Teaching duties also not be excessive, and student-teacher ratios not too high, so that the activity of teaching remains pleasant and there is adequate time for interaction with students, conducting research, and other university activities. Faculty will be appointed to individual institutions and generally not be transferable across institutions so that they may feel truly invested in, connected to, and committed to their institution and community.

13.4 Faculty will be given the freedom to design their own curricular and pedagogical approaches within the approved framework, including textbook and reading material selections, assignments, and assessments. Empowering the faculty to conduct innovative teaching, research, and service as they see best will be a key motivator and enabler for them to do truly outstanding, creative work.

13.6. In keeping with the vision of autonomous institutions empowered to drive excellence, HEIs will have clearly defined, independent, and transparent process and criteria for faculty recruitment. Whereas the current recruitment process will be continued, a ‘tenure-track’ i.e. suitable probation period shall be put in place to further ensure excellence. There shall be a fast-track promotion system for recognizing high impact research and contribution. A system of multiple parameters for proper performance assessment, for the purposes of ‘tenure’ i.e. confirmed employment after probation, promotion, salary increases, recognitions, etc. including peer and student reviews, innovations in teaching and pedagogy, quality and impact of research, professional development activities, and other forms of service to the institution and the community, shall be developed by each HEI and clearly enunciated in its Institutional Development Plan (IDP).”

***The OU Act, 1989 and the RU Act***

21. Section 9 of the OU Act speaks of a Senate having the power and duty to review policies and programmes of the University and suggest measures for its improvement and development among other functions. The Senate, being the policy making body in the University, had "three students including a lady student of the concerned University" as its member.

22. Section 4 of the RU Act spells out the objects of the University and reads as under:

“4. (1) the objects of the University shall be:

(a) to disseminate and advance knowledge, wisdom and understanding by teaching and research and by the example and influence of its corporate life.

.....

(d) to enhance linkage between culture and development through capacity building and sharing of knowledge and promoting the free flow of ideas and universal access to information.

(e) to promote the study for sustainable development, national integration, social justice, secularism, democratic way of life, international understanding and scientific approach to the problems of society by providing right kind of work ethos, professional expertise and leadership in all walks of life.

(2) Towards this end, the University shall:

(a) set-up departments for Science and Technology keeping in view the rapid changes in the field of science, the market demand for providing self employment to the pass-outs, along with wide scope for research facility to make the departments learning centres of excellence.

.....

(c) take special measures to facilitate students and teachers from all over India and abroad to join the University and participate in its academic programmes.

(g) establish such departments or schools in the University as may be necessary for the study of languages, literature and life of foreign countries with a view to inculcating in students a world perspective and international understanding”.

23. The relevant portions of Section 5 of the RU Act which delineated the powers of the University read as under:

“(ii) to establish such other units for research and instruction as are necessary for furtherance of its objects.

(vi) to create such teaching, administrative and other posts as the University may deem necessary from time to time and to fill up such posts with permission of Government.

(vii) to appoint persons as Professors, Readers or Lecturers or otherwise as teachers of the University.

(ix) to establish and maintain Departments or Schools and administrative set up to recognize, guide, supervise and control over the movable and immovable properties.

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

(xiii) to make contract for the purpose of transfer of technology either in whole or in part with any other institution or organization on such terms and conditions as may be required from time to time, to raise funds of the University.

(xvii) to receive donations and to acquire, hold, manage and dispose of any property movable or immovable, including trust or endowed property within or outside the State of Orissa, for the purpose or objects of the University, and to invest funds in such manner as the University may deem fit;

(xviii) to make provisions for research and advisory services and for that purpose to enter into such arrangements with

other institutions or bodies as the University may deem necessary.”

24. Thus, according to the Petitioners, RU had complete autonomy qua the administrative, finance and teaching aspects.

***The impugned Amendments***

25. The OUA Ordinance was issued by the State Government and received the assent of the Governor of Odisha on 9<sup>th</sup> November, 2020 (it came into force on 4<sup>th</sup> September, 2020). The Petitioners contend that by the said Ordinance, the autonomy of all the Universities either established under the OU Act or by separate Act like the RU Act stood withdrawn and was brought under the HED.

26. The Government of Odisha, on the other hand, was of the view that some of the existing provisions of the OU Act had lost their relevance due to the changed circumstances. It felt that some of the provisions of the OU Act were to be amended in order to improve the functioning of the Universities. Subsequently, the OUA Act replaced the Ordinance. The OUA Act brought about amendments to Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 21, 22, 23 and 24 of the OU Act.

27. Relevant to the issues raised in these petitions are the major changes brought about to the procedures in the appointment of VCs and teaching staff of Universities and HEIs. One is by Section 6 (b) of the OUA Act which amends Section 6 (3) of the OU Act whereby the Search-cum-Selection Committee constituted for short-listing of Vice-Chancellors (VCs) of the Universities has been changed. Under the amended Section 6(3) of the OU Act, the Committee for selection of a panel of names for VC shall consist of three members: (i) the Chancellor’s nominee (also

Chairman of the Committee) who “should be a superannuated officer of the State Government having worked as Chief Secretary to the State government or as a Secretary to the Government of India or in any other post of the same rank”; (ii) nominee of the UGC and (iii) nominee of the State Government who shall be an eminent academician of State or national repute.

28. The second change brought about is by Section 14 of the OUA Act which amends Section 21 of the OU Act whereby the selection of teaching staff of the University has been brought under the purview of the Odisha Public Service Commission (OPSC) (Opposite Party No.3). Further, Section 21(1) of the OUA Act delegates to the OPSC the recruitment process for the appointment of teaching staff.

29. A third major change is that Section 18 (1) of the OUA Act has repealed the RU Act, 2005. Section 18 (2) of the OUA Act states that notwithstanding the repeal under Section 18 (1), Section 33 (2) of the OU Act shall apply mutatis-mutandis to the said repeal. It requires to be noted here that under Section 33 (1) of the OU Act, the statutes constituting four different universities viz., the Utkal University Act 1966, the Berhampur University Act 1966, the Sambalpur University Act 1966 and the Shri Jagannath Sanskrit Viswavidyalaya, 1981 stood repealed. Section 33 (2) of the OU Act is a ‘savings’ clause whereby actions taken under the repealed statutes is to be construed as having been taken under the OU Act.

30. Other changes to the OU Act, which too have been challenged, include abolition of the Senate (Section 9 OU Act), significant changes to the composition and functions of the Syndicate (Section 10 OU Act) and the Academic Council (Section 11 OU Act). The challenge to the OUA Act,



which was notified on 9<sup>th</sup> November, 2020 and published in the Odisha Gazette on the same date, is on several grounds which would be dealt with hereafter while noticing the submissions on behalf of the counsels for the Petitioners.

31. On behalf of the Petitioner submissions were made by Mr. S.P. Mishra, learned Senior Counsel and Mr. Narendra Hooda, learned Senior Counsel. Mr. A.K. Parija, learned Advocate General along with Mr. P.K. Muduli, learned Additional Government Advocate on behalf of the State whereas Mr. T.K. Satapathy, learned counsel for the UGC and Mr. P.K. Parhi, learned Asst. Solicitor General for Union of India.

***Submissions on behalf of the Petitioners***

32. On behalf of the Petitioners, it has been submitted as under:

(i) The UGC Act, 1956 is relatable to Entry 66 of List I read with Article 254 of the Constitution of India. Entry 66 List I deals with "Coordination and Determination of Standards in Institutions for Higher Education or Research in Scientific and Technical Institutions". The OUA Act, on the other hand, has been made by the Odisha State Legislature under Entry 25 List III (State List) which deals with "Education including Technical Education, Medical Education and Universities, subject to the provisions of Entry 63, 64, 65 and 66 of List I; Vocational and Technical Training of Labour." Since the legislation made by the State Legislature is subject to the law made with reference to Entry 66 List I, the State Legislature cannot enact a law under Entry 25 List III which is not in consonance with the statute already made by the Parliament under Entry 66 List 1.

(ii) The UGC Regulations, 2018 (the central legislation) and the OUA Act (State legislation) are in direct collision with each other. They are



irreconcilable and it is impossible to obey one without disobeying the other. Also, this is not a case where Presidential assent has been given to the OUA Act. The State law is thus repugnant and accordingly is void. Reliance is placed on the decisions in ***Rajiv Sarin v. State of Uttarakhand (2011) 8 SCC 708*** and ***Professor Yashpal v. State of Chhatisgarh (2005) 5 SCC 420***.

(iii) The changes brought about by the OUA Act do not adhere to the standards set by the UGC Regulations 2018 which are mandatorily applicable to State Universities of Odisha. Selection of teachers is an integral facet of maintaining standards of education in the Universities. The provisions of the OUA Act adversely affect the minimum standards laid down by the UGC and insofar they contradict and are inconsistent with the UGC Regulations 2018, the impugned provisions of the OUA Act are liable to be struck down. Reliance is placed on the observations of the Supreme Court in ***Preeti Srivastava (Dr) v. State of Madhya Pradesh (1999) 7 SCC 120*** which holds that the central law prescribing minimum standard with regard to education is mandatory in nature and that the “calibre of teaching staff” is an aspect of determining the standard of education. Reliance is also placed on the decision in ***Osmania University Teachers’ Association v. v. State of A.P. (1987) 4 SCC 671***.

(iv) In ***Prem Chand Jain v. R K Chhabra AIR 1984 SC 981***, the Supreme Court explained that after the 42<sup>nd</sup> Amendment to the Constitution, ‘education including universities’ was omitted from the State List and taken to Entry 25 of List III, i.e. the Concurrent List. The UGC Act was enacted by Parliament for co-ordination and determination of standards in HEIs or research. The OUA Act which seeks to make changes to encroach upon the powers of the UGC under the UGC Regulations, 2018 is

repugnant to and inconsistent with the latter and is inoperative under Article 251 of the Constitution. Reliance is also placed on the decision in ***Bharathi Vidyapeeth v. State of Maharashtra (2004) 11 SCC 755.***

(v) Reliance is placed on the decision of the Supreme Court in ***Praneeth K. v. University Grants Commission 2020 SCC Online (SC) 688*** where it was held that it was the statutory obligation of States to adopt the UGC guidelines. Reliance is placed on the decision of the High Court of Andhra Pradesh in ***Osmania University Teachers' Association v. Union of India MANU/AP/0756/2002*** where it was held that the minimum qualifications prescribed and the procedure suggested by the UGC for the selection, appointment and composition of the Selection Committee for selecting candidates “are various steps in the same process and are integral for the promotion and co-ordination of university education.” It was held that the State Legislature could not have passed a parallel enactment under Entry 25 List III encroaching on Entry 66 of List I.

(vi) Reliance is placed on the judgment of a Full Bench of Kerala High Court in ***D. Radha Krishnan Pillai v. Travancore DevaSwom Board (2016) 2 KLJ 41*** where it was held that irrespective of whether the statutes of the Universities are amended in line with the UGC Regulations, once the State Government has adopted the UGC regulations, it was bound to comply with it. Reliance was also placed on the decision of this Court in ***Manorama Patri v. State of Odisha (2016) 1 OLR 434*** where it was held that the Universities who are receiving UGC grants had to abide by the UGC Regulations with regard to appointment of the teaching staff. It was held in that case that since the Ravenshaw University was receiving grants from the UGC, it was bound to abide by the UGC Regulations and any law in violation of UGC Regulations was liable to be set aside. Reliance is also

placed on the decision of the Gauhati High Court in *Manmita Barman v. State of Assam 2020 SCC OnLine Gau 4682*.

(vii) The OUA Act in an arbitrary and malafide manner takes away the administrative and academic freedom of the universities. They are sought to be brought under the bureaucratic control of the State Government.

(viii) The State Government has not prescribed higher standards of education than that provided by the UGC Regulations, 2018 insofar as direct recruitment to the posts of Assistant Professor/Associate Professor and Professor are concerned. Insofar as Section 21 (2) of the OUA Act has given full discretion to the OPSC to decide whether to conduct an examination only or an examination with interview, it has violated the mandatory minimum condition of Clause 6.0 of the UGC Regulations, 2018 which has laid down the procedure for selection of teachers to the Universities.

(ix) Section 21(5) of the OUA Act states that for vacancies pertaining to the same subject and same rank of teachers of more than one university, the OPSC may conduct a common selection test. This overlooks the fact that Departments of Universities have specialized requirements integral to the development and progress of research and learning. Such need may not be addressed by resorting to a common selection test. Regulation 4.1(III) of the UGC Regulation 2018 envisages an outstanding professional, with significant contribution to the knowledge in relevant discipline, with ten years' experience being eligible to be appointed as a Professor. The mandatory requirement of a written examination makes such provision otiose. A written examination for the post of Teachers in a University is irrational, devoid of any determinable principles, suffers from the vice of

manifest arbitrariness and is, therefore, violative of Article 14 of the Constitution of India.

(x) Insofar as Section 21(6) of the OUA Act gives power to the OPSC to conduct only a preliminary written test and forego the need for examination and interview in case the OPSC opines that there are a large number of applicants and that holding of an examination and/or interview is not reasonably practicable, it would result in hostile discrimination against one set of applicants rendering the entire process manifestly arbitrary.

(xi) The change to the composition of the Selection Committee for the post of VC brought about by Section 6 (3) of the OUA Act makes it subject to the complete control of the State Government. The discretion of the Chancellor with regard to the nominee is removed. The Syndicate's nominee is replaced by nominee of the State Government. Inasmuch as the Chancellor's nominee is an ex-bureaucrat, and not a person of eminence in higher education, Regulation 7.3.0 of the UGC Regulation, 2018 would stand violated.

(xii) The stand of the State Government that the VC has more administrative than academic functions to perform and hence the Selection Committee should assess the administrative aptitude of the candidate is not in consonance with the recommendations of the report of the Kothari Commission 1964-66 which is reflected in Clause 7.3(i) of the UGC Regulations 2018 which mandates minimum 10 years experience as Professor of a University or ten years experience in a reputed research and/or academic organization for being eligible for the post of Vice Chancellor.

(xiii) The OUA Act has taken away the administrative and financial autonomy from the Universities. Reference is made to Section 3(c) of the OUA Act which places the University under control of the State Government qua acquiring, holding and dealing with movable and immovable properties. Section 6(b) has removed representative nominee of the Syndicate from the Search Committee for the selection of VC and replaced it with the nominee of the State Government. Section 9 has abolished the Senate and transferred its powers to the Syndicate of the University under Section 10 (c) with regard to reviewing the policies and programmes of the University and residuary powers not otherwise provided for in the Act.

(xiv) Section 14 of the OUA Act takes away the power of the VC and the Selection Committee to appoint teachers and non-teaching staff of Universities and vests it in the OPSC and the State Selection Board (SSB) respectively. Section 15 of the OUA Act vests the exclusive power of creation of teaching and non-teaching posts as well as the determination of the scale of pay with the State Government. It completely excludes the University from the decision-making process pertaining to its own employees. A collective reading of all the amendments reflects the intention of the State Government to appropriate the control and administration of the Universities. This seriously erodes the autonomy of the Universities which is against the objectives of the NEP 2020, the recommendations of the Kothari Commission, the Yash Pal Committee and the best practices in the leading Universities of the world. The said amendments are arbitrary, against the spirit of the extant policies and laws pertaining to higher education in the country and are unsustainable in law.

(xv) Section 15 of the OUA Act amends Sections 22 of the OU Act to give unfettered and exclusive authority to the State Government to create all posts of Officers, Teachers of University as well as to determine their scale of pay, allowances and service conditions. The unamended OU Act had reposed the power with the Chancellor, subject to specific allotment of funds and the approval of the State Government. The unamended OU Act further had stated that in the absence of the yard stick framed by the University, the UGC scales would be applicable. The amendments brought about by the OUA Act take away the financial autonomy of the Universities and places them at the mercy of the State Government. It completely removes the authorities of the Universities from the decision-making process and this amounts to serious interference in the management of the affairs of the University. The Chancellor/VC is best suited to determine which posts need to be created, as well as apportionment of funds regarding teaching staff depending on the specific needs of the University. Thus, the financial as well as administrative autonomy of the Universities is impaired and this is antithetical to the established policies concerning higher education in the country.

(xvi) Section 18 of the OUA Act repeals the RU Act which had been enacted to convert the Ravenshaw College at Cuttack into a unitary University by taking the century old heritage college out of the jurisdiction of the Utkal University, a large affiliating University governed by the OU Act. The repeal of the RU Act has resulted in bringing it back in the fold of the OU Act. This would seriously affect the reputation of the Ravenshaw University and this runs contrary to the recommendations of the Gajendragadkar Committee. The provisions of the OUA Act also violate Section 23 of the GC Act since the draft of the proposed amendment was not published for the information of the persons likely to be affected



thereby. No opportunity was given to the persons affected to raise objections and make suggestions.

***Submissions on behalf of the UGC***

33. Appearing on behalf of the UGC Mr. T.K. Satapathy, learned counsel, submitted as under:

(i) The UGC Regulations and the amendments from time to time have been issued after detailed deliberations by Expert Committees and are mandatory in nature. This is emphasized in Clause 1.2 of the UGC Regulations, 2018.

(ii) The OUA Act has not been enacted in compliance with the UGC guidelines.

(iii) Under Section 28 of the UGC Act every regulation thereunder shall be laid, as soon as may be after it is made, before each house of Parliament while it is in session for a total period of thirty days. The UGC Regulations therefore cannot be disregarded. The OUA Act is not in conformity with the UGC Act and the Rules framed thereunder.

(iv) Reliance is placed on the decision in *Annamalai University v. Secretary to Government, Information and Tourism Department (2009) 4 SCC 590*, where it was held that the provisions of the UGC Act are binding on all the Universities whether conventional or open.

(v) The impugned State Legislation is in conflict with the central legislation including subordinate legislation. A State legislation under Entry 25 of the Concurrent List which is repugnant to the Central Legislation would be inoperative to that extent.



***Submissions on behalf of the State***

34. Appearing on behalf of the State, Shri A.K. Parija, learned Advocate General and Mr. Muduli, learned Additional Government Advocate submitted as under:

(i) The impugned amendments are not in violation of the UGC Act or the 2018 UGC Regulations. The expressions “Recruitment” and “Conditions of Service” fall within the domain of the State Legislature under Entry 25 List III read with Article 309 of the Constitution. In the absence of any legislation by the Central Government under Entry 25 List III, subordinate legislation under Entry 66 List I have to yield to the jurisdiction of the State Legislature under Entry 25 List III.

(ii) Section 6 (3) and Section 14 of the OUA Act 2020 which deal with the recruitment of the VC and teachers are within the legislative competence of the State Legislature. Entry 66 in List I is a specific entry having a very limited scope. It deals with co-ordination and determination of the standards in institutions of higher education or research as well as scientific and technical institutions. The words ‘co-ordination’ and ‘determination of standards’ would mean laying down standards. When it comes to prescribing minimum standards for such HEIs, exclusive domain is given to the Union. All other facets of education, including regulation and governance of education are within the legislative competence of the State Government under Entry 25 List III.

(iii) The UGC Regulations, 2018 lay down both “Minimum qualifications for the posts of Senior Professor, Professors and Teachers, and other Academic Staff in Universities and Colleges” and “revision of pay scales and other Service Conditions pertaining to such posts”. Only those

provisions of the UGC Regulations which lay down the minimum standards can be ascribed to Section 26(1) (e) and (g) and Entry 66 List I i.e., the minimum qualifications prescribed for appointment of VCs and teaching staff of Universities. However, service conditions and the method/process of selection of VCs and teaching staff cannot be ascribed to Section 26(1)(e) and (g) and Entry 66 List I.

(iv) The UGC Regulations, 2018 are required to be adopted by the State Legislatures by amending their respective University statutes. Therefore, the provisions of the UGC Regulations are directory in so far as State Universities are concerned. In case the State does not amend its University statutes in conformity with the UGC Regulations, the only consequence which follows is the withdrawal of funding from the UGC as enumerated under Regulation 1(3) read with Section 14 of the UGC Act.

(v) The test to be applied to determine the validity of the State legislation depends upon whether it prejudicially affects “coordination or determination of standards”. If the impact of the State law is so heavy or devastating as to wipe out or abridge Entry 66 List I, then and only then it may be struck down. By way of the impugned provisions, the State Government has not changed the minimum qualifications required for appointment of either VCs or teaching staff. The State Government has only amended the method of selection which does not affect the minimum standards of higher education.

(vi) Reliance is placed on the observations of the decision in ***Jagdish Prasad Sharma v. State of Bihar (2013) 8 SCC 633*** to contend that in the absence of any central legislation under List III Entry 25, the OUA Act made thereunder read with Article 309 of the Constitution of India,

regulating the method of selection and appointment of officers and teaching staff of Universities, was a validly permissible piece of legislation.

(vii) The UGC Regulations, 2018 have been made under Section 26(1) (e) and (g) of the UGC Act read with Section 14 thereof and are in the nature of subordinate legislation. Such subordinate legislation must yield to the plenary jurisdiction of the State Legislature under List II of the Seventh Schedule to the Constitution of India.

(viii) Since *Jagdish Prasad Sharma* (*supra*) is by a bench of three Judges of the Supreme Court, to the extent that the two judge Bench decisions in *Kalyani Mathivanan v. K.V. Jeyaraj* (2015) 6 SCC 363 and *Annamalai University* (*supra*) are inconsistent therewith, they must be considered *per incuriam*.

(ix) Service conditions and the method of process and selection of VC and teaching staff cannot be ascribed to Section 26(1) (e) and (g) of Entry 66 of List I. Reference was made to the decision in *Modern Dental College and Research Centre v. State of M.P.* (2016) 7 SCC 353 which explained that the scope of Entry 66 List I was limited and confined to coordination and determination of standards of HEIs and research. However, the expression “education” in List III Entry 25 gives concurrent powers to both the Union of India as well as the States. The State Legislature is therefore, competent to enact laws relating to the method/process of selection under Entry 25 List III read with Article 309 of the Constitution.

(x) Reliance is also placed on a letter dated 26<sup>th</sup> November, 2021 issued by the UGC to all Universities forwarding “guidelines for recruitment of faculty” in Universities, deemed-to-be Universities Colleges, which inter alia states that the composition of the Selection Committees for

appointment of Teaching Staff shall be as per the Acts and statutes of the State Universities.

(xi) The OUA Act, made under List-III Entry 25 of Schedule Seventh of the Constitution of India cannot be struck down merely because they are not in conformity with the UGC Regulations. It can be struck down only if its effect is so heavy and devastating so as to abridge Entry 66 List I. In this context, reliance is placed on the decision in *University of Delhi v. Raj Singh (1994) Suppl 3 SCC 516* and the decision of the Madras High Court in *Change India v. Government of Tamilnadu Manu/TN/0507/2016*.

(xii) The OUA Act does not alter the minimum standards for appointment of the VC as set out from Regulation 7.3 (i) of the UGC Regulations, 2018. The post of VC is an administrative post and not a teaching post since Section 4 of the OU Act does not include VC in the category of teachers. Further, Section 6(1) of the OU Act shows that the VC is a whole-time officer of the University. The decision in *Kalyani Mathivanan (supra)* supports this interpretation. Regulation 7.3(ii) of the UGC Regulations 2018 provides that the Search-cum-Selection Panel must evaluate the candidates “experience in academic and administrative governance”. Moreover, the duties of a VC under the UGC Regulation 2018 are administrative in nature.

(xiii) Section 6 of the OUA Act rather than prejudicially affecting the standards of higher education is in fact better than Regulation 7.3(ii) of the UGC Regulations. The said provision is therefore, *intra vires* the UGC Regulations, on an application of the test laid down in *Modern Dental College and Research Center (supra)*.

(xiv) Section 6 (1) of the OUA Act provides that the recommendation of Search Committee shall be 'unanimous', thus belying the contentions of the Petitioner that the control in this regard is entirely with the State Government. OPSC, a constitutional authority under Articles 315, 320 and 321 of the Constitution, has been entrusted with the recruitment of teaching staff of the Universities. This was done on the recommendation of the Chancellor as communicated by a letter dated 9<sup>th</sup> November, 2018 to the Hon'ble Governor. Since 17 Universities are conducting recruitments individually, the Chancellor thought it prudent to advise the Government to have a centralized recruitment by the OPSC. If the UGC Regulations 2018 were to be adopted for centralized recruitment for each of the 17 Universities, the Selection Committee would consist of (i) 17 VCs or his/her nominees, (ii) 17 academicians not below the rank of Professor to be nominated by the Visitor/Chancellor, (iii) 3 Subject Experts, (iv) 17 Deans of the Faculties concerned, (v) 17 Heads/Chairpersons of the Departments/Schools concerned. Such a Selection Committee would be completely impractical. Bihar and Jharkhand have also been conducting recruitment of teaching staff for the Universities through their respective PSCs and no objection has been raised by the UGC. Rather than prejudicially affecting the standards of education prescribed by the Parliament, the impugned amendment enhances the standards.

(xv) As regards repeal of the RU Act, it was submitted that prior to 1989 there were four Universities in Odisha viz., (a) the UU, established under the UU Act 1966, (b) the BU under the BU Act 1966 (c) The SU established under the SU Act 1966 and (4) the SJSV established under the SJSV Act 1981. The said Universities functioned as affiliating Universities of HEIs. In order to bring the Universities under the purview of one statute for administrative convenience, the OU Act was enacted and the

abovenamed individual statues were simultaneously repealed. Likewise, the RU Act has been repealed and brought under the purview of the OU Act. The academic autonomy of the RU has not been affected in any way.

***Nature of the UGC Regulations, 2018***

35. The first issue that requires to be addressed concerns the true nature of the UGC Regulations, 2018. Are they central subordinate legislation referable to Entry 66 of List I of the Schedule Seventh to the Constitution as contended by the UGC and the Petitioners and are they binding on the State of Odisha? Is the OUA Act repugnant to the UGC Regulations, 2018?

36. The UGC Regulations 2018 which replaced the UGC Regulations 2010 have been framed under Section 26 (1) (e) and (g) of the UGC Act read with Section 14 thereof. This is evident from the recitals of the Preamble to the UGC Regulations, 2018 which reads as under:

“In exercise of the powers conferred under clause (e) and (g) of sub-section (1) of Section 26 read with Section 14 of the University Grants Commission Act, 1956...”

37.1 There is merit in the contention of the State that the UGC Regulations, 2018 are in the nature of a subordinate legislation. In order to understand the true scope of the respective entries in the Lists in the Seventh Schedule to the Constitution, reference may be made to the decision of a three-Judge Bench of the Supreme Court in ***Jagdish Prasad Sharma (supra)***.

37.2 The background facts there were that the Ministry of Human Resources and Development (MHRD), Department of Higher Education, (DHE), Government of India, communicated, on 23<sup>rd</sup> March, 2007, its decision to the UGC that age of superannuation of all persons holding posts



as of 15<sup>th</sup> March, 2007 in any of the centrally funded Higher and Technical Educational Institutions under the HRD Ministry would stand enhanced from 62 to 65 years. It had also been decided that persons holding regular teaching positions, who had superannuated prior to 15<sup>th</sup> March, 2007 on attaining the age of 62 years, but had not attained 65 years could be reemployed against vacant sanctioned posts till they attained the age of 65 years.

37.3. As a result of non-implementation of the above decision, several State teachers filed writ petitions seeking enhancement of their age of superannuation from 62 to 65 years. The petitions were dismissed on the ground that no conscious decision had been taken by the UGC with regard to teachers working in State Universities since the above communication pertained to centrally funded Universities. On 3<sup>rd</sup> October, 2008 a Pay Review Committee set up by the UGC submitted its report to the UGC pursuant to which a conscious decision was taken by the UGC to enhance the age of superannuation for all the teachers throughout the country. Consequently, UGC published a Scheme on 31<sup>st</sup> December, 2008 proposing inter alia revision of pay of teachers and other equivalent cadres in all central universities and colleges and deemed universities.

37.4 A letter dated 31<sup>st</sup> December 2008 was written by the Central Government to the Secretary UGC containing the above Scheme. State Governments were given the option to adopt the Scheme in its composite form. The Scheme envisaged that in case a State Government opted to revise the pay scales of teachers, financial assistance of the Central Government to such State Governments would be to the extent of 80% of the additional expenditure involved, with the State Government having to meet the remaining 20% from its own resources. This was for the period



from 1<sup>st</sup> January 2006 till 31<sup>st</sup> March 2010, after which the entire liability would be taken over by the State government. Another important condition stipulated by the UGC was that the grant of central assistance for implementation scheme would be subject to the State Government implementing the entire scheme “as a composite scheme without any modification” except in regard to the date of implementation. This included enhancing the age of superannuation of teachers to 65.

37.5 The States of West Bengal, U.P., Haryana, Punjab and Madhya Pradesh implemented the UGC Scheme without waiting for the UGC Regulations which were framed only on 30<sup>th</sup> June, 2010. When reimbursement of the 80% of the expenses was sought from the Central Government, problems arose, since in keeping with the composite UGC Scheme, the State concerned, had not enhanced the age of superannuation simultaneously.

37.6 The question that arose was whether the UGC Regulations had a binding effect on educational institutions run by different States under the State enactments. The writ petitions seeking enforcement were allowed by the learned Single Judge of the Patna High Court but was reversed by the Division Bench of that High Court in appeals filed by the State.

37.7 Affirming the judgment of the Division Bench of the Patna High Court, the Supreme Court explained that while Regulations framed by the UGC were relatable to Entry 66 of List I of the Seventh Schedule to the Constitution, it did not empower the UGC to alter any of the terms and conditions of the enactments made by the States under Article 309 of the Constitution. The Supreme Court posed the question: “whether in the process of framing such regulations, the UGC could alter the service

conditions of the employees which were entirely under the control of the states in regard to State institutions?” Answering the said question in the negative, the Supreme Court held as under:

“70....There is no doubt that the Regulations framed by the UGC relate to Entry 66 List I of the Constitution in the Seventh Schedule to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation”.

37.8 It was held that the acceptance of the UGC Scheme in the composite form “was made discretionary and, therefore, there was no compulsion on the State and its authorities to adopt the Scheme.” Specific to the State of Bihar, it was noticed that the amended provisions of Section 67 (a) of the Bihar State Universities Act 1976 as amended by the 2006 amendment and the corresponding amendments made to the Patna University Act, 1976 had categorically stated that the period of service for non-teaching staff would not be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. The Supreme Court then proceeded to observe as under:

“77....There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame Regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under Entry 25 of List III. So long as the State legislation did not encroach upon the jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central

Government under Entry 25 List III, both would have to be treated on a par with each other. In the absence of any such legislation by the Central Government under Entry 25 List III, the Regulation framed by way of delegated legislation has to yield to the plenary jurisdiction of the State Government under List III Entry 25.”

38. This Court is accordingly inclined to accept the submission of the State government in the present case that while the UGC Regulation 2018 lays down the minimum qualifications for the teaching posts, the service conditions and the method/process of selection cannot be said to be covered thereunder.

39.1 The above plea also finds support from the decision of the Constitution Bench of the Supreme Court in ***Modern Dental College and Research Centre*** (*supra*) in which the scope of the respective entries i.e. Entry 66 List I and Entry 25 List III was examined in great detail.

39.2 The background to the said decision was that the Appellant institution had challenged the validity of the Madhya Pradesh statute of 2007 (‘the 2007 Act’) concerning fixation of fees in private professional educational institutions and to provide for reservations of seats to the persons belonging to Scheduled Caste (SC), Schedule Tribes (ST) and other backward classes in professional educational institutions. The statute provided for “regulation, admission and fixation of fees”. It encompassed all private professional educational institutions of all disciplines not confined to medical and dental professions. However, the challenge to the 2007 Act was raised only by medical and dental educational institutions, who also challenged the Admission Rules 2008 and the Entrance Examination Rules, 2009 which were framed under Section 12 of the 2007 Act.

39.3 One of the grounds of attack was the competency of the State Legislature to enact the 2007 Act, as according to the Appellant the subject matter fell in the domain exclusively reserved for Parliament. The High Court upheld the 2007 Act and the Rules. Only Rule 10(2) (iii) of 2009 Rules which provided that an ineligible candidate must be permanently registered by the Madhya Pradesh Medical/Dental Council on or before 30<sup>th</sup> April, 2009 was struck down.

39.4 The aforementioned judgment of the High Court was upheld by the Supreme Court of India. One of the specific issues was whether the 2007 Act was beyond the legislative competency of the Madhya Pradesh state legislature. In answering the question, the Supreme Court considered its earlier decisions in *Bharati Vidyapeeth v. State of Maharashtra* (*supra*); *Gujarat University v. Krishna Ranganath Mudholkar* AIR 1963 SC 703 and *Preeti Srivastava* (*supra*). The Supreme Court noted that the competing entries were Entry 66 List III and Entry 25 List III. It also took note of Entry 32 List II. The three entries were then analyzed as under:

“List I

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

List II

32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

List III

25. 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.”

101. To our mind, Entry 66 in List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words 'co-ordination and determination of standards' would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such co-ordination and determination of standards, insofar as medical education is concerned, is achieved by Parliamentary legislation in the form of Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short, 'MCI') therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as co-ordination of standards and that of educational institutions. When it comes to regulating 'education' as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in Entry 25 of List III, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject matter of Entry 11 in List II. Thus, power to this extent was given to the State Legislatures. However, this Entry was omitted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from July 03, 1977 and at the same time Entry 25 in List II was amended. Education, including university education, was thus transferred to Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the

appellants is accepted, it may render Entry 25 completely otiose. When two Entries relating to education, one in the Union List and the other in the Concurrent List, co-exist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to co-ordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by Entry 25 of List III is wide enough and as circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.”

39.5. The Supreme Court in, *Modern Dental College and Research Centre* (*supra*), proceeded to observe as under:

“103. .... Thus, while Entry 66 List I dealt with determination and coordination of standards, on the other hand, the original Entry 11 of List II granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to Education was removed and deleted, and the same was replaced by amending Entry 25, List III, granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of Education, except that which was specifically covered by Entry 63 to 66 of the List I.”

39.6 Thereafter, the decisions noted hereinabove were reconciled as under:

“104. No doubt, in *Bharti Vidyapeeth* it has been observed that the entire gamut of admission falls under Entry 66 of List I. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In *Gujarat University*, a Bench of



five Judges examined the scope of Entry II of List II (which is now Entry 25 of List III) with reference to Entry 66 of List I. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to the Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by Entry 66 of List I must prevail over power of the State. Validity of a state legislation depends upon whether it prejudicially affects 'coordination or determination of standards', even in absence of a union legislation. *In R. Chitralekha v. State of Mysore AIR 1964 SC 1823*, the same issue was again considered. It was observed that if the impact of State law is heavy or devastating as to wipe out or abridge the central field, it may be struck down. *In State of T.N. & Anr. v. Adhiyaman Educational & Research Institute & Ors. (1995) 4 SCC 104*, it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in *Dr. Preeti Srivastava and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidalaya (2006) 9 SCC 1*. Though the view taken in *State of Madhya Pradesh v. Kumari Nivedita Jain & Ors. (1981) 4 SCC 296* and *Ajay Kumar Singh & Ors. v. State of Bihar & Ors. (1994) 4 SCC 401* to the effect that admission standards covered by Entry 66 of List I could apply only post admissions was overruled in *Dr. Preeti Srivastava*, it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in *Bharti Vidyapeeth*.

105. We do not find any ground for holding that *Dr. Preeti Srivastava* excludes the role of states altogether from admissions. Thus, observations in *Bharti Vidyapeeth* that entire gamut of admissions was covered by Entry 66 of List I cannot be upheld and overruled to that extent. No doubt, Entry 25 of List III is subject to Entry 66 List I, it is not possible to exclude the entire gamut of admissions



from Entry 25 of List III. However, exercise of any power under Entry 25 of List III has to be subject to a central law referable to Entry 25.

106. In view of the above, there was no violation of right of autonomy of the educational institutions in the CET being conducted by the State or an agency nominated by the State or in fixing fee. The right of a State to do so is subject to a central law. Once the notifications under the Central statutes for conducting the CET called 'NEET' become operative, it will be a matter between the States and the Union, which will have to be sorted out on the touchstone of Article 254 of the Constitution. We need not dilate on this aspect any further.”

39.7. It was further observed in the concurrent judgment of Bhanumati J. in ***Modern Dental College and Research Centre (supra)***, as under:

“132. The intent of our Constitution framers while introducing Entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to ‘education’ and organizing its own common entrance examination.

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148. In view of the above discussion, it can be clearly laid down that power of Union under Entry 66 of Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of ‘determining the standards of higher education’ and not of laying down admission process. In no case is the State denuded of its power to legislate under Entry 25 of List III. More so, pertaining to the admission process in universities imparting higher education.”

40.1 At this stage the Court would like to deal with the decisions relied on by learned counsel for the Petitioners. The first is ***Kalyani Mathivanan v.***

**K.V. Jeyaraj** (*supra*). The issue in that case was, whether the appointment of the Appellant as VC of the Madurai Kamaraj University was illegal as she did not satisfy the eligibility criteria stipulated by the UGC Regulations, 2010? The Court answered the question in the affirmative and accordingly appointment of the Appellant as VC was set aside.

40.2 In the further appeal by the ousted VC in the Supreme Court, one of the questions was whether in the event of a conflict between the Madurai Kamaraj University Act, 1965 and the UGC Regulations, 2010 which would prevail? A two-Judge Bench of the Supreme Court relied on an earlier decision in **Annamalai University v. Information and Tourism Department** (*supra*) and held that to the extent that the State Legislation was in conflict with the Central Legislation, including a subordinate legislation, the former would be inoperative. However, it was observed that whether the State law encroaches upon Entry 66 or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List will have to be determined by the examination of two laws and will depend upon the facts of each case.

40.3 It was further held in **Kalyani Mathivanan v. K.V. Jeyaraj** (*supra*) that while UGC Regulations 2010 are mandatory to teachers and staff of central universities, they were directory for the universities, colleges and other HEIs under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the (UGC) Scheme. “Thus, the UGC Regulations, 2010 are partly mandatory and partly directory.” As far as the case on hand was concerned, it was held that since the State of Tamil Nadu had not adopted the UGC Regulations, 2010, the “question of conflict between the state legislation and the statutes framed under the central legislation does not arise.” Therefore, the appointment of

the Appellant as VC was upheld and the judgment of the Madras High Court quashing her appointment was set aside.

41. The other decision relied on by the Petitioners is *Annamalai University v. Information and Tourism Department* (*supra*). There the focus was on maintaining minimum standards of education. Although it was held that the State Legislation to the extent it was in conflict with the Central Legislation, including a subordinate legislation like the UGC Regulations, would be inoperative, but as explained in *Kalyani Mathivanan v. K.V. Jeyaraj* (*supra*), unless the UGC Regulations are adopted by the State Government and implemented, the question of repugnancy would not arise.

42. As regards other decisions cited by learned counsel for the Petitioners, in *Osmania University Teachers Association* case (*supra*), the State of Andhra Pradesh had enacted a Commissionerate Act which on facts was found to encroach on the domain of the UGC Act, 1956. Therefore, it was a case of a covered field again being encroached by the State Government. This is apparent from the following observations of the Supreme Court –

*“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 coordination 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 had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice versa.” (emphasis supplied)*

43. The issue in ***Manmita Barman v. State of Assam*** (*supra*) was whether the state could prescribe “higher eligibility qualifications for admission to medical college than the standard set by the NEET Exam by the Medical Council of India under the MCI Regulations”. The High Court of Gauhati while striking down the eligibility criteria laid down by the State of Assam since it was higher than what was prescribed under the MCI Regulations for the NEET Exam, observed that “the State has the right to control education including the medical admission so long as the field is not occupied by any union legislation.” However, as the present case is concerned, the context is not about the State prescribing higher standards for medical education. Likewise, in ***Manorama Patri v. State of Orissa*** (*supra*) the Ravenshaw University had relaxed the minimum qualifications prescribed in the UGC Regulations and therefore that was interfered with. In the present case, the OUA Act does not amend the minimum qualifications for appointment of VC or the teaching staff, as prescribed in UGC Regulations 2018.

44. On the other hand, the facts here appear closer to those in ***Laxmi Narayan Bairwa v. State of Rajasthan Manu/RH/0994/2019***. There the Rajasthan High Court was dealing with a challenge to the vires of the amendments to the Jainarayan Vyas University Act, 1962 and the Maharshi Dayanand Saraswati University Act, 1987. By way of the said amendment Act, the Government of Rajasthan amended the minimum qualifications for the appointment to the post of VC. Those amendments were challenged on the ground that they were not in conformity with the UGC Regulations, 2010. Negating the said challenge, the High Court held as under:

“25. The crucial point, in the opinion of this Court, is that the Supreme Court in at least two places, held that Regulation 7.3.0 has to be treated as recommendatory in nature, in as much as it relates to Universities and Colleges under a State legislation. This conclusion is also recorded in para 62.4 quoted above. As a consequence, this Court is unable to accept the petitioner’s argument that if a State once adopts such a recommendatory regulation (i.e. Regulation 7.3.0), its legislature is denuded of the power to legislate anything in deviation for all times to come. This conclusion is based upon two considerations. One is that Section 26(1)(e) is not cast in mandatory terms but rather states that “ordinarily” the stipulations would be adhered to. The second important consideration is that Central or State Universities created by law are not only covered but the other species of institutions such as deemed universities (under UGC Act) would be covered. If what the petitioner contends was to be accepted (Vice Chancellor of University), the consequence would be that vice chancellors with a limited number of students – 1000, offering only 5 disciplines would be eligible, whereas Deans of a large University (or senior professors heading departments in such universities) with administrative experience of heading faculties, which control administrative and educational functions of a large number of colleges on various aspects (whose students may well run into over 10,000) in diverse disciplines like English, Sciences, Law, Commerce, etc. would be ineligible for consideration. Given that the standards for Vice Chancellors were framed for the first time in 2010, the choice of the State to either continue to adhere to them, or to make statutory provisions in its university legislation, cannot be dictated in this manner. It is clear that the State’s judgment based upon the experience gained in its higher educational activities, assumes importance. The State may then well decide to depart from the UGC Regulations, 2010 and legislate either independently or through amendments (which it is empowered to do in exercise of its plenary legislative powers), providing for eligibility conditions that may be wider than those stipulated by the UGC Regulations, 2010. That appears to be the case in the present proceedings.”

45. The question of what would happen if the State does not adopt the UGC Regulations has been answered by the Madras High Court in ***Change India***



*v. Government of Tamil Nadu (supra)*. There the High Court noted that the State Government had not adopted the UGC Regulations 2010, and that no mandamus as such could be issued to it to comply with its requirement. It was observed by the High Court as under:

“38. A plea of estoppel cannot be really raised as sought to be canvassed by the UGC as it is a matter of statutory amendment. On our query, learned counsel for the UGC was of the view that they being now quite awake to the violations by the State Government qua the UGC Regulations would be entitled to and would take necessary steps as permitted under the UGC Act and the Regulations framed therein consequent to the approach of the State Government in not amending the statutes which may include stopping of aid in future. This is a matter for the University Grants Commission.

39. The State Government should also now be quite aware of the consequences which will flow to them on their inaction or refusal to amend the provisions of the Statutes in pursuant to the Regulations and should be ready to face them. This may entail difficulty in the functioning of the State Universities on account of the lack of support and fund flow from the UGC.

40. We are, thus, of the view that no positive direction is required in the present case in the aforesaid given facts and circumstances and also considering the fact that this is a Public Interest Litigation. The respective parties are quite aware of the consequences which flow. It would, no doubt, be advisable and desirable for the State Government to amend the Acts in terms of the Regulations in view of the pre-eminent role of the UGC so that both are in conformity. This is not only for the purpose of financial aid for the future or on account of the assurances held out in the past, but also on account of the desirability of doing so.”

46. Likewise, in the present case the consequences of the Government of Odisha not adopting the UGC Regulations 2018 in toto and choosing to go with the OUA Act in the manner indicated above would not *ipso facto* result in the invalidation of the OUA Act.



47. The conclusions of this Court as regards the nature and binding effect of the UGC Regulations, 2018 are as under:

- (a) UGC Regulations, 2018 may have the character of central subordinate legislation referable to Entry 66 of List I of the Seventh Schedule to the Constitution;
- (b) Nevertheless, inasmuch as the UGC Regulations, 2018 have not been adopted by the Government of Odisha, they are not binding on it. They can at best be directory as far as the Odisha State universities are concerned
- (c) For the same reason, as explained in *Kalyani Mathivanan v. K.V. Jeyaraj and Others* (*supra*), the question of the OUA Act being repugnant to the UGC Regulations, 2018 does not arise.

***Does the OUA Act denude the autonomy of the State Universities? Is it manifestly arbitrary?***

48. Turning now to the provisions of the OUA Act, one of the principal grounds of challenge concerns the change in the method of selection of the VCs. These are depicted in a tabular chart as under:

<b>Odisha Universities Act, 1989</b>	<b>Odisha Universities Act, 1989 as amended in 2020</b>
<i>6(3) The Committee referred to in sub-section (1) shall consist of three members out of whom one member shall be nominated by the Chairman, University Grants Commission, one member shall be nominated by the Chancellor and the remaining member shall be selected by the Syndicate of the concerned University, and the Chancellor</i>	<i>6(3) The Committee referred to in sub-section (1) shall consist of following three members, out of whom one shall be appointed by the Chancellor as the Chairman of the committee, namely: (a) Chancellor's nominee who should be a <b>superannuated officer of the State Government having</b></i>

<p><i>shall appoint one of the members to be the Chairman of the Committee.</i></p>	<p><b><i>worked as Chief Secretary to the State Government or as a Secretary to Government of India or in any other Post of the same rank;</i></b>                  (b) <i>Nominee of University Grants Commission;</i>  <i>and</i>                  (c) <i>Nominee of the State Government who shall be an eminent academician of State or National repute.</i>                  (emphasis supplied)</p>
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49. The corresponding provision is contained in Clause 7.3(i) of the UGC Regulations 2018, which reads as under:

*“7.3(i) A person possessing the highest level of competence, integrity, morals and institutional commitment is to be appointed as Vice-Chancellor. The person to be appointed as a Vice-Chancellor should be a distinguished academician, with a minimum of ten years’ of experience as Professor in a University or ten years’ of experience in a reputed research and / or academic administrative organization with proof of having demonstrated academic leadership.*

*(ii) The selection for the post of Vice-Chancellor should be through proper identification by a Panel of 3-5 persons by a Search-cum-Selection Committee, through a public notification or nomination or a talent search process or a combination thereof. The members of such Search-cum-Selection Committee shall be **persons of eminence in the sphere of higher education** and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the Search-cum-Selection Committee shall give proper weightage to the academic excellence, exposure to the higher education system in the country and abroad, and **adequate experience in academic and administrative governance**, to be given in writing along with the panel to be submitted to the*

*Visitor/Chancellor. One member of the Search-cum-Selection Committee shall be nominated by the Chairman, University Grants Commission, for selection of Vice Chancellors of State, Private and Deemed to be Universities.”*

50. The contention on behalf of the State that the amendment to the OU Act by the OUA Act does not dilute the minimum standards set out in Clause 7.3(i) of the UGC Regulations, 2018 for the appointment of a VC, merits acceptance. The change brought about is that the number of academicians in the Committee has been reduced from 3 to 2 and the third is one retired bureaucrat. However, the decision of the Committee has been mandated to be ‘unanimous.’

51. If indeed the qualification expected of the VC is not only experience in academic matters but also “in administrative governance”, as is evident from the nature of his duties as spelt out in the UGC Regulations 2018, then the inclusion of a bureaucrat in the Selection Committee panel cannot be said to completely destroy the standards prescribed for the appointment of the VC. A short additional affidavit dated 19<sup>th</sup> September, 2021 filed by the State shows that in recent times, ex-bureaucrats have been made Chancellor’s nominee.

52. The criticism that the Syndicate is now being completely dominated by the State Government is also not valid, since Section 6(1) of the OUA Act, as amended, provides that all recommendations of such committee shall be unanimous.

53. The question that arises is whether the above change can be said to have a “heavy and devastating effect” so as to “wipe out or abridge the central field” i.e. the matters covered by Entry 66 of List I of the Seventh Schedule to the Constitution? It will be recalled that this was the threshold

identified in *Modern Dental College & Research Centre (supra)* while evaluating the effect of the State Legislation in that case which had been enacted with reference to Entry 25, List III. In the considered view of this Court, the said high threshold cannot be said to have been crossed in the present case. In other words, the changes noted are not such that it would encroach on the domain of the UGC Regulations, 2018. Consequently, the Court is not able to accept the plea of the Petitioners that the said amendments would destroy the autonomy of the University and make them subservient to the control of the State Government.

54. Turning now to the selection of teaching staff by the OPSC, the changes brought out in the OUA Act can be depicted in a tabular form as under:

<b>Odisha Universities Act, 1989</b>	<b>Odisha Universities Act, 1989 as amended in 2020</b>
<p>21(2) <i>The teachers of a University shall be appointed by the Syndicate of that University on the recommendation of a Selection Committee after scrutinizing all the papers concerning the selection.</i></p> <p>(3) <i>The Selection Committee referred to in sub-section (2) shall consist of:</i></p> <p>(i) <i>the Vice-Chancellor;</i></p> <p>(ii) <i>Director of Higher Education;</i></p> <p>(iii) <i>three outside experts selected by the Vice-Chancellor from out of a panel prepared by the Syndicate of the University;</i></p> <p>and</p> <p>(iv) <i>an academician nominated</i></p>	<p>21(1) <i>On and from the date of commencement of the Odisha Universities (Amendment) Act, 2020 but subject to the provisions hereafter provided the Commission shall be the authority competent to conduct examination for appointment to the teaching posts of a University.</i></p> <p>(2) <i>The Commission shall conduct examination or examination and interview in accordance with eligibility criteria and minimum qualification required for appointment to the post of teachers, as may be prescribed in the University Grants Commission Regulations and</i></p>

<p>by the Chancellor in case of appointment to the post of professor.</p> <p>(4) The quorum at a meeting of the Selection Committee shall be four of whom at least two shall be experts including the expert nominated by the Chancellor, if any.</p> <p>(5) Where the Selection Committee fails to make any specific recommendation or where the Syndicate differs from the recommendation made by the Committee, the matter shall be referred to the Chancellor whose decision thereon shall be final.</p> <p>(6) Subject to the provisions, if any, in the Statutes the employees of a University, other than those specified in the preceding sub-sections shall be appointed by the Vice-Chancellor.</p>	<p><b>guidelines</b> issued in this behalf, from time to time.</p> <p>(3) All teachers of the University staff be appointed by the Vice-Chancellor of the concerned University on the recommendation of the Commission.</p> <p>(4) The Registrar of the concerned University shall, ordinarily, by the last date of December of every year, make a requisition to the Commission subject-wise vacancies of teachers, including anticipated vacancies of the next calendar year, indicating number of posts reserved for different reserved category candidates in accordance with the provisions of relevant Acts or Rules, Orders, Resolutions or Instructions issued, from time to time, by the State Government and such other information as prescribed and, if any, as may be required by the Commission.</p> <p>(5) For vacancies pertaining to same subject and same rank of teachers of more than one University, the Commission may conduct common selection test for such Universities.</p> <p>(6) In case there is large number of applications received from the candidates and in the opinion of the Commission that it is not reasonably practicable</p>
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	<p><i>to conduct the examination or examination and interview, they may shortlist the candidates by conducting a preliminary written test or adopt such other method as they deem just and proper.</i></p> <p><i>(7) The Commission while constituting a Selection Committee for selection of teachers for different subjects, shall invite minimum three subject experts as per the guideline or regulations of University Grants Commission issued in this behalf, from time to time.</i></p> <p><i>(8) The Commission shall be competent to determine the manner of conduct of its proceedings and to take all decisions required for selection of teachers to the Universities consistent with the provisions of this Act and Regulations prescribed in this behalf by the University Grants Commission.</i></p> <p><i>(9) On the basis of result of examination or examination and interview, the Commission shall prepare and forward subject-wise merit list of the candidates, for existing and anticipated vacancies, each equal to the vacancies communicated by the concerned University and also forward waiting list candidates as determined by the Commission; Provided that where the merit</i></p>
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	<p><i>list is prepared by the Commission on the basis of the common selection test, the names of selected candidates shall be forwarded to the University according to choice of posting exercised by the selected candidates which shall be honoured as per descending order in the merit list and the Commission shall recommend names to Universities concerned accordingly.</i></p> <p>(emphasis supplied)</p>
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55. On the other hand the UGC Regulations 2018 provides for the composition of the selection committee as under:

***“5.1 Selection Committee Composition***

*1. Assistant Professor in the University:*

*(a) The Selection Committee for the post of Assistant Professor in the University shall consist of the following persons:*

- i) The Vice Chancellor or his/her nominee, who has at least ten years of experience as Professor, shall be the Chairperson of the Committee.*
- ii) An academician not below the rank of Professor to be nominated by the Visitor/Chancellor, wherever applicable.*
- iii) **Three experts in the subject** concerned nominated by the Vice Chancellor out of the panel of names approved by the relevant statutory body of the university concerned.*
- iv) Dean of the Faculty concerned, wherever applicable.*
- v) Head/Chairperson of the Department/School concerned.*
- vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories to be nominated by the Vice Chancellor, if any of the candidates from any of these categories is an applicant and if any of the above members of the selection committee does not belong to that category.*

*(b) Four members, including two outside subject experts, shall constitute the quorum.”*

56. A perusal of the above provisions show that the minimum qualifications for appointment of teaching staff as prescribed in the UGC Regulations 2018, have in fact been adhered to and not diluted. Section 21(2) of the amended Act, as set out, indeed requires such adherence. The OUA Act does not change the minimum qualifications for either the VC or the teaching staff. Only the method of their selection has been amended and this in no way affects the minimum standards of higher education.

57. The Court's attention was drawn to Article 309 of the Constitution of India which empowers the 'appropriate legislature' to regulate the 'recruitment' and 'conditions of service' of persons appointed to public services and posts in connection with the affairs of the state or the Union as the case may be. The method of selection and appointment is a sub-set of 'recruitment' and the State legislature can enact a law to regulate it. In *Jagdish Prasad Sharma v. State of Bihar (supra)*, the Supreme Court reminded that: "Under Entry 25 of List III, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation." In the same decision, it was further emphasised that in the absence of legislation by the central government under Entry 25 List III, the subordinate legislation under Entry 66 List I will have to yield to the 'plenary jurisdiction of the State Government under List III Entry 25.'

58. The Petitioners' criticism of the uniform criteria for selection of teaching staff as being irrational and arbitrary, does not appear to be well-

founded. The change appears to have originated in a letter dated 9 November, 2018 addressed to the Chief Secretary, Govt. of Odisha by the Principal Secretary to the Chancellor, i.e. the Governor, which reads as under:

“To

*The Chief Secretary,  
Government of Odisha,  
Bhubaneswar*

*Sub: Recruitment to teaching posts like Assistant Professors, Associate Professors and Professors of the Universities through a central agency.*

*Sir,*

*Inviting a reference to the subject cited above, I am to say that recruitment process to the posts of Assistant Professors, Associate Professors and Professors of the Universities is being conducted by the concerned Universities at present by a Selection Committee formed at respective University level as per the provisions of Orissa Universities Act, 1989 and Statutes made there under.*

- 2. As the number of State Universities have reached 17 now, there is continuous process of recruitment at one University or other. The applicants apply for positions in one University after another as per their advertisements. Thus, the applications of aspiring candidates are processed several times in several Universities. They are interviewed several times resulting in the inefficiencies and repetitive work at Universities.*
- 3. Simultaneously, it is seen that the Universities which recruit teachers earlier tend to lose them to Universities which recruit later. Thus, the efforts of Universities in calling for applications, processing them, conducting interviews and recruiting teachers goes in vain once a teacher leaves one University for another.*
- 4. That apart, provision of LIEN to a teacher when she/he leaves one University for another results in creating handicap for the first University as it cannot recruit against that post. There seems to be no logic to keep a post vacant on account of LIEN for a person who takes up a regular recruitment post. Hence, the provision of LIEN may be abolished for regular recruitment posts in Universities. However, it may*

*be continued for those who go on tenure posts like that of Vice-Chancellor where the person would have to return to his/her parent post after his/her tenure is over.*

5. *In view of the above facts, Hon'ble Chancellor has been pleased to order that:*

a. *Government is to examine the proposal for recruitment of University teachers (Assistant Professor, Associate Professor and Professor) by a Central Agency like OPSC or any central agency. If this proposal is accepted, then corresponding amendment is to be made in Orissa Universities Act, 1989 and Statutes made there under.*

b. *The provision of LIEN may be removed for regular recruitment posts while it may be continued for tenure posts as mentioned above.*

6. *Action taken in the matter may be intimated to undersigned by 31<sup>st</sup> December, 2018 for kind information of Hon'ble Chancellor."*  
(emphasis supplied)

59. If the above argument persuaded the State government to experiment with a changed method of recruitment, that can hardly be characterized as irrational and arbitrary. Also, the Court is not persuaded to enter into the finer details of selection of teachers and Professors and in particular the needs for experts in specialized fields. As per Section 21 (7) of the OUA Act, the OPSC shall include minimum three subject experts, as per the guideline or regulations of the UGC in the Selection Committee for selection of university teachers. How these changes actually work out in practice is too early to tell. The mere possibility that it might create difficulties may not be a good enough reason to pronounce the entire set of changes to be unconstitutional.

60. Also, the apprehension that the OPSC may not be equal to the task of recruitment of teachers is not based on any actual empirical data. Whenever there are changes to the methods of recruitment, some apprehension by those wanting the continuation of the status quo is but natural. But then the

changes are intended to improve the system and the test of their working would have to be made on actual case to case basis. At this stage, it is not possible for the Court, on the basis of the material placed before it, to come to a definite conclusion that these changes will not serve the purpose of improving the system of recruitment of teaching staff.

61. The mere recantation of the expression ‘manifest arbitrariness’ to assail the validity of the OUA Act will not satisfy the high threshold that the said expression requires the Petitioners to satisfy. The arbitrariness must be ‘demonstrable’. In the considered view of this Court, the Petitioners have not been able to persuade the Court about the ‘manifest arbitrariness’ of the impugned provisions of the OUA Act. To reiterate, the threshold laid by the decision in *Modern Dental College & Research Centre (supra)* that the impugned changes/provisions should have a “heavy and devastating effect” is certainly not met in the present case.

62. In the present case, as already discussed hereunder, there is no overlapping of the amendments to the OU Act with the UGC Regulations, 2018. Therefore, the decision in *Osmania University Teachers Association (supra)* has no application to the facts of the present case

63. In the present case, the UGC Regulations 2018 do not affect the power of the State to determine the process and method of selection of the VCs and the teaching staff. The UGC Regulations 2018 cannot be said to occupy the entire field in relation to the said issue.

#### ***Repeal of the RU Act***

64. If it indeed is true that with the enactment of OU Act 1989, four enactments under which four other universities in Orissa stood established, were repealed, viz., the Utkal University Act 1966, the Berhampur

University Act 1966, the Sambalpur University Act 1966 and the Shri Jagannath Sanskrit Viswavidyalaya Act, 1981, without any objection from the UGC, there appears to be no reason why objection should be raised to the repeal of the RU Act. The justification put forth then that the said Universities were being brought under the purview of one statute for administrative convenience, appears to hold good even now as regards the RU.

65. Nothing has been placed on record to show that either the autonomy or the academic freedom of the RU would be adversely affected by the impugned repeal. The Court is therefore not able to subscribe to the apprehension expressed by the Petitioners that the autonomy of the Ravenshaw University would be impaired by the repeal of the RU Act.

66. For all of the aforementioned reasons, the Court finds that no grounds are made out for granting any of the reliefs prayed for. In the result, the writ petitions are accordingly dismissed, but in the circumstances, with no order as to costs.

**(S. Muralidhar)**  
**Chief Justice**

**(A.K. Mohapatra)**  
**Judge**

S.K.Jena/PA