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*Before H.S. Bedi & J.S. Narang, JJ*

ANSHUL SOOD & OTHERS,—*Petitioners*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 5833 of 2004

31st August, 2004

*Constitution of India, 1950—Art. 226—University Grants Commission Act, 1956—S.3—Notification dated 16th October, 2003 issued by the Government of India—Notification dated 10th February, 2004 issued by the Chandigarh Administration—Admission to B.E. Degree Course in the PEC—Government of India on the recommendation of the UGC issuing notification u/s 3 of the 1956 Act according status of deemed University to PEC—Chandigarh Administration by notification dated 10th February, 2004 reducing reservation of seats of the State quota from 85% to 50% Challenge thereto—Before functioning as a University autonomously, administratively and financially various acts are required to be committed, completed and to be complied with—Memorandum of Association which necessarily required to be approved before making a deemed University functional not approved till date—Recommendations of the UGC are not the prerequisites for issuance of notification u/s 3 of the 1956 Act—Respondents admitting that for running the PEC as a deemed University actually, factually and practically the interregnum period is required—Chandigarh Administration also admitting that the PEC is not able to function in complete perspective as a deemed University for the current session—In the absence of approval of MOA and implementation to make the deemed University function practically and factually not possible during the current session, order issued by the Chandigarh Administration reducing the seats reserved for the locals not sustainable and deserves to be quashed.*

*Held*, that it has been contended that so far as the status accorded to the PEC as Deemed University is concerned the same is not under challenge, but, the acts which have to be committed or performed for making it function actually, factually and practically as Deemed University, may need time by the concerned quarters.

If that be so, there was no hurry for issuing the notification/order dated 10th February, 2004 without making compliance of the requirements for practical functioning of the PEC as Deemed University. Especially, when the stand of the Chandigarh Administration is that the reduction of the reservation from 85% to 50% for the locals of Chandigarh is dependent on and is contained in the MOA, in this regard, specific reference has been made to para 6 of the same, but, the MOA has not been approved as yet. Whereas, the Chandigarh Administration is proceeding upon the premises that the MOA has been approved as has been stated in their averments in the written statement, which fact is incorrect. When the basic document, upon the basis of which the stand had not been approved by Government of India, the issuance of the impugned order/notification would not be sustainable and the same deserves to be quashed.

(Para 25)

*Further held*, that despite the status of deemed University having been conferred upon the PEC, the functioning of the same could not be made autonomous—financially and everywise as the provisions in the budget have been allocated once all over again. It is strange that Chandigarh Administration knew too well that the MOA has not been approved as is evident from the communication received by them from Government of India but chose to issue the order dated 10th February, 2004, by virtue of which the reservation of the quota for the locals has been reduced from 85% to 50% which has not been shown to be the pre-requisite for issuance of notification under section 3 of the UGC Act, 1956.

(Para 32)

*Further held*, that no doubt the principal notification dated 16th October, 2003 is not under challenge, but, in any case, it has been admitted by all that for making the Deemed University functional actually, factually and practically the interregnum period is required. However, the acts committed and the projections given by the Union Territory itself show that the PEC shall not be able to function in complete perspective as a Deemed University for the current session 2004-05. They have very fairly observed in the notification dated 8th July, 2004 that for the academic session 2004-05 the PEC would continue to function under the aegies of Punjab University for the

purpose of affiliation and academic programmes etc. and that the new academic programme as a Deemed University would be implemented from the next academic session 2005-06. If that be so, the solitary act by virtue of which the seats reserved for the locals for the current session 2004-05, have been reduced could not have been reduced by virtue of the impugned order dated 10th February, 2004 especially when the same has been issued without the MOA having been approved when such order is based upon para 6 of the charter i.e. MOA.

(Para 36)

Ms. Nirmaljit Kaur, Advocate for the petitioners.

S. K. Sharma, Standing Counsel for respondents No. 1 and 2.

Rajiv Atma Ram, Senior Advocate with Ms Sunint Kaur,  
Advocate for respondents No. 3 and 4.

### JUDGMENT

**J. S. NARANG, J**

(1) This judgement would dispose of CWP Nos. 5833, 10590 and 10966 of 2004, as common question of law and somewhat similar facts are involved and that the relief claimed is also similar. For brevity, the facts are being taken from CWP Nos. 5833 of 2004.

(2) The point involved in the present petitions that the seats in the Punjab Engineering College (hereinafter referred to as "the PEC") were being filled in the following manner :

<b>Total number of seats in B.E. Degree course in different branches for the year 2003-04 :</b>	<b>.. 385</b>
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The distribution of the seats was as under :—

- (a) 85% State Quota (U.T. Chandigarh) = 329 seats. The eligibility to the aforesaid percentage is that the student must have passed his/her qualifying examination (10+2) from Union Territory, Chandigarh.

(b) 15% All India Quota : 56 seats

The candidates who have passed their qualifying examination, but are not covered under category (a) above.

(3) The break-up of the seats as aforesaid has also been provided i.e. from category (a) 244 seats had been declared as open seats and 85 seats had been kept in the reserved categories such as Scheduled Caste, sons/daughters/spouses of Military/Paramilitary Personnel/physically handicapped/children and grand-children of Freedom Fighters and Sports Persons. In the same variant, 38 seats out of 15% seats have been kept as open seats and 18 seats for the reserved categories as aforesaid. We need not go into the break-up provided in the various branches in the courses.

(4) The grievance of the petitioners is that by virtue of notification dated 10th February, 2004, copy Annexure P3, the Chandigarh Administration has reduced the State Quota (U.T., Chandigarh) from 85% to 50% and that the said reduction to the extent of 35% has been passed on to All India Quota, meaning thereby that the availability of seats has been made in the ratio of 50:50 *vis-a-vis* State Quota and All India Quota.

(5) This petition has been filed under Articles 226/227 of the Constitution of India challenging the aforesaid order *inter alia* on various grounds apart from the pivotal argument that the PEC has not effectively become a "Deemed University" despite the notification dated 16th October, 2003, issued by the Central Government, copy Annexure P11. It may be noticed that the legality of this notification has not been challenged by any of the petitioners. It shall be apposite to notice the aforesaid notification, which reads as under :—

No. F. 9—38/2001—U.3

Government of India,  
Ministry of Human Resource Development  
Department of Secondary & Higher Education.

Shastri Bhawan, New Delhi  
16th October, 2003.

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### NOTIFICATION

In exercise of the powers conferred by Section 3 of the University Grants Commission Act, 1956, (3 of 1956), the Central Government, on the advice of the University Grants Commission, hereby declares Punjab Engineering College, Chandigarh as Deemed to be University for the purpose of the aforesaid Act with immediate effect.

(RAVI MATHUR),

Joint Secretary to  
Government of India.

The Manager,  
Government of India Press,  
Faridabad (Haryana).

Copy forwarded for information to :

1. The Secretary, University Grants Commission, New Delhi.
2. The Principal/Director, Punjab Engineering College, Chandigarh—160009.

“The grant of Deemed to University to Punjab Engineering College Chandigarh is subject to the condition that it will adhere to the guidelines/instructions issued by UGC and AICTE from time to time as applicable to Deemed Universities.”

3. The Home Secretary-cum-Education Secretary, Education Department, Chandigarh Administration U.T. Secretariat, Sector-9, Chandigarh—160009.

4 to 11      \*\*      \*\*      \*\*      \*\*      \*\*

(6) It is the plea of the petitioners that by declaring an institution to be a Deemed University under Section 3 of the University Grants Commission Act, 1956 (hereinafter referred to as “the UGC Act”), a particular established procedure and a number of formalities need to be complied with and completed before the said institution is allowed to function factually and actually as a Deemed University, which are noticed as under :—

- “(a) The institution should be autonomous. That is it should be registered under the Societies Registration Act or Public Trust Act and should formulate a Memorandum of Association and Rules based on the model prescribed by the UGC.

- (b) The moveable and immovable assets should be legally vest in the name of the institution seeking recognition as a Deemed to be University.
- (c) The admissions to all the undergraduate courses, in the institution seeking recognition as a Deemed to be University, shall be made in the ratio of 50% : 50% for State Quota (U.T., Chandigarh Quota in the instant case) students and All India Quota students through a common entrance test conducted either by University Grants Commission (UGC) or by an institution/agency identified and approved by the UGC.
- (d) The institution, having the above qualifications, for seeking recognition as a Deemed to be University, is required to apply for the same to the University Grants Commission (UGC) through Ministry of Human Resource Development, Government of India, on a proforma prescribed by the UGC.
- (e) After the proposal is received by the UGC an expert committee is appointed to visit the institution for carrying out the necessary inspection and verification. The Committee submits its report to the UGC for further necessary action in the matter. The report of the expert committee is considered in the meeting of the UGC. Thereafter, the recommendation of the UGC, is forwarded to the Ministry of Human Resource Development, Government of India for declaring an institution as a Deemed to be University.
- (f) Ministry of Human Resource Development, Government of India, after considering the recommendations of the UGC, notifies the institution to be a Deemed to be University through a gazette notification.
- (g) After the issue of Ministry of Human Resource Development, Government of India notifications above, the concerned State Government (the Chandigarh Administration in the instant case of Punjab Engineering College) is required to issue a notification and/or pass a detailed order for causing the institution to operate as a Deemed University.

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- (h) After issue of the State Governemnt (the Chandigarh Administration in the instant case of Punjab Engineering College) notification and/or passing of detailed order, the institution starts operating as a Deemed to be University with the consequences including the following :
- (i) With the institution becoming a Deemed University, all moveable and immovable assets stand transferred in the name of the institution and do not remain vested with the Chandigarh Administration in the instant case of Punjab Engineering College.
  - (ii) The institution immediately comes under the administrative control of the Board of Governors of the society/trust which is specified in the Memorandum of Association while sending the proposal for Deemed to be University to the UGC. In the instant case, the Punjab Engineering College does not remain under the administrative control of Chandigarh Administration.
  - (iii) Like a University, the exminations for all the undergraduate and postgraduate courses, offered by the institute, are Conducted by the Institute itself. The institution does not remain affiliated to any other University for the conduct of examinations of its courses and award of degrees for the same.
  - (iv) Though the funding agency of the institution remains the same as that prior to its recognition as a Deemed to be University yet, no annual budget allocation is done for the institution like that for a Government Department. Instead, a grant-in-aid is sanctioned for the institution (Deemed to be University) by the same funding source which allocated annual budget to the institution prior to its becoming a Deemed University.
  - (v) Unlike in a college, an institution recognized as a Deemed University is headed by a Vice Chancellor or a Director and not by a Principal.

- (vi) All policy decisions regarding academic matters, including the Constitution of Board of Studies, Constitution of Research Board, Constitution of Research Degree Committees, design of Degrees and Certificates etc. of the institution are taken by its Senate and not by the University to which the institution was affiliated prior to its recognition as a Deemed to be University.
- (vii) Unlike in a college a Registrar is appointed for a Deemed to be University.
- (viii) Unlike in a State Government College (in the instant case of Punjab Engineering College under the Chandigarh Administration) the recruitment of faculty is made by Selection Committees duly constituted by the Board of Governors of the institute. That is the recruitment of faculty through Union Public Service Commission (UPSC) is dispensed with as soon as the institution starts operating as a Deemed University.
- (ix) Unlike in a Government department the recruitment for non teaching Group 'C' & 'D' posts is made by selection committees duly constituted by the Board of Governors of the Institute and not through the Regional Employment Exchange, which is the practice in a Government department".

(7) It has been averred that the process for projecting the PEC as a Deemed University had been initiated but to make it operate as a Deemed University, the picture is not clear. There is so much required to be done before it can be accepted as a Deemed University in the right and correct perspective. For all practical purposes, the PEC is still functioning as a Government Department under the control of Chandigarh Administration, which was the status prior to the issuance of the notification under Section 3 of the UGC Act. If that be so, which has been practically accepted, the issuance of the impugned order dated 10th February, 2004, copy Annexure P3 by the Chandigarh Administration is neither justifiable nor sustainable under law.



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(8) In this regard, it has been further averred that the PEC is operating as a Government Department, which fact stands established from the acts of Chandigarh Administration itself i.e. a letter dated 30th January, 2004 had been addressed by the Chandigarh Administration to the Ministry of Human Resources Development Government of India, for seeking approval of the draft notification to be issued in this regard. No approval has been received in this regard as yet. Copy of the letter has been appended as Annexure P4. It is not clear, that this exercise is required to be carried out before the issuance of notification under Section 3 of the UGC Act or any such follow up action is provided anywhere for projecting the status as a Deemed University. The perusal of the draft notification which has been appended as part of Annexure P4 shows that the Administration is not clear in its own mind as to from which date the PEC shall function actually, factually and practically as a Deemed University. In this regard some paras of the draft notification need to be noticed, which read as under :—

- “3. On and from the 1st of March, 2004, all posts sanctioned by the Chandigarh Administration for different departments/sections of the College to the Society shall stand transferred to the Society.
- 4(i) For the period prior to 1st March, 2004 the Officers, teachers or other employees, who were either posted or were liable to be posted to the Punjab Engineering College, prior to transfer of the college to the Society, shall continue to work in their respective positions, without any special allowance for such work, until such time as may be decided upon by the Chandigarh Administration.
- (ii) The employees of the Punjab Engineering College will be given an opinion regarding absorption in the PEC Society, which has already been registered, or to remain Government employees (to be adjusted against vacant posts if any in their cadre elsewhere in the Administration). It would be made clear to them that in case there are no such vacant posts in their respective cadre available then they would be retrenched from service.

- (v) The present employees of the PEC who opt to be absorbed in the PEC Society shall become employees of the PEC Society with effect from 1st March, 2004 and shall cease to be the Government employees. From the date of allotment of Government employees to the Society, the responsibility of payment of salaries, allowances, loans, advances and other admissible concessions to allotted persons, shall be borne by the College. The society shall recover from such allotted persons their contribution towards GP Fund and Savings-cum-Group Insurance Scheme and deposited the same to be appropriate Head of Accounts of the Chandigarh Administration.

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6. Unit decided otherwise by the Chandigarh Administration, the Chief Engineer, UT, Chandigarh shall continue to attend to all maintenance works relating to buildings, roads, electrical installations, water supply, sewage disposal and drainage in the college campus as per existing procedure. The Chandigarh Administration shall not allot the necessary funds to the Chief Engineer, U.T., Chandigarh for such works. The Chief Engineer, U.T., Chandigarh shall also execute all additional construction/installation works as may be requested for by the Society after 1st March, 2004 on deposit work basis without, however, charging any establishment cost.

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9. For the Current year, PEC shall continue to function under the aegis of the Panjab University for the purpose of affiliation and academic programmes etc. The new academic programmes of the PEC as a Deemed University would be implemented from the next academic session i.e. 2004-2005. Regarding the possibility of introduction of NRI seats/NRI sponsored seats and possible increase in tuition fees for students, the matter would be left to the PEC Society.

xxx                      xxx                      xxx                      xxx.”

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(9) The perusal of the above shows that the new academic programmes of the PEC as a Deemed University were proposed to be implemented from the next academic session i.e. 2004-05 (the current session).

(10) It looks that the Government was not in a position to make the PEC function as a Deemed University as is evident from the fact that, the grant-in-aid, which was earlier sanctioned by the Chandigarh Administration for the PEC at the time of inception of the same for becoming a Deemed University during the financial year 2003-04, has been converged into the budget allocation. Whereas, in the earlier letter dated 16th February, 2004, the PEC had been intimated that no budget has been provided for the PEC for the financial year 2004-05, Whereas,—*vide* the subsequent notification dated 29th March, 2004, the Financial Department, Chandigarh Administration revised the budget provision for the financial year 2004-05 (current session), for allocating the funds accordingly.

(11) It has also been averred that it was incumbent upon the respondents to have appointed a Director under the control of Board of Governors of the institution, which is a mandatory requirement for the purpose of setting up the Deemed University. But no such act is shown to have been performed by the respondents till date as is evident from the communication dated 6th February, 2004, copy Annexure P8, addressed by the Ministry of Human Resources Development, Department of Secondary and Higher Education wherein it has been mentioned that while conveying the Commission's approval,—*vide* letter dated 3rd July, 2003, it has been clearly mentioned that (1) the Governance structure of the college should be similar to those of IITs (Indian Institute of Technology) (2). The recruitment facilities may be based on IIT pattern as has been done in NIT institutions (3). The first Director of the Institute should be an eminent person preferably from the IIT system.

(12) It may also be noticed that the University Grants Commission while sending its recommendation to the Central Government in respect of the Regional Engineering Colleges had observed that the Memorandum of Association (MOA) submitted by the PEC is not as per the model Memorandum of Association prescribed by the University Grants Commission. A further request had been made that the MOA of the PEC be finalised pursuant to the pattern

of MOA prescribed by the Ministry for National Institute of Technology. It is obvious that the MOA submitted by the Chandigarh Administration to the University Grants Commission had not been finalised nor had been accepted prior to the notification issued under Section 3 of the UGC Act. It is because of this reason the clear status of PEC as a Deemed University was not decipherable. Yet another factor which has been referred to is, the written statement filed by the Chandigarh Administration in CWP No. 17643 of 2003, wherein, a categorical plea has been taken that the notification dated 16th October, 2003, has been issued by the Government of India but the College is still functioning as a Department of Chandigarh Administration and that the MOA of the PEC is yet to be approved by the Government of India. Further, the Board of Governors for the Deemed University has still not been constituted and that the age of retirement of the employees continues to be 58 years unless altered by the Board of Governors. It is also the plea that the terms and conditions of the Deemed University are still silent. The petitioners have pleaded that the requirement of reserving the allocation of seats accordingly is contained in the MOA of the PEC, which, as per the Chandigarh Administration, is yet to be approved by the Government of India. It may be noticed here that to this plea the Chandigarh Administration has taken the stand that in view of the issuance of the notification dated 16th October, 2003 by the Government of India, the PEC has to be accepted as a Deemed University for all practical purposes except the implementations which have to be made pursuant to the aforesaid notification. So far as the stand taken by it in CWP No. 17643 of 2003, is concerned, it has been stated that the statements made in the written statement are nothing but inadvertent mistakes and that amended written statement incorporating the correct facts is being filed to the aforesaid petition.

(13) It has also been averred that the purpose of declaring an institute to be a Deemed University is to make it independent administratively, financially and academically, which is not the case which has been accomplished so far as the PEC is concerned. It goes without saying that the PEC cannot be defined as autonomous body/institution for functioning as a University. Mere issuance of the notification under section 3 of the UGC Act is not sufficient to accept in all perspectives the institution to be a Deemed University. No one has the right to play with the lives of students in such

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institutes, who have to be given the admission as yet and who are studying in the same. The quality of education cannot be compromised with the complacent attitude adopted by the authorities. It looks that no one has completed the home work before such projections are given to the society.

(14) It has been averred in para 14 of the petition that the reservation policy of the PEC, whereby the change was yet to be accepted by way of approval to be granted to the Memorandum of Association (MOA) submitted by the Chandigarh Administration, has not been granted as yet. It is para 6 of the MOA, wherein it is contained that 50% seats would be filled up on All India basis for the undergraduate courses. It is obvious that upon approval of the MOA, this right of reservation shall flow accordingly. It has been averred that the said MOA is yet to be approved by the Government of India. It has necessitated for us to peruse the reply to para 14 submitted by Government of India, University Grants Commission (UGC) and so also the Chandigarh Administration. The stand of Union of India is that the policy for admission on 50:50% basis should be followed from the date the PEC was granted the Deemed University status and that the Memorandum of Association has already been approved. The University Grants Commission, has taken a categorical stand vis-a-vis the approval of the MOA and that a very cautious stand taken is that even in the absence of the formal approval of MOA, the requirement of providing 50:50 reservation has to be followed. It has also been averred that no further notification is required to be issued by Chandigarh Administration for starting operation of Deemed University by the PEC. Likewise the stand of Chandigarh Administration is that the Government of India has approved the MOA, wherein it is categorically contained that the admissions to the undergraduate courses in the institute shall be made through a Common Entrance Test and at least 50% of the seats would be filled up on All India Basis and that for Postgraduate courses 100% seats would be filled on All India Basis. Therefore, even as per the MOA the minimum of 50% seats have to be filled up on All India Basis. In reply to para 14, it has been categorically averred that the MOA was sent to the UGC/ Government of India along with the proposal and the same stands approved at the time of issuance of notification under Section 3 of the UGC Act dated October 16, 2003.

(15) It shall be apposite to notice the contents of para 14 of the petition and the respective replies of respondents No. 1 to 4 which read as under :—

**Para 14 of the petition :**

“14. That the reservation policy for admission to Punjab Engineering College is provided in para 6 at page 4 of the MOA, which states that 50% seats would be filled up on All India basis for all the undergraduate courses which implies that this policy of reservation for admission to Punjab Engineering College can be implemented only when it becomes and operates as a Deemed University. However, the MOA, which provides for 50%:50% reservation policy, is yet to be approved by Government of India as stated by the Chandigarh Administration in its written statement dated 11th March, 2004 (Annexure P-9). Therefore, the same, in the absence of approval of the Government of India, cannot be operated against the petitioners to revise the existing policy (85%:15%) for State Quota (Chandigarh Quota) students and All India Quota students respectively. Moreso, when the admission process has already been started when the petitioners have taken admission in 10+2 in the schools/colleges at Chandigarh for taking benefit of the existing reservation policy of 85%:85%. The same can only be revised when Punjab Engineering College starts operating as a Deemed University after its MOA and the draft notification of the Chandigarh Administration are approved by Government of India and a final notification is issued by the Chandigarh Administration in this regard.”

**Reply to para 14 of respondent No. 1**

“14. In reply to para 14, it is submitted that policy for admission on 50:50 basis should be followed from the day PEC was granted the Deemed University status, secondly, the MOA has already been approved as stated above.”

**Reply to para 14 of respondent No. 2**

“14. That in reply to para 14 of the writ petition, it is submitted that even in the absence for the formal approval of MOA the requirement of providing 50:50 reservation has to be

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followed. However, it is again reiterated that issuance of further notification by Chandigarh Administration for starting operating of Deemed University Institution is not required”.

**Reply to para 14 of respondents No. 3 and 4 :**

14. Denied in view of the fact stated and submissions made above. The Memorandum of Association was sent to the UGC/GOI along with the proposal and the same stands approved with the issuance of notification Annexure R-2 by Government of India. Facts submitted in earlier paras may kindly be read in reply to this para”.

(16) During the course of arguments, the Union of India and the University Grants Commission had been directed through counsel to produce the relevant records by virtue of which the notification, under section 3 of the U.G.C. Act dated 16th October, 2003, had been issued upon the recommendation of the U.G.C. and that the pointed reference to the recommendations of U.G.C. Both the respondents produced the complete record which has been perused by us. We shall revert back to the status of granting approval to MOA in the later part of the judgment. It shall be apposite to notice the recommendation which was made by the U.G.C.,—*vide* letter dated 3rd July, 2003, copy of which has been appended as Annexure R2/I with the written statement of U.G.C. The minutes and the resolution of the Commission have been reproduced in the aforestated communication which read as under :—

“xxx xx xx xx

The Commission approved the recommendations of the Expert Committee to grant deemed to be university status to Punjab Engineering College, Chandigarh. The Commission further decided that the recommendations made by the Expert Committee be referred to the Ministry of Human Resource Development for conferring the status of deemed to be University to Punjab Engineering College, Chandigarh which are indicated as below :—

- (a) The College be called ‘Central Institute of Technology’ with 100% funding by the Ministry of Human Resource Development, New Delhi.

- (b) The governance structure of the Institute should be similar to those of IITs. The Chairman of the Board of Governors should be an academician or an industrialist.
- (c) 50% of seats to UG level and 100% on PG level may be filled through a National Level Test.
- (d) The recruitment of faculties may be based on IIT pattern as has been done in NIT Institutions. Also, the Institute should have a flexible cadre promotion system.
- (e) The first Director of the Institute should be an eminent person preferably from the IIT system.

A copy of the report/recommendation of the Expert Committee and that of the MOA/Rules is enclosed herewith for your ready reference. Further, Ministry of Human Resource Development is requested to take necessary action in this respect at an early date.

Yours faithfully,

(Sd.). . .

(SHARANJIT SINGH)  
Deputy Secretary.”

(17) This communication has also been referred to by Union of India in its short reply when it had been directed that respondent No. 1 should file parawise reply to the petition which was subsequently filed on 13th August, 2004. The Union of India, upon receiving the recommendation, as aforesaid, reverted to the PEC,—*vide* communication dated 24th July, 2003, copy Annexure R/II, whereby, the observations made by All India Council for Technical Education (AICTE) and the University Grants Commission (UGC) were communicated. The AICTE made categorical observation that “None of the programmes are accredited” and that the UGC had recommended that the Deemed University status be granted to the PEC Chandigarh by making the afore-noticed observations. The comments of the PEC had been asked for and a categorical observation had been made that



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the MOA/Rules be also modified accordingly. The Chandigarh Administration addressed a communication dated 9th September, 2003, copy Annexure RI/III. It had been intimated that the action had already been initiated for accrediting each of the programmes being conducted by the PEC as suggested by AICTE. The concurrence with the view points of the UGC had also been indicated. So far as filling up of 50% seats at undergraduate level, on All India basis, through a National Level Test are concerned the Chandigarh Administration indicated that they had already been approved. It had also been pointed out that the MOA/Rules have been modified with the existing name and the same were enclosed for approval and issuance of notification at the earliest

(18) The composite stand of the respondents has been that the reservation of the seats to the extent of 50% to the level of undergraduate courses on All India basis, has to be filled through National Level Test, to be conducted accordingly for the session i.e. 2004-05. It is also the stand of the respondents that the status of Deemed University has been granted to the PEC but for giving the practical shape and the implementation thereof does take time as some of the fulfilments have to be made accordingly. Thus, the cumulative approach is that some interregnum period is required for running the PEC as a Deemed University actually, factually and practically. The concerned authorities have to issue certain programmes as yet by way of notifications etc. Such authorities have to come into existence accordingly. The UGC had earlier taken the stand while submitting a short reply that while sending the recommendation to the Government of India for conferment of Deemed University status upon the PEC—one of the conditions imposed was that 50% seats at undergraduate level and 100% seats at postgraduate level may be filled through National Level Test. However, while submitting parawise reply, the plea taken is that the change of ratio of State Quota (Chandigarh U.T. Quota) and All India Quota status from 85% to 50%:50%, is the requirement. The parawise reply of the UGC shows that the recommendation had been made by it for conferring the status of Deemed University upon the PEC but upon compliance of the prerequisites as spelt out in the letter dated 3rd July, 2003. It is thereupon that a communication had been sent to the PEC for their comments and it is at that time, the updating of the MOA was also required. The reply of the Chandigarh

Administration to that letter shows that they had concurred with the requirements as spelt out in the recommendatory letter by the UGC the Government of India but, as to whether the compliance was made or not before the issuance of the notification under Section 3 of the UGC Act dated October 16th, 2003, none of the respondents have been able to show to us any efforts in this regard nor a categorical answer has been given in their respective written statements. So far as approval of the MOA is concerned the perusal of the record shows that the model MOA was communicated to the Chandigarh Administration and that when the same was promulgated and sent to the UGC as per their comments, the same was not commensurate and co-relative to the said format. In this regard the requisite file of Union of India was produced before us, which has been seen by us. Some of the notings on the file need to be noticed as no privilege has been claimed by the Government or anyone and in any case according to our opinion, no such privilege could be claimed, the same read as under :—

**“Noting portion of File No. F-9-38/2001-U3**

MOA & Rules of Punjab Engineering College (PEC), Chandigarh were examined by UGC and a comparative statement of UGC Model MOA/Rules, IIT, Allahabad MOA/Rules and PEC's MOA/Rules were placed for consideration in the Commission's meeting held on 10th June, 2002.

These MOA/Rules have been re-examined broadly and the position is summarized below:—

**A. Admission:**

**UGC Model MOA.**—Admission through Common Entrance Test conducted by UGC or an agency identified and approved by UGC or an agency identified and approved by UGC.

IIT, Allahabad- admission as per policy of Central Government.

PEC admission through common entrance test and at least 50% of seats on All India Basis (clause 6) (UGC has suggested that 50% seats at UG level and 100% seats at PG level should be filled through a National level test) page 120/c.

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**B. Review and inspection :**

Central Government/ UGC/ Chandigarh Administration may appoint one or more person to review the work and progress of the Institute and to hold inquiries into the affairs (clause 7).

**C. Board of Governors :**

(i) **Chairman.**— In UGC Model MOA/Rules. Vice-Chancellor is Chairman, in IIT, Allahabad and NIT, Eminent Technologist/Engineer/Industrialist/Educationist to be nominated by Central Government is Chairman.

In PEC, Chandigarh advisor to Administrator U.T. ,Chandigarh is Chairperson of first Board of Governors. In subsequent BOG, an eminent educationist/industrialist to be selected by the Administration is Chairman.

(ii) **Government of India/UGC Nominee.**— In UGC Model MOA/Rules as well IIT, Allahabad and NIT, there is provision of one nominee of Government of India (Min. of HRD) and one nominee of Chairman UGC. There is no such provision in first BOG of PEC, Chandigarh. In subsequent BOG, there is a provision of a nominee M/O HRD and UGC.

**D. Finance Committee :**

In UGC Model MOA/Rules, there is a provision of a nominee each from M/O HRD and UGC.

In NITs there is a provision of two nominees of Government of India.

In PEC there is no provision for Government of India/M/O HRD nominee.

**E. Director (Equivalent to VC) :**

As per UGC model MOA/Rules Vice -Chancellor is to be appointed by the President from a panel of 3 names suggested by a Search Committee consisting of one nominee each of the President of the Institute/State or Central Government/Chairman UGC.

In NIT's Director is to be appointed by Central Government.

In PEC Director is to be appointed by Chandigarh Administration on the recommendation of Search Committee consisting of Adviser to the Administrator, Chandigarh, Secretary (Tech.Edu.), Chandigarh, Finance Secretary, Chandigarh and a representative each from Central Government and UGC.

**F. Alteration/Amendments & Addition in Bye-laws :**

As per UGC Model MOA/Rules and NIT/ Rules.— Amendments shall become effective on receipt of concurrence of Government of India.

In PEC Amendments shall become effective on receipt of concurrence of Chandigarh Administration.

(3) It may thus be seen that some of the provisions in MOA/Rules of PEC are not in accordance with model MOA/Rules of UGC or NIT's/MOA/Rules and needs amendment. Following suggestions are submitted for consideration:—

- (i) The provision of the first Board of Governors in clause 10 may be deleted. In this 80 years old institution, existing arrangement may continue till a notification is issued for transfer of PEC from a Department of Chandigarh Administration to PEC Society and thereafter BOG in Rule 5 of Bye-laws may be immediately constituted.
  - (ii) A nominee each of Ministry of Human Resource Development and UGC may be included in the Finance Committee.
  - (iii) Alteration /Amendments and Addition in MOA/Rules should be effective on receipt of approval/concurrence of Government of India.
  - (iv) As regards Admission, Review and Inspection and other provision in MOA/Rules of PEC, Chandigarh. We may have no objection.
- (4) If approved, Chandigarh Administration may be informed that representations have been received regarding MOA/Rules of PEC, Chandigarh and MOA/Rules have been

re-examined. Suggestion given in para 3 above may be communicated for necessary action. If considered necessary a representative of Chandigarh Administration may be called for discussion regarding proposed amendments in MOA/Rules.

Sd/—

18.6.2004.

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(19) While going through the MOA Rules of Punjab Engineering College (PEC) (Deemed University), Chandigarh it was observed that some of the provisions in MOA/Rules of PEC are not in accordance with the MOA/Rules of UGC or NIT's MOA/Rules. Following suggestions were communicated to Chandigarh Administration,—*vide* this Ministry's letter dated 28th June, 2004 for necessary action :—

- (i) The provision of the first Board of Governors in clause 10 may be deleted. Existing arrangement may continue till a notification is issued for transfer of PEC from a Department of Chandigarh Administration to PEC Society and thereafter Board of Governors as proposed in Rule 5 of Bye-laws may be immediately constituted.
  - (ii) A nominee each of Ministry of Human Resource Development and UGC may be included in the Finance Committee.
  - (iii) Alteration /Amendments and Addition in MOA/Rules should be effective on receipt of approval/concurrence of Government of India.
- (2) In response to this Ministry's letter dated 28th June, 2004, Chandigarh Administration, Home Department,—*vide* its letter dated 23rd July, 2004 has communicated its comments which are as under :—
- (i) Expeditious action for constitution of regular Board of Governors is being taken.
  - (ii) The suggestion for including nominees of Ministry of Human Resource Development/University Grants

Commission in the Finance Committee of PEC Society will be placed in the first meeting of Board of Governors.

- (iii) The approval of Chandigarh Administration for any amendment in the MOA/Bye-Laws will be taken by the PEC Society, and the approval of Government of India may not be required.
- (3) A Notification No. 11/23/152-IH(2)-2004/12566, dated 8-9th July, 2004 has also been received from Chandigarh Administration converting the PEC, Chandigarh to a "Fully funded autonomous body" from its present status of "a Department" of Chandigarh Administration. As per the notification the administration of the PEC shall vest in the PEC Society.

Submitted for kind information and further orders please.

Sd/—

29.7.2004

We may inform U.T. Admn. that unless MOA/Rules of PEC are amended as suggested in para 1 above, the MOA/Rules of PEC cannot be approved by Government of India. DFA

Sd/—

30.7.2004.

**(No noting after 30th July, 2004 has been seen or produced).**

(20) During the course of hearing of the petition various CMs had been filed for placing on record the documents so also the affidavits called from time to time by different orders and that the said documents have been taken on record subject to all just exceptions. It may be noticed that the Chandigarh Administration issued a notification dated July 8, 2004,—*vide* which it has been observed that for the academic session 2004-2005, the PEC would continue to function under the aegis of the Panjab University for the purpose of affiliation and academic programmes etc. and that the new academic programmes of the PEC as a Deemed University would be implemented from the

next academic Session 2005-06. It looks that Chandigarh Administration had virtually understood that the actual, factual and practical working of the PEC as Deemed University may not be possible for the academic session 2004-05. It shall be apposite to notice some of the provisions contained and provided in the aforesaid notification by making reference to various paragraphs. Paras 2, 30, 38 and 39 require specific reference which read as under :—

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2. The grant-in-aid already sanctioned by the Chandigarh Administration to Punjab Engineering College in its budget, for the year 2004-05 for both plan and non-plan expenditure, shall become operative from 1st of October 2004. The Budget for the Punjab Engineering College for the current financial year shall continue to be operated under the respective heads of account by the Chandigarh Administration until 30th September, 2004, both in plan and non-plan heads. However, from the year 2005-06 onwards, the Chandigarh Administration shall every year, sanction funds based on block grant system excluding the expenditure on account of pension as grant-in-aid equivalent to the non-plan and plan expenditure during the year 2003-04. The Society shall prepare an annual budget and shall present the same to the Administration for allocation of funds as grant-in-aid. The Administration may increase or decrease the amount of grant in aid to be given in a particular year. The Rules guiding the determination of future grant in aid shall be finalized by the Administration separately in consultation with the Punjab Engineering College Society and with the approval of the Government of India if required.

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30. With respect to reservation of posts in the PEC Society and all the Departments/Bodies functioning under the Society, the same provisions of reservation shall apply as those prevalent in the Chandigarh Administration and its various Departments. In respect of Admission to various seats in the Punjab Engineering College or the

Departments under it, also, the same provisions in respect of reservation would apply as are prevalent in PEC at present.

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38. For the academic session of 2004-2005, Punjab Engineering College would continue to function under the aegis of the Panjab University for the purpose of affiliation and academic programmes etc. The new academic programmes of the Punjab Engineering College as a Deemed University would be implemented from the next academic session i.e. 2005-2006. Regarding the possibility of introduction of NRI seats/NRI sponsored seats and possible increase in tuition fees for students, the matter would be left to the PEC Society.
39. Financial rules and service rules and all other rules/guidelines of the Chandigarh Administration and all other rules/guidelines which are currently in force, would be followed by the Punjab Engineering College Society unless specifically provided for otherwise by the Society, in accordance with the Memorandum of Association and the Byelaws.

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(21) It may be noticed that notice of motion was issued,—*vide* order dated April 6th, 2004 returnable for 9th April, 2004. The short date was given as the matter related to admission of the students to the PEC. Upon receipt of the written statements, the counsel for the respondents were pressing for the vacation of the interim order dated April 9th, 2004,—*vide* which the operation of the impugned order dated 10th February, 2004, copy Annexure P3, had been stayed, as the counselling was to be conducted for admission of the students. Thus, the interim order dated August 4, 2004, was passed which reads as under:—

“Arguments heard in part. At this stage, Mr. Sharma seeks an adjournment to enable him to file reply on behalf of respondent Nos. 1 and 2. May do so by 9th August, 2004



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with an advance copy to the counsel opposite. No further adjournment will be granted.

To come up on 11th August, 2004.

We also direct that the records pertaining to the declaration of the Punjab Engineering College as a Deemed University,— *vide* Annexure P—11 shall be produced in Court along with particulars as to the provisions under which the guidelines for declaration of the Deemed University have been issued.

We also direct that counselling fixed for 9th August, 2004 will go on the presumption that 85% quota is reserved for local candidates and 50% for outside candidates, but result thereof shall not be declared till further orders. Dasti.”

(22) The affidavit dated August 14th, 2004, has been filed by Prof. Ved Parkash, Secretary, University Grants Commission, New Delhi and he has categorically answered some of our queries, which read as under :—

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(2) That as per information supplied by the UGC learned counsel, this Hon'ble Court has directed UGC to clarify the following points:—

- (a) Whether guidelines issued for the purpose by UGC are statutory in nature or not ?
- (b) Whether these guidelines are binding ?
- (c) Whether the notification dated 21st December, 1985 is applicable to the present case or not ?

In this regard, it is submitted as under:—

- (a) The guidelines are not statutory in nature but are in the form of administrative instruction.
- (b) These guidelines are binding on all the deemed to be universities, which have been given the deemed to be University status and they have to be abide by the said guidelines.

- (c) The Regulations UGC (Establishment and Maintenance of Institutions), 1985 dated 21st December, 1985 is for establishment and maintenance of institutions under Section 12 CCC of the UGC Act. These institutions are called as Inter- University Centres. Under these regulations, the UGC establishes institutions for providing common facilities, services and programmes for a group of Universities.

“It may be pertinent to mention that the Inter-University Centres are different from that of deemed to be Universities. The status of deemed to be universities is accorded by the Central Government on the recommendations of the UGC under Section 3 of the UGC Act, 1956.”

(23) Mrs. Nirmaljit Kaur, Learned counsel for the petitioner has argued that the PEC Chandigarh, no doubt, has been notified to be a Deemed University pursuant to the notification issued under Section 3 of the UGC Act, 1956, but, the issuance of such notification alone does not make the said institution functional Deemed University in all respects. The UGC had made the recommendation prior to the issuance of the aforestated notification,—*vide* letter dated July 3, 2003 and in that also observations had been made and if those may be taken as pre-requisites for argument sake and that without fulfilment of those the notification under Section 3 of the UGC Act, could not have been issued by the Government of India. Dehors of this, if the notification has been issued without compliance of pre-requisites, then margin for implementation may have to be granted to the concerned quarters. Does the issuance of the notification would mean that some requisites, as aforestated, can be taken to have been fulfilled by mere consent of fulfilments in future from the concerned quarters and the rest are to be allowed to be fulfilled and that the status of Deemed University has to be accepted pursuant to the notification.

The perusal of the replies submitted by the Union of India, UGC and the Chandigarh Administration would show that the MOA. A document necessarily required to be approved for making a Deemed University functional has not been approved till today. The respondents have taken the incorrect stand by making the averments that the MOA has been approved. The Union of India has made such statement

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while submitting replies before this Court, but, the fact is not so, as is evident from the feeble stand which has been taken by the UGC while submitting reply. Such similar stand at some places has been taken by Union of India as well. Whereas, the Chandigarh Administration has taken a categoric and positive stand with regard to the reservation of seats for the residents of U.T. Chandigarh, i.e. reservation stood reduced by virtue of MOA. In this context, reference has been made particularly to para 6 of the MOA. which has been reproduced by them in their reply. If the MOA has not been approved, how reliance can be placed upon para 6 of the MOA and the impugned order/notification dated 10th February, 2004, could be issued. The answer has to be "No". If that be so, the impugned notification as aforestated would not be sustainable and deserves to be quashed.

(24) It has been further argued that the Chandigarh Administration has made a desperate attempt to protect its order dated 10th February, 2004 by issuing yet another notification dated 8th July, 2004, after the filing of the present petition. Wherein, it has been candidly admitted that the implementations to make the Deemed University function practically and factually may not be possible and, therefore, such governance shall be implemented from the Session 2005-06 but for the academic purposes the PEC shall continue to be affiliated to Panjab University i.e. during the current Session 2004-05. If that be so- can part of the stipulation contained in the MOA, which is yet to be approved, be made applicable by way of issuing the impugned order.

(25) It has also been contended that so far as the status accorded to the PEC as Deemed University is concerned the same is not under challenge, but, the acts which have to be committed or performed for making it function actually, factually and practically as Deemed University, may need time by the concerned quarters. If that be so, there was no hurry for issuing the notification/order dated 10th February, 2004 without making compliance of the requirements for practical functioning of the PEC as Deemed University. Especially, when the stand of the Chandigarh Administration is that the reduction of the reservation from 85% to 50% for the locals of Chandigarh is dependent on and is contained in the MOA, in this regard, specific reference has been made to para 6 of the same, but the MOA has not been approved as yet. Whereas, the Chandigarh Administration is

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proceeding upon the premises that the MOA has been approved as has been stated in their averments in the written statement, which fact is incorrect. When the basic document, upon the basis of which the stand has been taken by the Chandigarh Administration, has not been approved by Government of India, the issuance of the impugned order/notification would not be sustainable and the same deserves to be quashed.

(26) On the other hand, Mr. Rajiv Atma Ram, Senior Advocate, learned counsel for the Chandigarh Administration has argued that the status of Deemed University accorded to the PEC has not been challenged by anyone before this Court i.e. the notification issued under Section 3 of the UGC Act dated 16th October, 2003. Thus, upon the issuance of the notification and the status of Deemed University having been conferred upon the PEC, would conclude one thing that all acts required to be fulfilled shall be Deemed to have been complied with. In this regard he has placed reliance upon :

- (i) in re: **State of Bombay versus Pandurang Vinayak and others. (1).**

Their Lordships of the Supreme Court observed that while interpretation of the statute after the issuance of the notification the deeming fiction has to be adhered to. The extract in this regard is as under :—

“When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. (Vide Lord Justice James in *Ex parie* Walton : In re : Levy, (1881) 17 Ch. D.746 at p. 756 (a). If the purpose of the statutory fiction mentioned in S.15 is kept in view, then it follows that the purpose of that fiction would be completely defeated if the notification was construed in the literal manner in which it has been construed by the High Court. In *East End Wellings Co. Ltd. versus Finsbury Borough Council*, (1952) A.C. 109 (b), Lord Asquith while dealing

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(1) AIR 1953 S.C. 244

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with the provisions of the Town and Country Planning Act, 1947, made reference to the same principle and observed as follows :—

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it.....The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs”.

The corollary thus of declaring the provisions of S.25, Bombay General Clauses Act, applicable to the repeal of the ordinance and of deeming that ordinance an enactment is that wherever the word “ordinance” occurs in the notification, that word has to be read as an enactment”.

(27) It has been further argued that the wholesale reservation on the basis of residence requirement within the State and institutional preference cannot be allowed and such act would be violative of Article 14 of the Constitution of India. It is on these premises that the status of Deemed University has been granted by the Government of India and that the seats reserved for Chandigarh U.T. Quota have been correctly reduced from 85% to 50%. It is contended that dehors of the condition contained in the MOA or elsewhere the U.T. Administration was within its rights to reduce the locals quota from 85% to 50%. In support of the contention, the learned counsel has placed reliance upon a judgment of the Supreme Court in re: **Dr. Pardeep Jain etc. versus Union of India and others, (2)**. A pointed reference has been made to para 10, 13, 18, 20 and 21 of the judgment. The cumulative excerpt of the aforesaid paras reads as under :—

“Anyone anywhere, humble or high, agrestic or urban man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural

growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases would be the result of his birth in a place situate within that State, should have opportunity for education of advancement which is denied to an other citizen because he happens to be resident in State B. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious student for admission to technical institutions and medical college by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regard as an outsider in our institutional set up. However, departure may justifiably be made from the principle of selection based on merit. The concept of equality under the constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, thereof, there is inequality, in fact, legal equality always tends to accentuate it. Equality in law must produce real equality, de jure equality must ultimately find its *raison de etre* in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so for the purpose of

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bringing about real equality of opportunity between those who are unequals. Thus, a certain percentage of reservation on the basis of residence requirement may legitimately be made in order to equalise opportunities for medical admissions on a broader basis and to bring about real and not formal, actual and not merely legal, equality. The percentage of reservation made on the count may also include institutional reservation for students passing the PUC for Pre-Medical examination of the same university or clearing the qualifying examination from the school system of the educational hinterland of the medical colleges in the State and for this purpose, there should not be distinction between schools affiliated to State, Board and schools affiliated to the Central Board of Secondary Education. However, such reservation should in no event exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made. Accordingly, wholesale reservation made by some of the State Government on the basis of "domicile" or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding our students not satisfying these requirements, regardless of merit is unconstitutional and void as being in violation of Art. 14 of the Constitution. This also applies to B.D.S. Course."

(28) It has also been contended that the apex Court has made observations from time to time that the reservation should not be provided based on residence requirement within the State or on institutional preference. Thus, in the case at hand, after granting the status of Deemed University to the PEC, the seats have been reduced accordingly, therefore, the order dated 10th February, 2004, is sustainable under law, as the same is not violative of any right of the petitioners allegedly protected under the Constitution of India. Reference has been made to the aforesaid judgment and specifically to paras 22 and 23, the gist of which reads as under :—

"So far as admissions to post-graduate courses, such as M.S.M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional

preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, though residence requirement within the State shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course from a medical college or university may be given preference for admission to the post-graduate course in the same medical college or university but such reservation on the basis of institutional preference should not be in any event exceed 50 per cent of the total number of open seats available for admission to the post-graduate course. This must apply equally in relation to admissions to M.D.S. Course. However, even in regard to admissions to the post-graduate course, so far as super specialities such as neurosurgery and cardiology are concerned, there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on merit on all India basis”.

(29) It has been further argued that once the status has been defined, the implementation thereof for the purpose of practical functioning may take some time, as has been fairly conceded by the learned counsel for the petitioner. If that be so, the subsequent orders, the notifications, which have been issued by the Chandigarh Administration for the purpose of functioning of the PEC as Deemed University, are to be taken in conformity thereof. It may be kept in mind that the condition for offering 50% seats to the undergraduate level courses in a Deemed University on all India basis was required to be fulfilled by the Chandigarh Administration before the PEC could be accorded the said status. It is evident from its reply dated 9th September, 2003, copy of which has been appended by Union of India as Annexure RI/III that the reduction of the seats from 85% to 50% for U.T. Quota had already been approved by the Chandigarh Administration. It is pursuant thereto that the impugned communication had been issued to the PEC by the Chandigarh



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Administration. Since the principal notification dated 16th October, 2003, has not been questioned, which is based upon the reduction of the State Quota (Chandigarh Quota), it would not lie in the mouth of the petitioners to question the communication dated 10th February, 2004, which is nothing but an act in propagation of the aforesaid notification. It is the settled law that anything which is done in progress and in propagation of the notification, which is not under challenge, such actions would be and are in conformity with the real intent of the principal notification. Thus, the subsequent such orders and notifications cannot be challenged and cannot be said to be violative of any alleged right stated to be projected under law. This fact has been candidly admitted by the learned counsel for the petitioners while conceding that such terms, orders and notifications may be imposed or enforced in the Session of 2005-06 and not in the current session. Thus, the petition merits dismissal as no legal infirmity has been or could be found in the order/communication dated 10th February, 2004 as 50% seats have to be offered in the undergraduate level courses on All India basis, on the basis of the National Level Test, which has been duly held.

(30) Mr. S.K. Sharma, learned Standing Counsel for Union of India and UGC has adopted the arguments of Chandigarh Administration.

(31) We have heard the learned counsel for the parties and have perused the respective pleadings and also the documents appended as *prime facie* evidence and so also the notifications issued by the concerned authorities and we have also perused the record of respondents No. 1, 2, 3 and 4 produced in original.

(32) We have pondered over the issues raised in this petition. The admitted fact is that the notification has been issued by the Government of India under Section 3 of the UGC Act, 1956 according "Deemed University" status to the PEC. It is also the admitted case that in compliance to the aforesaid provision, such status has been accorded upon the recommendation made by the UGC, which has been noticed hereabove, Learned counsel for the parties are *ad idem* that after according the status as Deemed University the PEC is not in a position to function actually, factually and practically as a

University. It has been very fairly conceded by the learned counsel for the respondents that there are various acts which are required to be committed, completed and to be complied with before the PEC is able to function as a university autonomously, administratively, financially and everywise. We have not been shown from the regulations, which may have been issued by the UGC, as to what are the pre-requisites which are required to be fulfilled by an institute to be termed as a Deemed University before the issuance of notification under Section 3 of the UGC Act. However, it is the admitted case that the Memorandum of Association (MOA) was required to be submitted for the perusal of UGC, which is the magnacarta for a Deemed University/the institution to accomplish the functioning as such. The perusal of the pleadings, correspondence and the original files which have been produced, shows one thing categorically that none of the parties were clear as to whether the MOA has been finally approved or not. The Government of India has taken the stand that the MOA has been approved which fact has been elicited from the written statement filed by the concerned officer. On the other hand, the University Grants Commission has given a non committal reply and has taken the plea that even if the MOA has not been approved, the reservation of the seats for locals (U.T. Quota) could be reduced from 85% to 50% accordingly. The Chandigarh Administration has categorically projected that the MOA has been approved and a very heavy reliance has been made upon the contents thereof by making a specific reference to para 6, wherein, it has been provided that the reservation of seats shall be reduced from 85% to 50% for the locals. The respective officials of the respondents, Government of India, Union Territory, Chandigarh and the UGC had not given as fair and honest assistance in this regard as is evident from the perusal of the original files of Government of India and UGC produced by Shri S.K. Sharma, Standing Counsel for both the said respondents. We have seen from the files that till the last noting dated 30th July, 2004, the Government of India has expressed its reservation *vis-a-vis* the approval of MOA. It has been categorically observed that the Union Territory Administration be informed that unless MOA/Rules of the PEC are amended as suggested, the same cannot be approved by Government of India. A communication dated 4th August, 2004, addressed to

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Chandigarh Administration, in this regard is on the file. It is obvious that the effective and practical functioning of the PEC as Deemed University has not been possible, though the effect had been made that it should function in such manner for the Session 2004-05. This fact is far too obvious from the notification which has been issued by the U.T., Chandigarh on 8th July, 2004, which has been appended as Annexure R3/4. The perusal of the said notification shows that the PEC has been permitted to remain affiliated to the aegis of Panjab University for the Session 2004-05 and it has also been observed that for the academic programmes etc. it shall continue to function virtually as before. It has also been mentioned that the new academic programmes of the PEC as a Deemed University would be implemented from the academic session i.e. 2005-06. So far as the reservation of the posts of the faculty and other posts in the PEC are concerned, which according to the administration has been taken over by the PEC Society, the provisions applicable and prevailing in the Chandigarh Administration have been made applicable. Thus, it is obvious that despite the status of Deemed University having been conferred upon the PEC, the functioning of the same could not be made autonomous-financially and everywise as the provisions in the budget have been allocated once all over again. It is strange that Chandigarh Administration knew too well that the MOA has not been approved as is evident from the communication received by them from Government of India but chose to issue the order dated 10th February, 2004, by virtue of which the reservation of the quota for the locals has been reduced from 85% to 50%, which has not been shown to be the pre-requisite for issuance of notification under Section 3 of the UGC Act, 1956.

(33) The Bench had put a categorical query to the learned counsel for the parties that the observations contained in the recommendations made by the UGC,—*vide* communication dated 3rd July, 2004, can be called as the pre-requisites for issuance of the notification under Section 3 of the UGC Act. The answer has been that these are not the pre-requisites. It may be noticed that the condition of 50% seats made available to the locals and 50% on All India basis to the undergraduate level does find mention in the observations made while recommending the case of the PEC to

the Government of India. Thus, it is obvious that this was not the pre-requisite for issuing the notification under Section 3 of the UGC Act, 1956.

(34) The argument of the learned counsel for Union Territory that the issuance of notification under Section 3 of the UGC Act, would mean that the compliance for fulfilling the requisites and the compliance of the observations made by the UGC shall be taken to have been complied with by the concerned quarters and, therefore, the reduction of the seats for the local is sustainable and the Union Territory has correctly issued the orders dated 10th February, 2004, is not at all well founded. Reliance has been placed upon the Judgment in re: Pandurang Vinayak's case (*supra*). We are afraid that the said judgment is not applicable to the facts of this case. It is not the interpretation of the notification which has been raised before us but the very functioning of the Deemed University actually, factually and practically is at issue. Once, it has been admitted that all these three characteristics cannot be said to be achieved by virtue of the issuance of the notification under Section 3 of the UGC Act, 1956 it would be too much to accept that one observation *vis-a-vis* the reservation of seats would be taken as complied with and that the rest of them are in the process of being implemented, adhered to or have been left for the competent authorities to have the way accordingly. Thus, the argument of the learned counsel for the respondent is not sustainable and the same is, therefore, rejected.

(35) The argument that reservation on the basis of residence requirement within the State and the institutional preference cannot effect the right of the administration to reduce the quota for the locals and offering it to the outsiders, is also not sustainable. It is not the case of the Chandigarh Administration that dehors of the rules promulgated/provided in the Memorandum of Association and dehors of the notification under Section 3 of the UGC Act, 1956, the order dated 10th February, 2004 could be issued. The perusal of the stand in the written statement of U.T. shows that a categorical and substantial weight has been placed upon the stipulation contained in the MOA, as is evident from their reply dated 9th September, 2003 to the letter dated 24th July, 2003 addressed to the Government of

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India in this regard before the issuance of the notification under Section 3 of the UGC Act. Though the stand taken is that the recommendations of the UGC are not the pre-requisites for issuance of such notification yet the approval of MOA has been made the basis for issuing the impugned order dated 10th February, 2004, which in fact has not been approved as yet. If the working and functioning of a Deemed University is directly related to the charter contained under MOA, the model of which has to be adhered to, it does not lie in the mouth of the administration to pass orders without such charter having been approved and accepted by the concerned authorities. In the facts and circumstances of this case, the aforesaid judgement relied upon by the counsel for the Chandigarh Administration is not at all applicable.

(36) The argument that the petitioners are not entitled to challenge the order dated 10th February, 2004, which is supplemental to and in propagation and implementation of principal notification dated 16th October, 2003, which has not been challenged, would not be sustainable. No doubt, the principal notification is not under challenge before us, but, in any case, it has been admitted by all that for making the Deemed University Functional actually, factually and practically the interregnum period is required. However, the acts committed and the projections given by the Union Territory itself show that the PEC shall not be able to function in complete perspective as a Deemed University for the current session 2004-05. They have very fairly observed in the notification dated 8th July, 2004 that for the academic session 2004-05, the PEC would continue to function under the aegis of Panjab University for the purpose of affiliation and academic programmes etc. and that the new academic programmes as a Deemed University would be implemented from the next academic session 2005-06. If that be so, the solitary act by virtue of which the seats reserved for the locals for the current session 2004-05, have been reduced could not have been reduced by virtue of the impugned order dated 10th February, 2004 especially when the same has been issued without the MOA having been approved when such order is based upon para 6 of the charter i.e. MOA.

(37) In view of the above, we are of the opinion that the petition deserves to be allowed. Consequently, the petition is allowed and the impugned order dated 10th February, 2004 Annexure P3 is

quashed and that the acts committed pursuant thereto shall also not affect the reservation of the quota (U.T. Quota for the locals to the extent of 85%). It may be observed that by our order dated 4th August, 2004, we had allowed the carrying on of the counselling fixed for 9th August, 2004 on the presumption that 85% seats are reserved for local candidates shall be taken to have been upheld and so far as the candidates on All India basis are concerned, the counselling had been allowed to the extent of 50% which shall now be taken only upto 15% as it existed earlier.

(38) Before we part with the judgment, we express our displeasure in some regards. It has really pained us to see the manner and the method in which the officials of the Government of India, University Grants Commission and the Union Territory have assisted us by way of filling their respective written statements. It is on our request that the Government of India and the University Grants Commission filed a detailed parawise reply wherein categoric averments have been made *vis-a-vis* approval of MOA. Dehors of this, the official concerned stated categorically in their written statements that the MOA had been approved which prompted us calling for the record of Government of India and University, Grants Commission, the perusal of which has shown to us that a blatant incorrect statement has been made by the concerned officials. It is not only the dereliction of duty but a dishonest statement has been made before the Court. It is advised that the concerned authorities may take/initiate appropriate proceedings against such officials. In any case, they are warned to remain careful in future while filing written statement for the purposes of assisting Courts. We, the Courts place very heavy reliance upon the statements which are divulged by the Government by way of filing written statements.

(39) The official record of Government of India, University Grants Commission and also of Union Territory, Chandigarh Administration, has been returned to their respective counsel to be delivered to the concerned quarters, Dasti on payment.

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**R.N.R.**