

# Government-Aided and Private Educational Institutions are Public Authorities

By  
Dr Pawan Kumar Yadav

Associate Professor  
Department of Political Science  
S. M. College, Chandausi, Distt.–Sambhal, Uttar Pradesh

## Abstract

An aided college is “supervised and controlled” by the government and its agencies. The Principal acts “in a public capacity” and his office becomes “statutory” and “public” due to the fact that his responsibilities “and powers” affect a portion of the public. The university has “control” over the colleges. The Executive Council of a university has the power to inspect a college and grant or withdraw the affiliation. The Vice-Chancellor is empowered to enforce his orders against the management of a college. “The Uttar Pradesh State Universities Act, 1973” gives ample powers to the State government for the regulation, “control” and supervision of the affiliated colleges. The usage of the phrase “any person or authority” in Article 226 extends beyond “statutory authorities”. They may “cover any person or body performing public duty”. A public authority is a body “which has public duties to perform and carries out its transactions for the benefit of the public and not for private profit.” One might classify an activity as “state action” if they discover that the government is providing “financial support” and has an unusual amount of control over the management and policy. “Activities which are too fundamental to the society are by definition too important not to be considered government functions.”

**Keywords:** Public Authority, Aided-College, State Government, University, Statute, Supreme Court.

## Introduction

When the Right to Information Act was enacted in 2005, public-spirited people started to ask various kinds of information from educational institutions, among others, which they considered to be in public interest. In Uttar Pradesh, there are broadly three types of educational institutions, viz., government, government-aided, and private. The government-aided and the private educational institutions were especially unwilling to share the information asked. Whenever the State Information Commission passed an order against a school or college, the latter made a habit of going the High Court of Judicature for seeking a stay order. Thus, even by 2007, a large number of cases were filed in the High Court. But, before summarizing the landmark judgement in such a case, it would be appropriate to go step by step. As a case study, I shall start with the government-aided degree colleges affiliated with the M. J. P. Rohilkhand University, Bareilly, Uttar Pradesh. In support of my proposition that the government-aided degree colleges are “public authorities”, I shall rely on the existing Acts, Statutes, and the judgements of the Hon’ble High Courts and the Hon’ble Supreme Court of India.

## An Aided College is “Supervised and Controlled” by the Government and its Agencies

The Principal and the teachers of the colleges are recruited by the U.P. Higher Education Services Commission, Allahabad, and colleges are allotted to them by the Directorate of Higher Education, Uttar Pradesh, Allahabad. If the Secretary/Manager/Management Committee of a college does not issue an appointment letter to the candidate recommended by the U. P. Higher Education Services Commission and the Directorate of Higher Education, U. P., the Director, Higher Education, U. P., can take action against the Management of the college under sub-sections (1), (2), and (3) of section 15 of the U. P. Higher Education Services Commission Act, 1980<sup>1</sup>, and section 57(2) of the U. P. State Universities Act, 1973.<sup>2</sup> This is a clear evidence of the “control” of the State Government on the colleges.

The office the Principal of a government-aided college is “a statutory office”, as the university grants the college admission to its “privileges”.

The Management Committee of the college is recognized by the University under section 2(13) of the U. P. State Universities Act, 1973. The presence of an “observer” from the university during election of the Management Committee is mandatory. These facts prove beyond doubt that the university has “control” over the Management Committee of colleges.

A government-aided college is not independent in opening different educational courses in the college. Even with respect to self-finance courses or vocational courses, it is the University Grants Commission, New Delhi, the university concerned, the State Government, the All India Council for Technical Education, and the National Council for Teacher Education who regulate, recognize and supervise – in other words, “control” – and also “substantially finance” the colleges.

The State Government through Director, Higher Education, Directorate of Higher Education, Allahabad, has “control” on the colleges. The State (through its agencies, like, the University Grants Commission, the National Assessment and Accreditation

<sup>1</sup> Justice I. M. Qudusi, *Qudusi’s Uttar Pradesh Higher Education Manual*, Hind Publishing House, Allahabad, 2006, p. 1097

<sup>2</sup> Pramod Kumar Barar, *The Uttar Pradesh State Universities Act, 1973*, Diglot Edition, Pustak Sadan Prakashan, 2012, p. 77.

Council, etc.) regulates, recognizes and supervises – in other words, “controls” – and also “substantially finances” the colleges. The University Grants Commission provides grants for the developmental activities in colleges, like, building construction, library, laboratories, and other infrastructure. The government-aided colleges also get the salary of teachers and other staff members from the State Government. The students of the colleges get scholarship from the State Government.

Special audits of the finances and accounts of the colleges are conducted by the Directorate of Higher Education, Uttar Pradesh, Allahabad. Under section 58 of the U.P. State Universities Act, 1973, the State Government can, by order, authorise any person (Authorised Controller) to take over the “Management of the college and its property to the exclusion of the Management, and whenever the Authorised Controller so takes over the Management, he shall have in relation to the Management of the college and its property all such powers and authority as the Management would have if the college and its property were not taken over under this Section.”<sup>3</sup>

The teachers and the Principal cannot be punished by the Management of a college without prior permission of the Vice-Chancellor of the university, as per section 35 of the U. P. State Universities Act, 1973.<sup>4</sup> The service conditions of teachers of the colleges, including “conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement” are such as are “prescribed by the Statutes”, and thus, are similar to those of government employees.

### **An Aided College is “Controlled” by the University**

The following provisions (sections) of “The Uttar Pradesh State Universities Act, 1973” provide for the regulation, “control” and supervision of the affiliated colleges by the University concerned:

- (i) As per sub-section (2) of section 35, “Every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-chancellor and shall not take effect unless it had been approved by the Vice-Chancellor.”<sup>5</sup>
- (ii) Similarly, section 37(5) says that “Every affiliated college shall furnish such reports, returns and other particulars as the Executive Council or the Vice-Chancellor may call for.”<sup>6</sup> The Executive Council of a university has the power to inspect a college and grant or withdraw the affiliation (sub-sections (6), (7), and (8) of section 37).<sup>7</sup>
- (iii) Section 68-A empowers the Vice-Chancellor to enforce his orders against the management of a college in relation to various service conditions of teachers.<sup>8</sup>

In conforming to the abovementioned provisions, the “First Statutes of the M. J. P. Rohilkhand University, 1977”<sup>9</sup> also provides for the regulation, “control” and supervision of the affiliated colleges by the University:

- (i) Without “the prior approval of the Vice-Chancellor” the constitution of a management cannot be changed (Statute 11.05(e) and (f)).<sup>10</sup> The Vice-Chancellor has the right to inspect the “original documents” relating to “income and expenditure of the college including the accounts of the Society, Trust, Board or Parent body under which it may be operating” (Statute 11.05(g)).
- (ii) Statutes 11.10, 11.17, 11.18, 11.22, 11.23, 11.24, and 11.31 lay down certain conditions on the colleges (like, admission of students, conducting university examinations, etc.) the fulfilment of which is compulsory.<sup>11</sup>

### **The College is “Controlled” by the State Government**

“The Uttar Pradesh State Universities Act, 1973” enacted by the State Legislature gives ample powers to the State government for the regulation, “control” and supervision of the affiliated colleges. For example:

- (i) The State Government has the right to inspect the administration and finances of colleges (section 40).<sup>12</sup>
- (ii) Under sections 57, 58, and 60 the State Government can issue notice and take over the control of the college if the management is found to be involved in administrative and financial irregularities.<sup>13</sup>
- (iii) The Vice-Chancellor has the power to enforce his order against management (section 68-A).<sup>14</sup>

The Entry 32 of the State List (List II) in the Seventh Schedule [Article 246] of the Constitution of India permits the State Legislature to make a law “affecting” the following: “incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.” The Entries 10 and 28 of the Concurrent List (List III) in the Seventh Schedule [Article 246] of the Constitution of India

<sup>3</sup> Ibid., pp. 78-79.

<sup>4</sup> Ibid., pp. 54-55.

<sup>5</sup> Ibid., pp. 54-55.

<sup>6</sup> Ibid., p. 58.

<sup>7</sup> Ibid., p. 58.

<sup>8</sup> Ibid., pp. 86-87.

<sup>9</sup> Notification No. 6453/XV-10-77 – 77 (2)-77, dated 20 December 1977, U. P. Extraordinary Gazette, 20 December 1977.

<sup>10</sup> Rohilkhand University Handbook, Volume I, Part-B, *First Statutes of the Rohilkhand University, 1977-78*, Bareilly, p. 25.

<sup>11</sup> Ibid., pp. 26-30.

<sup>12</sup> Pramod Kumar Barar, op. cit., p. 66.

<sup>13</sup> Ibid., pp. 77-79.

<sup>14</sup> Ibid., pp. 86-87.

empower “the State Legislature to make a law dissolving a charitable trust and transferring its property, rights, etc., to another institution.”<sup>15</sup>

### The Principal of a Private College is a “Public Authority”

In the matter of Miss Kumkum Khanna and others, Petitioners vs. The Mother Aquinas, Principal, Jesus and Mary College, Chanakyapuri, New Delhi and another, Respondents, the Hon’ble Delhi High Court<sup>16</sup> held that:

“... If the duty is of public nature and if it appertains to an office, the office would also be of a public nature, and its holder would be acting in a public capacity” (Para. 10). When a college is granted access to university “privileges”, it no longer qualifies as a wholly “private institution”. The Principal acts “in a public capacity”, and his office becomes “statutory” and “public” due to the fact that his responsibilities “and powers” affect a sizable portion of the public, particularly the students (Para. 12). “A statute” is not required to establish “a public office”. It will be recognised “as public” even if it is governed and controlled “by a statute” (Para. 14). It further said that a “person might, when acting in execution of a public duty, be a public authority. ... In general, a public officer may be said to be one who discharges any duty in the discharge of which the public are interested”<sup>17</sup> (Para. 14). The court also said that “even a director of a private limited company was held by the House of Lords to occupy a public office in *McMillan vs. Guest* (1942) AC 561” (Para. 14). It concluded by saying, “therefore, ... the Principal of [a private] College is person or authority [i.e., a public authority] within the meaning of Article 226 of the Constitution [of India]” (Para. 15).

### The Hon’ble Supreme Court of India on the Term “Public Authority”

This issue was taken up by the Hon’ble Supreme Court of India in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs. V.R. Rudani and others*.<sup>18</sup> The Court concisely stated that: “The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed” (Para. 20). The Hon’ble Court further elucidated: “public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions, like Government institutions, discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character.”<sup>19</sup> Again, in *Sukhdev Singh and others vs. Bhagatram Sardar Singh Raghuvanshi and another*,<sup>20</sup> the Hon’ble Supreme Court of India held that: “A public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit”<sup>21</sup> (Para. 39). The decisions of the State courts in USA seem to establish that a private agency, if supported by public money for its operations, would be ‘state’ (Para. 96). A finding of state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action (Para. 96). Another factor which might be considered is whether the operation is an important public function. The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as

<sup>15</sup> Supreme Court of India, Bench: Bhuvneshwar P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajgopala Ayyangar, J. R. Mudholkar, JJ., *The Board of Trustees, Ayurvedic Unani Tibia College, Delhi Vs. The State of Delhi and Another*, Petition No. 96 of 1955, Date of Judgement: 23-10-1961, <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=4085>.

<sup>16</sup> Delhi High Court, Bench: V.S. Deshpande and Yogeshwar Dayal, J.J., *Miss Kumkum Khanna and others, Petitioners vs. The Mother Aquinas, Principal, Jesus and Mary College, Chanakyapuri, New Delhi and another, Respondents*, Civil Writ No. 398 of 1975, Decided on August 19, 1975; AIR 1976, Delhi 35.

<sup>17</sup> Halsbury’s Laws of England, 3rd Edition, Vol. 30, paragraphs 1317 and 1319, pp. 682 and 684.

<sup>18</sup> Supreme Court of India, Bench: K.J. Shetty, J. and G.L. Oza, J.; *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R. Rudani and others* [Civil Appeal Nos. 2704-06 of 1979; Date of Judgement: 21-4-1989], (1989) 2 SCC 691 [at page 700]; AIR 1989 SC 1607; 1989 Lab IC 1550; also at <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=7958>; this judgement was also quoted by the Supreme Court of India, Bench: K. G. Balakrishnan and P. Venkatarama Reddy, JJ., *Binny Ltd. and another vs. V. Sadasivan and others*, with *D. S. Veer Ranji vs. CIBA Specialty Chemicals (I) Ltd. and others*, Civil Appeal No. 1976 of 1998 with Civil Appeal No. 4839 of 2005, Date of Judgement: 8-8-2005; AIR 2005 Supreme Court 3202.

<sup>19</sup> Please see *The Evolving Indian Administration Law*, by M.P. Jain [1983] p. 266.

<sup>20</sup> Supreme Court of India, Bench: A. N. Ray, C.J., K. K. Methew, Y. V. Chandrachud, A. Alagiriswami and A. C. Gupta, JJ.; *Sukhdev Singh and Others vs. Bhagatram Sardar Singh Raghuvanshi and Another*, Civil Appeals Nos. 2137 and 1879 of 1972, 1655 of 1973 and 115 of 1974; Date of Judgement: 21-2-1975; (1975) 1 SCC 421; AIR 1975 Supreme Court 1331.

<sup>21</sup> Halsbury’s Laws of England, 3<sup>rd</sup> Edition, Vol. 30, paragraph 1317, p. 682.

a governmental agency, then even the presence or absence of state financial aid might be irrelevant in making a finding a state action (Para. 97). Institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the function performed governmental agencies<sup>22</sup> (Para. 102).

Relying on a book entitled “*Judicial Review of Administrative Action*”,<sup>23</sup> in *Binny Ltd. and another vs. V. Sadasivan and others*,<sup>24</sup> the Hon’ble Supreme Court of India conclude that:

“a body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies, therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest. ... This may happen in wide variety of ways. For instance, a body is performing a public function when it provides ‘public goods’ or other collective services, such as health care, education and personal social services, from funds raised by taxation” (Para 11).

In the abovementioned case, the Court relying on “*VST Industries Limited vs. VST Industries Workers’ Union & Another*”<sup>25</sup>, stated that:

“By way of illustration, it is noticed that a private company selected to run a prison, although motivated by commercial profit, should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the Court, and the purpose and nature of their detention is a matter of public concern and interest” (Para 7).

In *Pradeep Kumar Biswas and Others vs. Indian Institute of Chemical Biology and Others*,<sup>26</sup> the Hon’ble Supreme Court of India held that

“... institutions engaged in matters of high public interest or performing public functions are, by virtue of the nature of the function performed by them, governmental agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions.”

Ultimately, while delivering its decision in *Federal Bank Ltd. v. Sagar Thomas*<sup>27</sup>, the Hon’ble Supreme Court of India said:

“... a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

In *Ramana Dayaram Shetty vs. The International Airport Authority of India and Others*,<sup>28</sup> the Hon’ble Supreme Court of India highlighted the factors which made “even a registered society ‘an agency or instrumentality of government’ and, therefore, an ‘authority’ for purposes of Art. 12.” The Court also held that:

“a finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action.”

In *S. S. Rana vs. Registrar, Co-operative Societies & Another*,<sup>29</sup> the Hon’ble Supreme Court of India concluded that:

“Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.”

A Constitution Bench of the Hon’ble Supreme Court of India constituted for *Ajay Hasia, etc. vs. Khalid Mujib Sehravardi and Others, etc.*,<sup>30</sup> listed six criteria for the test it had established in *Ramanna’s* case, of which two are relevant for this study. They are as follows:

“2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.”

<sup>22</sup> The Supreme Court of the United States of America in the decisions in (1926) 273 US 536; and *Nixon vs. Condon* (1931) 286 US 73.

<sup>23</sup> S. A. De Smith, Lord Harry Woolf, and Sir Jeffrey L. Jowell, *Judicial Review of Administrative Action*, Sweet & Maxwell Ltd., London, 5th ed, 1995, Chapter 3, para 0.24.

<sup>24</sup> *Binny Ltd. and another vs. V. Sadasivan and others, with D. S. Veer Ranji vs. CIBA Specialty Chemicals (I) Ltd. and others*, *ibid.*

<sup>25</sup> Supreme Court of India, *VST Industries Limited vs. VST Industries Workers’ Union & Another*, (2001) 1 SCC 298; 2000 AIR SCW 4566; also quoted in para 19 of *Binny Ltd. and another vs. V. Sadasivan and others, with D. S. Veer Ranji vs. CIBA Specialty Chemicals (I) Ltd. and others*, *ibid.*

<sup>26</sup> Supreme Court of India, Bench: R.C. Lahoti and Doraiswamy Raju, JJ.; *Pradeep Kumar Biswas and Others vs. Indian Institute of Chemical Biology and Others*, Appeal (civil) 992 of 2002, Date of Judgement: 16-4-2002; [(2002) 5 SCC 111]; also at <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=18410>.

<sup>27</sup> *Federal Bank Ltd. v. Sagar Thomas* (2003) 10 SCC 733 [at page 748].

<sup>28</sup> Supreme Court of India, *Ramana Dayaram Shetty vs. The International Airport Authority of India and Others*, (1979) 3 SCC 489.

<sup>29</sup> Supreme Court of India, Bench: S.B. Sinha and P. P. Naolekar, JJ.; *S. S. Rana vs. Registrar, Co-operative Societies & Another*, Appeal (civil) No. 6052 of 2004, Date of Judgement: 25-4-2006; available at <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=27670>.

<sup>30</sup> *Ajay Hasia, etc. vs. Khalid Mujib Sehravardi and Others, etc.*, Bench: Y. V. Chandrachud, C.J., P. N. Bhagwati, V. R. Krishna Aiyer, Syed Murtaza Fazalali, A. D. Koshal, JJ., Writ Petition Nos. 1304, 1262, 1119, 1118, 1574-75, 1373-74, 1244-45, 1230, 1494-97, 1566-67, 1143, 1440, 1586, 1420-23, 1441-43, 1389, 1144, 1461, 1437-39, 1431, 1268, 1145, 1263 and 1331 of 1979; Date of Judgement: 13-11-1980, (1981) 1 SCC 722; also at <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=4414>.

“4. Existence of “deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality”.

#### **A Society Registered under the Societies Registration Act, 1860, is a “Legal Entity”**

In *The Board of Trustees, Ayurvedic Unani Tibia College, Delhi vs. The State of Delhi and Another*<sup>31</sup>, the Hon’ble Supreme Court of India approvingly reiterated the decision of the *Satyavart Sidhantalankar vs. The Arya Samaj, Bombay*, (1945) 48 Bom. L.R. 341<sup>32</sup>, in which Bhagwati, J., held that

“a Society registered under the Societies Registration Act, 1860, was a legal entity apart from the members constituting it, and it can sue and be sued in its own name.”

Similarly, in *The Taff Vale Railway Co. vs. The Amalgamated Society of Railway Servants* [1901] A.C. 426,<sup>33</sup> it was held that “a society is a legal entity.”

In the case of *Bonsor v. Medicines Union* [1956] A.C.104,<sup>34</sup> the House of Lords had to decide “whether a registered society” that had roughly the same rights as those granted by the Societies Registration Act qualified “as a legal person”, and there, Lords Morton and Parker held that

“a society is a legal entity though not a corporation.”

#### **Conclusion**

The facts and references given in the preceding paragraphs apply to government-aided colleges in Uttar Pradesh, thereby proving indubitably that a college is a “Public Authority” as defined in Section 2(h) of the RTI Act, 2005. Thus, a college/Society/Trust registered under the U. P. Societies Registration Act, 1860, is a “legal entity”.<sup>35</sup> And, finally, a landmark judgement of the High Court of Judicature at Allahabad, apparently, succinctly summed up the aforementioned decisions of the Supreme Court of India when it declared that:

“... where there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organisation etc. the same would fall under the provisions of Section 2(h) of the Act. The provisions of the Act have to be read in consonance and in harmony with its objects and reasons given in the Act which have to be given widest meaning in order to ensure that unscrupulous persons do not get benefits of concealment of their illegal activities or illegal acts by being exempted under the Act and are able to hide nothing from the public. The working of any such organisation or institution of any such private body owned or under control of public authority shall be amenable to the Right to Information Act.”<sup>36</sup>

\* \* \*

<sup>31</sup> *The Board of Trustees, Ayurvedic Unani Tibia College, Delhi Vs. The State of Delhi and Another*, op. cit.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Please see *Satyavart Sidhantalankar vs. The Arya Samaj, Bombay*, (1945) 48 Bom. L.R. 341, and *The Taff Vale Railway Co. vs. The Amalgamated Society of Railway Servants* [1901] A.C. 426; both quoted by the Supreme Court of India in *The Board of Trustees, Ayurvedic Unani Tibia College*, *Ibid.*

<sup>36</sup> High Court of Judicature at Allahabad, Bench: Hon’ble Rakesh Tiwari, J., *Dara Singh Girls High School, Gaushala Road, Ghaziabad, through its Manager, Virendra Chaudhary, Petitioner vs. State of U.P. and others, Respondents*, Civil Misc. Writ Petition No. 4747 of 2008, Decided on January 24, 2008.