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**Is Imparting of 'Education' by Private Educational Institutions a 'Public Function' and its Implications**

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India has seen an exponential growth in the education sector and it holds an important place in the global education market. With 1.3 plus billion population, a market size of US\$ 100 billion plus, more than 36,000 higher education institutions contributing 59.7 per cent of the market size, India has one of the largest higher education systems in the world\*. With private sector taking a larger share of student enrolments every year, there is a huge potential for private equity participation in the education sector for sustained growth and delivery of quality education. However, this participation has also created unique challenges and one of such challenges is the amenability of educational institutions to the wider writ jurisdiction of the High Courts under Article 226 of the Constitution of India ("COI") in its capacity of being an 'authority'.

The Supreme Court of India ("SC") recently dealt with the issue of invocation of writ jurisdiction of the High Court against Deemed Universities in the matter of Dr. Janet Jeyapaul v. SRM University & Others. ("SRM Case"). The petitioner (an employee of the SRM University) in the SRM Case had invoked the writ jurisdiction of the High Court of Madras ("HCM") under Article 226 challenging the notice issued by the SRM University terminating her services. The Single Judge of HCM allowed the writ petition by quashing the notice of termination and directing reinstatement of the petitioner. However, order of the Single Judge was set aside by the Division Bench of HCM, without considering merits of the case, holding that the SRM University was neither a State nor an authority within the meaning of Article 12 of the COI.

**Contentions of the Parties:** The amicus curie appointed by the SC on behalf of the petitioner submitted that while deciding the question as to whether the writ lies under Article 226 of the COI against any person, juristic body, organization, etc., the test, in the first instance, is to examine the object and purpose for which such

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body/authority/organization is formed as also the activity which it undertakes to fulfil the said object/purpose. The approach of the court while deciding this question is to assess as to whether the concerned body is formed for discharging any "public function" or "public duty" and if so, whether it is actually engaged in any public function or/and performing any such duty. If the case complies with this twin test, such person /organization, as the case may be, would be subjected to the writ jurisdiction of the High Court under Article 226 of the COI. It was further contented that the expression "any person or authority" used in Article 226 of the COI are not confined only to statutory authorities and instrumentalities of the State but may in appropriate case include any other person or body performing public function/duty.

It was further pointed out that the SRM University is a juristic body engaged in imparting education in higher studies and is conferred with a status of "Deemed University" by the Central Government under Section 3 of the University Grant Commission Act, 1956 ("UGC Act") and "imparting education to students at large" is a "public function" and, therefore, if any authority is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such authority, it should be made amenable to writ jurisdiction of the High Court under Article 226 of the COI.

One of the submissions made on behalf of the SRM University was that if this court holds that the SRM University is amenable to writ jurisdiction then apart from employees even those who are otherwise dealing with the SRM University would start invoking writ jurisdiction which would open the flood gate of litigation in courts.

**Decision of the SC:** The SC held that the division bench of the High Court erred in holding that the SRM University is not subject to writ jurisdiction of the High Court under Article 226 of the COI. While rejecting the view of the Division Bench of HCM, the SC observed that the SRM University is engaged in imparting education in higher studies to students at large and therefore it is discharging "public function" by way of imparting education. Further, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act, and being a "Deemed University", all the provisions of the UGC Act are made applicable to the SRM University which, *inter alia*, provides for effective discharge of the public function namely education for the benefit of public. Once the SRM University is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the COI and once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the COI.

**Conclusion:** The SC judgment has a far reaching implication for educational institutions as it not only provides an additional remedy against the "Deemed Universities" (and by implication other educational institutions performing

public function and public duty) but a substantial one as the High Courts have wide powers under Article 226 of the COI which can now be used frequently by the litigants against such institutions to secure their fundamental rights. Therefore, while on one hand, the SC judgment is being welcomed by students and public at large, the Deemed Universities and other institutions for education are not too pleased.

*\*As per market reports.*

**Feedback**

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