

**\* THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**

**AND**

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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**+ WRIT PETITION Nos. 1873 & 2882 OF 2015**

**W.P.No.1873 of 2015**

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% Dated 01-05-2015

# The A.P. State Council of Higher Education

rep., by its Secretary (FAC), Hyderabad.

Petitioner

VERSUS

\$ The Union of India, rep., by Ministry of Law & Legislation

and Company Affairs, Central Secretariat Buildings,

New Delhi & four others.

Respondents

! Counsel for petitioner : Advocate General (A.P.)

^ Counsel for respondent No.1 : Sri B. Narayana Reddy (Asst. Solicitor General)

Counsel for respondents 2&3 : Sri E. Madan Mohan

Counsel for respondents 4&5 : Advocate General (TG)

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**W.P.No.2882 of 2015**

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# State of Telangana, rep., by its Special Secretary,

GA (States Reorganisation) Department, Hyderabad & another.

Petitioner

VERSUS

\$ Union of India, rep., by its Secretary, Ministry of Home Affairs  
(CS Division), New Delhi & four others.

Respondents

! Counsel for petitioner : Advocate General (T.G.)

^ Counsel for respondent No.1 : Sri B. Narayana Reddy (Asst. Solicitor General)

Counsel for respondents 2-4 : Advocate General (A.P.)

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> HEAD NOTE:

? Cases referred

1. (2006) 1 SCC 442 = AIR 2006 SC 661

2. (2014) 12 SCC 696

3. AIR 1963 SC 853

4. AIR 1970 SC 1446

5. (2006) 5 SCC 330

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**AND**

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**WRIT PETITION Nos.1873 & 2882 of 2015**

**Date: 01.05.2015**

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**In W.P.No.1873 of 2015:**

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*Between*

The A.P. State Council of Higher Education (A statutory Body pursuant to Legislation vide Act 16/1988), rep. by its Secretary (FAC), 1<sup>st</sup> Floor, Opposite to Mahaveer Hospital, Mahaveer Marg, Masab Tank, Hyderabad-500028.

... Petitioner

*And*

1. The Union of India, rep. by Ministry of Law & Legislation and Company Affairs, Central Secretariat Buildings, New Delhi., and four others.

... Respondents

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**In W.P.No.2882 of 2015:**

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*Between*

1. The State of Telangana, rep. by its Special Secretary, GA (States Reorganization) Department, Government of Telangana, Secretariat, Hyderabad, and another.

... Petitioners

*And*

1. Union of India, rep. by its Secretary, Ministry of Home Affairs (CS Division), North Block, Central Secretariat, New Delhi., and three others.

... Respondents

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**THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA**

**AND**

**THE HON'BLE SRI JUSTICE SANJAY KUMAR**

**WRIT PETITION Nos.1873 & 2882 of 2015**

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**COMMON ORDER:** (Per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

First mentioned writ petition (W.P. No.1873 of 2015) (hereinafter referred to as 'first writ petition') has been filed by the A.P. State Council of Higher Education which is a statutory body formed and constituted under the Act called the Andhra Pradesh State Council of Higher Education Act, 1988 (hereinafter referred to as 'Act, 1988') against the Union of India, the State Bank of Hyderabad, the State of Telangana and the Telangana State Council of Higher Education. Second one (W.P.No.2882 of 2015) has been filed subsequently by the State of Telangana against the Union of India, the State of Andhra Pradesh and the A.P. State Council of Higher Education (in short, 'APSC').

2. The first writ petition (W.P.No.1873 of 2015) has been filed seeking relief against the Bank who decided to stop the operation of Bank account maintained by APSC. There would not have been any difficulty to decide this matter on fact as well as law, had there been no second writ petition (W.P.No.2882 of 2015) filed by the Telangana State Council of Higher Education (hereinafter referred to as 'TSC'). Therefore, both the writ petitions are consolidated and heard out analogously.

3. The factual aspects of both the matters are more or less the same, and the same is summarized as follows.

The APSC came into being on publication of Act, 1988 in the A.P. Gazette on 21.04.1988, followed by G.O.Ms.No.199, Education Department, dated 17.05.1988 under the provision of Section 3 of Act 1988. As such, it is a separate statutory and autonomous body having perpetual seal and succession; and it can sue and be sued. By and under the aforesaid Act, 1988, this Council has the exclusive authority for conducting various common entrance examination tests namely (i) Engineering and Medical Common Entrance Test (EAMCET) for admission of students into Engineering, Medicine and Agriculture, Pharmacy (ii) Integrated Common Entrance Test (ICET) for admission of students into MBA and MCA (iii) Education Common Entrance Test (EDCET) for admission of students into B.Ed. (Bachelor of Education) (iv) Engineering Common Entrance Test (ECET) for admission of Diploma holders and B.Sc., students into Engineering and Pharmacy (v) Physical Education Common Entrance Test (PECET) for admission of students into Physical Education Programmes (vi) Law Common Entrance Test (LAWCET) for admission of students into 3 year and 5 year Law Course (vii) Post Graduate Law Common Entrance Test (PGLCET) for admission of students into LLM (viii) Post Graduate Common Entrance Test (PGCET) for admission of students into M.Tech. and M. Pharm.

4. On 20.01.2015, by a written communication, State Bank of Hyderabad informed that they have decided not to allow the APSC to operate the Saving Bank A/c. Nos.521889272278 and 62009828659 maintained in Shantinagar Branch. By the said communication, it is informed that the TSC has objected to such operation. It is asserted by APSC that this decision of the Bank is high-handed, arbitrary and illegal. The Bank has no authority to refuse to operate the Bank account as there has been no garnishee order or order of the appropriate Court restraining operation of the Bank account. It is alleged that the claim and contention of the TSC is untenable under law.

5. In the second writ petition (W.P.No.2882 of 2015) it has been stated that the then State of Andhra Pradesh has been bifurcated into two States namely, State of Andhra Pradesh and State of Telangana under the Andhra Pradesh Reorganization

Act, 2014 (hereinafter referred to as 'Act, 2014'). Under Sections 3 & 4 of Act, 2014, with effect from the appointed day i.e., 02.06.2014, these two States are functioning as separate and independent States. The Act, 2014 provides for taking various measures to effectuate smooth functioning of the two independent States. One of the measures is the method of functioning of the existing State institutions on and from the appointed day. The status and functioning of the institutions mentioned in the tenth schedule of the Act are governed by Section 75, which is under Part-II of Act, 2014. In terms of this provision, the institutions specified in the tenth schedule located in the State of Telangana or the State of Andhra Pradesh, as the case may be, should continue to provide facilities to the people of the other State i.e., the State of Andhra Pradesh from the State of Telangana and *vice versa* in accordance with the provisions of this Act. Section 75 of the Act, 2014 does not provide for apportionment of assets, rights and liabilities of the institutions between the two successor States. These institutions specified in the tenth schedule have to work independently in their own sphere within four corners of the law of the land.

6. It is the settled position of law that the institutions located in the successor States are governed by the law of the successor State-laws of the land namely, principle of land, known as doctrine of *lex situs*.

7. Under Article 246 (2) & (3) of the Constitution of India, the State Legislatures are competent to make laws in respect of their territory covered by the entries in List-II & III of the 7<sup>th</sup> Schedule of the Constitution. Therefore, in terms of Section 75 of Act, 2014, the specified institutions under the tenth schedule are governed by the laws of the respective States where they are located. Having regard to the aforesaid legal position, the institutions specified in the tenth schedule located in Telangana are governed by the law of the State of Telangana.

8. In exercise of the power under Section 101 of Act, 2014, State of Telangana adopted Act, 1988, with slight modifications vide G.O.Ms.No.5, Higher Education (UE) Department, dated 2.8.2014, so as to govern this institution specified at Item No.27 of the tenth schedule. Thus, the State of Andhra Pradesh has no authority to interfere in the functioning of the organizations specified in the tenth schedule which

are located in Telangana State territory. In view of the above, the then existing body constituted by the then State of Andhra Pradesh, prior to formation of the State of Telangana, has no authority to function and administer an institution located in the State of Telangana and the said body automatically ceases to exist and accordingly, the then APSC has no authority in respect of the institution specified at Item No.27 of the tenth schedule. The office of the institution of petitioner No.2, formerly known as APSC, is now situated in the State of Telangana at Hyderabad. Therefore, the law enacted by the State of Telangana alone, necessarily, has application for administration of the institution. Consequently, any action taken or order now passed by the erstwhile body of the institution specified at Item No.27 of tenth schedule is without jurisdiction and would be *ultra vires*.

9. The APSC, at the instance of the State of Andhra Pradesh, is now asserting its power and authority and physically occupying the premises without any authority of law. The APSC is not entitled to operate the bank accounts or withdraw any amount. Notwithstanding the aforesaid legal status, even after 2<sup>nd</sup> June, 2014, the APSC has withdrawn considerable amounts from the State Bank of Hyderabad, Shantinagar Branch, in respect of the above two saving bank accounts. As such, the petitioner No.2 wrote a letter to the State Bank of Hyderabad and Andhra Bank for freezing of the said accounts. Accordingly, a decision was taken by the Bank and rightly so.

10. In the second writ petition (W.P.No.2882 of 2015), in the aforesaid background, declaratory reliefs on the above lines have been sought by the State of Telangana, being one of the petitioner, against the State of Andhra Pradesh, which is one of the respondents.

11. Counter-affidavit has been filed to this writ petition (W.P.No.2882 of 2015) by the APSC taking a legal objection that the reliefs claimed by the State of Telangana against the State of Andhra Pradesh cannot be maintained by way of this writ petition in view of the provisions of Article 131 of the Constitution of India. That apart, in the counter-affidavit, it is stated that on bifurcation of the State on commencement

of Act, 2014, the status of APSC, as claimed by the writ petitioner, is disputed and denied. According to the APSC, it is fully entitled to function as such, operate the existing Bank accounts as was being done before the bifurcation and the provisions of Section 75 of Act, 2014 have no legal impact, since Hyderabad is a common capital for both the States.

12. The learned Advocate General for the State of Andhra Pradesh, while submitting on the question of maintainability of the second writ petition (W.P.No.2882 of 2015), wherein the State of Telangana is the petitioner and the State of Andhra Pradesh is a respondent, contends that the relief Nos.3 & 4 claimed are not at all entertainable and further adjudicable by this Court as the same relate to the claim and contention and rival contentions between the two States with regard to assets and properties.

13. Article 131 of the Constitution of India is the only remedy and the forum mentioned therein is the only forum for adjudication of such disputes. While referring to Article 300 of the Constitution of India, he says that both the States are *sui juris* and they can sue and be sued, the meaning and expression of the State as mentioned in Article 131 is not synonymous with that as mentioned in Article 12 or 226 of the Constitution of India. The phraseology, namely, to the exclusion of any other Court mentioned in Article 131 is clear enough to indicate that this Court has no jurisdiction. In support of his submission, he has placed reliance on the decisions of the Supreme Court in *Tashi Delek Gaming Solutions Limited v. State of Karnataka* and *State of Tamil Nadu v. State of Kerala*.

14. On the point of maintainability, the learned Advocate General for the State of Telangana submits that the bar under Article 131 will be applicable when one State sues exclusively the Union of India or any other State. If there is any involvement of third parties in any action, the above bar is not at all applicable, like the present one. In support of his submission on this point, he has placed reliance on the judgments of the Supreme Court reported in *Tashi Delek Gaming Solutions Limited v. State of Karnataka* (1 supra), *Anant Prasad Lakshminiwas Ganeriwal v. State of A.P.*, *The State of Bihar v. The Union of India* and *Nautam Prakash DGSVC, VADTAL v. K.K.*



*Thakkar.*

15. However, on merits, the learned Advocate General for the State of Andhra Pradesh submits that, if the above two reliefs are excluded, this writ petition can be maintained in that case and it is possible for this Court to decide the matter.

16. The learned Advocate General for the State of Andhra Pradesh submits on merits after placing the fact that the State of Telangana and the TSC are aware of the details of the funds, if any, the petitioner Council is also very much aware that the funds are in tact in the form of Fixed Deposits in the Banks located in Hyderabad only. In this regard, reference is made to the letter dated 5.9.2014 addressed by the Telangana Government to the Government of Andhra Pradesh seeking bifurcation of the staff and available funds. Act of adaptation by G.O.Ms.No.5 dated 2.8.2014 to G.O.Ms.No.33 dated 31.12.2014 would amount to amendment of the Act, 1988. Hence, such amendment is not valid in law for the reason that APSC still remains as an independent statutory body, which is functioning at the common capital of Hyderabad till it is bifurcated as per the procedure laid down under Section 75 of Act, 2014. He contends that the Telangana Government has adopted Act, 1988 and Regulations issued thereunder under Section 101 of Act, 2014, to create the 5<sup>th</sup> respondent Council vide G.O.Ms.No.5 dated 2.8.2014 with effect from 2.6.2014 for the purpose of facilitating its operation in relation to the State of Telangana and not otherwise. The very adaptation of the Act under Section 101 of Act, 2014 is not applicable to those institutions specified in the tenth schedule under Section 75 of Act, 2014 till the procedure contemplated under Section 75 of Act, 2014, which mandates either the continuation of the institutions for the people of both the States beyond one year or deletion of such institutions from the tenth schedule depends upon the decision of the 1<sup>st</sup> respondent Government and the same is binding on both the Governments. The procedure contemplated under Act, 2014 for ninth schedule institutions is distinct and different and the same cannot be compared with tenth schedule institutions. The adaptation of the APSC, which is listed in the tenth schedule, creating a parallel one being TSC invoking Section 101 of Act, 2014 is contrary to the procedure laid down under Section 75 of Act, 2014.

17. He contends further that APSC is located in a common capital for both the States of Andhra Pradesh and Telangana for a period not exceeding ten years, as per Section 5 of Act, 2014. Therefore, Telangana Government, having created TSC, cannot now claim territorial jurisdiction exclusively over APSC, which is a specified institution in the tenth schedule under Section 75 of Act, 2014, without going through the due process mandated under the said Act. Thus, the words “located in that State” mentioned in Section 75 of Act, 2014 means to facilitate the services to the people of other States by the institutions specified in the tenth schedule.

18. The question of TSC becoming a successor organization to the petitioner Council would only happen as and when APSC is bifurcated as per law laid down in Sections 75 & 79 of Act, 2014. Thus, as long as APSC is listed in the tenth schedule under Section 75 of Act, 2014, the question of TSC taking its place as a successor organization does not arise since Section 101 of Act, 2014 is permissive in general, but adaptation of the institution specified in the tenth schedule under Section 75 of the aforesaid Act, 2014 i.e., lock, stock and barrel, is impermissible and void in law.

19. The Circular dated 30.10.2014 addressed to the various Banks requesting to stop withdrawals cannot be made applicable to tenth schedule institutions for the reason that the Act, 2014 does not provide any procedure for division of funds of tenth schedule institutions. Therefore, applying the said Circular and freezing the accounts of the petitioner Council by the 2<sup>nd</sup> & 3<sup>rd</sup> respondent Banks is totally erroneous and illegal. Therefore, the question of disputes of funds between the States of Telangana and Andhra Pradesh does not and cannot arise, without bifurcation of the APSC. Therefore, freezing of the accounts based on a letter written by the Bank on 8.1.2015 under the guise of the Circular dated 30.10.2014 is totally illegal and amounts to a collusive act of the Bank with the State of Telangana.

20. The learned Advocate General appearing for the State of Telangana submits that APSC, Hyderabad is an institution constituted under sub-section (1) of Section 3 of Act, 1988 and the said institution was defined under clause (e) of Section 2 of Act, 1988. It is submitted that sub-section (3) of Section 3 of Act, 1988 provides that the headquarters of the State Council shall be located at Hyderabad. The said institution

was constituted with an object to advise the State Government and set standards of Higher Education, etc., as set out in the objectives of Act, 1988. The said Council has been functioning since 1988 onwards in Hyderabad and it has no other sub-offices or branch offices in the then existing State of Andhra Pradesh, except Hyderabad. The said Council was specified and included in the tenth schedule of the Act under Section 75 of Act, 2014. The institutions listed in the tenth schedule shall continue to provide facilities to the people of other State even after bifurcation of the State on certain terms and conditions as may be agreed between the two States. There is no partition provided in respect of the institutions specified in the tenth schedule except providing service. Undisputedly, since the institution is located in Hyderabad, the institution will be governed by the law of the land, known as the doctrine of *lex situs*. In terms of the doctrine of *lex situs*, all the rights over or in relation to any institutions are governed by the law of that State where the said institution is located. In this context, he referred to a decision of the Supreme Court in case of *Anant Prasad Lakshminivas Ganeriwal v. State of A.P.* (3 supra). The territory of Hyderabad District is included in the State of Telangana under Section 3 of Act, 2014. The State of Andhra Pradesh is entitled to locate its headquarters in the Hyderabad city for a period not exceeding ten years, but it is not given any right over the territory or its law making power or administration. Section 75 of Act, 2014 clearly states that the institutions located in that State would extend the services to other State on such terms and conditions of agreement. The State of Telangana was formed with effect from 2.6.2014. Thereafter, Act, 1988 was adapted in the name and style of Telangana State Council of Higher Education Act under Section 101 of Act, 2014 vide G.O.Ms.No.5 dated 2.8.2014. Pursuant to the said adaptation, a new Council was constituted for Item No.27 of the tenth schedule, known as the Telangana State Council of Higher Education. In view of the same, the State of Andhra Pradesh or its Higher Education Council has no authority over the said institution. Thus, the State of Telangana and its enacted law will have application over the said institution. Act, 2014 provided for the ownership of the institution on territorial basis located in the respective territory and there is no division of assets and liabilities of the institutions listed in the tenth schedule. He submits further that under Sections 68 & 71 of Act, 2014, even the State Government Companies and Corporations are allowed to continue on territorial basis as owners except State headquarters which are existing State-wide operations.

21. He concluded that neither the State of Andhra Pradesh nor the Council constituted by the erstwhile State of Andhra Pradesh can have any control, authority or function over the State Council and operate the Bank accounts of the A.P. State Council of Higher Education located in Hyderabad.

22. After considering the submissions and contentions of both the parties, we feel that it is incumbent upon us to decide the preliminary objection raised by the learned Advocate General for the State of Andhra Pradesh whether the reliefs, being prayer Nos.3 & 4, in W.P.No.2882 of 2015 can be entertained by this Court or not. In other words, whether the provisions of Article 131 of the Constitution of India, which reads as follows, is a bar or not?

**131. Original jurisdiction of the Supreme Court:-** Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

23. On a plain reading of Article 131 of the Constitution of India, it appears, without any doubt, that the Supreme Court has original jurisdiction to entertain a *lis* with regard to the disputes between the Government of India on one hand and one or more States on the other, or between the Government of India and any State or States on one side and one or more other States on the other, or between two States and this dispute relates to any question whether on fact or law which the existence or extent of a legal right of the aforementioned disputants depends.

24. Therefore, it postulates the legal right of the two parties mentioned above and not that of any other third party. In other words, a fight between two States to establish any legal right based on fact and law can be decided by the Supreme Court alone and in that situation, it clearly ousts the jurisdiction of other Courts.

25. According to us, in order to apply the aforesaid Constitutional bar, the fact of the *lis* and claim and contention in substance, involved therein must confine to the two States exclusively, not involving nor referring to any third party. As it is rightly argued by the learned A.G. for the State of Telangana, the word "State" mentioned in Article 131 of the Constitution of India is to be construed in strict sense viz., sovereign State, not that of as mentioned in wider sense in Article 12 of the Constitution of India.

26. On a reading of both the writ petitions, it appears to us that the APSC is a separate legal entity and it has been constituted by and under the Act, 1988 and by this writ petition, the aforesaid Council has claimed funds lying in the Bank in its name. It appears that the TSC is also a separate legal entity. Therefore, these mutual but rival rights and claims are really sought to be established merely by both the two separate statutory bodies viz., of the State of Andhra Pradesh and the State of Telangana after being created by making appropriate legislation either by original or by way of adaptation of original.

27. Hence, we do not think that these two writ petitions are in the real sense a fight between two independent States as contemplated under Article 131 of the Constitution of India.

28. As far as the reliefs mentioned in 3 & 4 in W.P.No.2882 of 2015 are concerned, the same are merely surplusage and can safely be excluded. We, therefore, delete the same. Consequently, we hold that the later writ petition is also maintainable.

29. We now proceed to decide the claims and contentions on merit.

30. In these two matters, there is no dispute as regards factual aspects and the same are briefly stated hereinafter. The APSC came into existence by and under the Act, 1988 by virtue of Section 3 of this Act. The said Section is set out hereunder:

**3. Constitution of State Council of Higher Education:-** (1) The Government may, by notification, and with effect on and from such date as may be specified in this behalf, constitute a State Council for the purpose of this Act to be called the Andhra Pradesh State Council of Higher Education.

(2) (a) The State Council shall be a body corporate having perpetual succession and a common seal and shall sue and be sued by the said corporate name.

(b) In all suits and other legal proceedings by or against the State Council the proceedings shall be signed and verified by the Secretary and all processes in such suits and proceedings shall be issued to and served on the Secretary.

(3) The Headquarters of the State Council shall be located at Hyderabad.

31. Thus, it is clear that this Council is a statutory body and it has an independent legal character from that of the Government functioning. It seems to us that the statutory body was intended to be created to give autonomy with regard to maintaining, promoting and improving standards of higher education. The composition of the Council is provided under Section 4 of the Act, 1988. The said Section reads as follows:

**4. Composition of the State Council:-** (1) The State Council shall consist of the following members, namely:

**I. Full Time Members:**

(i) a Chairman; and

(ii) a Vice-Chairman,

to be appointed by the Government from among eminent educationists.

**II. Ex-Officio Members:**

(i) the Secretary to Government, Education Department;

(ii) the Secretary to Government, Finance Department;

(iii) the Secretary to Government, Labour, Employment and Technical Education:

(iv) the Secretary or any other officer of the University Grants Commission not below the rank of a Joint Secretary nominated by the Chairman, University Grants Commission.

### III. Other Members:

(i) four persons to be appointed by the Government from among eminent educationists;

(ii) one person who shall represent the industry to be appointed by the Government:

(iii) three persons of whom one shall be a technical expert, to be nominated by the State Government.

(2) Every appointment under this section shall take effect from the date on which it is notified by the Government.

32. It further appears that this Council under the Act has to get grants from the Government as permitted by the Legislative Assembly of the State. The Council, under Section 18 of Act, 1988, is guided by the direction of the Government and the Council has also accountability under Section 19 to the Government. The Government is entitled to make inspection and enquiry into the works done by the State Council. Under Section 21 of the said Act, the Government has powers to revise any decision of the Council.

33. In view of the bifurcation of the erstwhile State of Andhra Pradesh by Act 2014, the status and functioning has been mentioned in Section 75 of the Act, 2014. The said Section provides as follows:

**75. Continuance of facilities in certain State institutions:-** (1) The Government of the State of Andhra Pradesh or the State of Telangana, as the case may be, shall, in respect of the institutions specified in the Tenth Schedule to this Act, located in that State, continue to provide facilities to the people of the other State which shall not, in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government.

(2) The Central Government may, at any time within one year from the appointed day, by notification in the Official Gazette, specify in the Tenth Schedule referred to in sub-section (1) any other institution existing on the appointed day in the States of Andhra Pradesh and Telangana and, on the issue of such notification, such Schedule shall be deemed to be amended by inclusion of the said institution therein.

34. It would appear from the tenth schedule, this Council is indicated at Sl.No.27.

35. Now, the core issue in these matters is as to who can claim the ownership and control of this Council.

36. If the aforesaid Section is read carefully, it would appear, as rightly contended by the learned Advocate General for the State of Telangana, that the State Council, which was in existence on the appointed day is to be and/or deemed to have been allocated to the State of Telangana as this Council is located at Hyderabad which is a part of the State of Telangana as mentioned in Section 3 of Act, 2014. Since the Council comprises of land and building, it is essentially an immovable property and it remains at a place where it is. We, therefore, usefully reproduce this Section hereunder:

**3. Formation of Telangana State:-** On and from the appointed day, there shall be formed a new State to be known as the State of Telangana comprising the following territories of the existing State of Andhra Pradesh, namely:-

Adilabad, Karimnagar, Medak, Nizamabad, Warangal, Rangareddi, Nalgonda, Mahabubnagar, Khammam (but excluding the revenue villages in the Mandals specified in G.O.Ms.No.111, Irrigation & CAD (LA IV R&R-I) Department, dated the 27<sup>th</sup> June, 2005 and the revenue villages of Bhurgampadu, Seetharamanagaram and Kondreka in Bhurgampadu Mandal) and Hyderabad districts,

and thereupon the said territories shall cease to form part of the existing State of Andhra Pradesh.

37. We are unable to accept the contention of the learned A.G. for the State of Andhra Pradesh that since Hyderabad is a common capital for the State of Andhra Pradesh, this Council which was in existence prior to the appointed day would continue to remain and would stand allocated to the State of Andhra Pradesh as its property.

38. On a fair reading of Section 5 of Act, 2014, as correctly contended by the learned A.G. for the State of Telangana, the State of Andhra Pradesh is a mere user of the city of Hyderabad for a maximum period of ten years. It has no proprietary right, title



and interest in this city and none of the assets which belong to the erstwhile State of Andhra Pradesh, located at Hyderabad, can be claimed by the State of Andhra Pradesh except in accordance with Act, 2014. Similarly, any institutions mentioned in the tenth schedule, situated in the territory of bifurcated State of Andhra Pradesh will stand allocated to that State and the State of Telangana cannot have any claim over the said property. For example, Sri Padmavathi Mahila University, Tirupati, which is situated in Tirupati, at Sl.No.57 of the tenth schedule, will stand allocated exclusively to the State of Andhra Pradesh. However, despite this legal status of the institutions mentioned in the tenth schedule, they will continue to serve the people of the other State within which it is not located, which will not be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within one year from the date of the appointed day.

39. At present, as far as this Council is concerned, there has been no agreement and the period of one year is yet to be over also. It does not appear that the Central Government has intervened in the matter. But, it would be open for both the States to work out this issue.

40. Therefore, in this case, factually, it appears that by virtue of G.O.Ms.No.5 dated 2.8.2014 the Government of Telangana, in exercise of powers under Section 101 of Act, 2014, has adopted the Act, 1988 with modification that it should be read as 'Andhra Pradesh State Council of Higher Education Act (Telangana Adaptation Order), 2014'. Because of the adaptation with amendments in the eye of law, APSC has no existence, at least in Hyderabad, or in any part of Telangana State, if there be any branch of this office. It further appears that consequent upon the aforesaid adaptation with amendment by G.O.Ms.No.6 dated 5.8.2014 and by G.O.Ms.No.7 dated 5.8.2014, a notification is issued for changing composition of the body and fresh appointments of Chairman, Vice-Chairman and other Members have also been made.

41. Under such circumstances, the assets and properties and funds whatever lying at the present location of the APSC belong to TSC.

42. We cannot accept the contention of the learned A.G. for the State of Andhra Pradesh that by a Government Order a statute cannot be amended in view of the specific provision of Section 101 of Act, 2014, which reads as follows:

**101. Power to adapt laws:-** For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

**Explanation:-** In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

43. When the Legislature has delegated this power to the Government under the Statute itself, it is deemed to be an Act of the Legislature. Therefore, this contention has no force at all and this provision, if read along with Section 100 of Act, 2014, as the power of adaptation with amendments has been expressly provided in the aforesaid provision of law.

44. In view of the aforesaid discussion, we are constrained to hold that the claim made by the APSC is not sustainable under law. Of course, if there had been any branch of this APSC within the territory of the present State of Andhra Pradesh, it might have continued to function as a fractured and divided body. As there is none, it would be open for the State of Andhra Pradesh to negotiate with the State of Telangana as per provisions of Section 75 of Act, 2014, as above for its services.

45. We therefore declare that all the bankers of the erstwhile APSC will recognize and allow the present TSC to operate the Bank accounts.

46. Thus, both the Writ Petitions are disposed of accordingly. There will be no order as to costs.

Consequently, pending miscellaneous petitions, if any, shall also stand closed.

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**Kalyan Jyoti Sengupta, CJ**

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**Sanjay Kumar, J**

Dt. 01.05.2015

Note: L.R. copy to be marked.

(B/O)

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