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Need for Increased Awareness of Commercial Laws in Unaided Educational Institutions

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Abstract:

Indian Education Sector is highly regulated. Number of statutes and laws influence the working of the Educational Institutions. Contrary to the belief that excellence in legal compliance is expected only in a Corporate set-up, this article highlights through some practical examples, how equally important the same is for Educational Institutions, even though most of them operate in a non-corporate set-up. Case for better legal awareness and compliance is particularly strong for institutions in the private unaided sector because costs of inefficiencies due to poor legal awareness and compliance on the part of these institutions have to be borne by the students for no fault of theirs as their fees are linked with the costs. For example, if a tax, by law is not required to be paid by the educational institutions due to some exemption, is erroneously paid, then eventually it is the student who has to pay the price of this inefficiency by way of higher fees. The article examines the present level of legal awareness amongst educational institutions, the implications and also offers suggestions for improvement.

Keywords: Fees, legal awareness, legal compliance, private unaided colleges

1. Introduction

The Indian Education sector is regulated quite rigorously. Figure 1 spells out the general regulatory framework for such higher educational institutions in India.

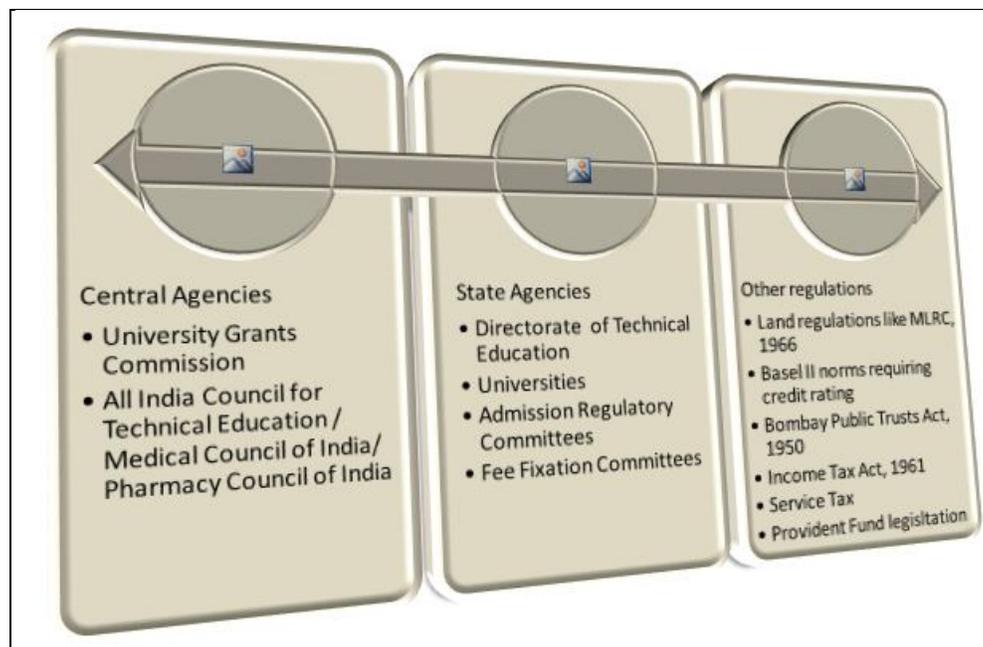


Figure 1: Legal framework for Educational institutions

Most of the private unaided educational institutions in India are registered as Trusts and or Societies. Such Trusts and Societies are registered as Charitable Organizations. Given the absence of profit motive, it is a general belief that most of the commercial laws are not applicable to such Institutions. Further it is also believed that taxes, duties, levies etc are not payable by such institutions. It is true that being charitable in nature such institutions have been provided a number of tax sops. At the same time, it is also true that despite being charitable in nature, there are legal compliances that these institutions have to make. A slip on either side that is, not claiming an exemption that is legally available and / or claiming an exemption that is not legally available can be a costly affair.

This article examines both such slippages by private unaided educational institutions, its implications and offers suggestions for improvement in the existing situation. In case of Government or Government aided institutions, since the funding is from the Government, such lapses will not impact the students much. However, where the student's fees are directly linked with the costs incurred, the issue become important.

2. Data Collection and Analysis

As a part of the research, "Study of Financial Management practices adopted by Unaided Educational Institutions in Ahmednagar District (2003-13)", data was collected from unaided institutes from Ahmednagar District in Maharashtra. The institutes represented a variety of colleges from the fields of engineering, medical, pharmacy, polytechnic etc. Primary data was collected by way of questionnaires. The respondents were asked to list 3 major problems related to financial management practices. 27% of the respondents stated lack of professionalism is one of the concern areas. Another 27% of the respondents complained that lack of training also comes in the way of efficient financial management of the educational institutions.

While interviewing the respondents it was found that both the cases – lack of awareness of the exemptions available and lack of compliance where it is necessary – were causing significant monetary losses. In the 1st category it was found that there was unawareness of the following regulatory developments that provided for exemptions to the educational institutions –

- Exemption of electricity duty as per provisions of Maharashtra Electricity Duty Act, 1958 – As per section 3(2)(iiia) of the Maharashtra State Electricity Duty Act, 1958, since the year 1986, an exemption is available from payment of electricity duty to schools and colleges that are registered under the Bombay Public Trust Act, 1950. The electricity duty that works to around 15% of the total bill was charged to and paid by almost all the educational institutions, despite a clear exemption being available.
- Exemption of service tax on business auxiliary services – Educational Institutions avail number of auxiliary business services like transportation of students, housekeeping services, canteen services etc. Till the amendment in the Budget of 2014/15, no service tax was payable on all such services as clarified by Circular No.172/7/2013-ST dated 19.09.2013. Yet since it was not in the knowledge of the institutions, in many cases it was observed that service tax was paid on outsourced services despite an exemption available.

In the 2nd category it was found that almost all the institutions have paid penalties/interests for lapses/delays on either of the following compliances –

- Penalty for late filing of annual fee fixation proposal with the Shikshan Shulka Samiti
- Interests for delayed payment of TDS as per provision of Income Tax Act, 1961
- Penalties for delayed filing of e-TDS returns as per provision of the Income Tax Act, 1961
- Damages for delayed deposit of Provident Fund dues as per the Employee Provident Fund Act, 1952

The above quoted specific cases were those that were seen prominently on the surface of the matter. If a scrutiny or thorough audit is done, there is a possibility of finding out much higher amount of negligence on this count.

3. Consequences of Defaults

In case of legal defaults of either type – failing to claim an available exemption or failing to comply with legal provisions – results in direct monetary loss for the educational institution. However such a loss gets disguised along with some other cost. For example, very few would come to know of electricity duty that is paid as a part of the monthly light bill. Similarly, service tax, while payment, is clubbed with the service bill. Hence, unless the matter is seen in some details, these inefficiencies would get easily passed on as legitimate costs. As per norms laid down by the Government, both unaided schools and colleges are required to get their fees from Government agencies on the basis of costs incurred by them. Thus, such inefficiencies ultimately get converted into fees from students who end up paying costs that are least concerned with academics and in fact, not required to be incurred only if due care and diligence is exercised by the institutions.

Another problem in this case is that when the exemption is claimed for past periods then it would get passed on to future students since those who have studied in the past would have already paid up their fees and would have even left the institutions. This will be clearly an anomalous situation quite unfair on the part of the students.

4. Suggestions for Improvement

It is a well accepted fact that the laws, norms, provisions and rules keep on changing frequently and impact the operations of any business. Hence it is suggested that the Head Office of the Trust should take a lead in making a conscious effort to see to it that the operating people and those at the Trust office should stay updated on the developments in the regulations. Even a small miss or lapse can be very costly affair. In this direction, it is suggested the private unaided educational institutions should avail professional services notwithstanding the charges or fees. It should hire services of experts on a regular basis. If it deprives itself of professional consultation, it is bound to suffer heavily in terms of losses in different forms. A benefit granted by the law can be

easily missed out or non-compliance with a provision can lead to huge penalties. Such services can also be hired by associations of private unaided educational institutions. However, for this the association needs to be active.

5. References

1. Bombay Public Trust Act, 1950, section 36(A)(3)
2. Employee Provident Fund Act, 1952
3. Income Tax Act, 1961
4. Maharashtra Electricity Duty Act, 1958, Section 3(2)(iia)
5. Maharashtra Educational Institutions (Regulation of Fee) Act, 2011
6. Service Tax Mega Exemption Notification dated 25.06.2012
7. Service Tax Notification 14/2004 dated 10.09.2004
8. Service Tax Circular No.172/7/2013-ST dated 19.09.2013
9. Shikshan Shulka Samitis, Fee Fixation norms as amended from time to time