

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

WRIT PETITION Nos.19770, 19858, 19879, 19922, 19929, 19934, 19936, 19937, 19945, 19950, 19953, 19975, 19976, 20004, 20043, 20052, 20053, 20055, 20056, 20057, 20058, 20060, 20061, 20062, 20065, 20068, 20070, 20074, 20075, 20079, 20080, 20081, 20089, 20096, 20097, 20104, 20111, 20112, 20115, 20143, 20145, 20155, 20157, 20168, 20179, 20214, 20249, 20253, 20259, 20261, 20262, 20269, 20270, 20273, 20276, 20285, 20294, 20297, 20304, 20305, 20308, 20313, 20314, 20316, 20321, 20330, 20333, 20335, 20339, 20341, 20342, 20343, 20344, 20347, 20354, 20355, 20356, 20373, 20374, 20376, 20377, 20379, 20388, 20395, 20404, 20405, 20409, 20411, 20412, 20413, 20414, 20415, 20416, 20418, 20422, 20423, 20424, 20427, 20446, 20507, 20511, 20546, 20566, 20567, 20625, 20758, 20760, 20763, 20778, 20798 of 2015

% 07.07.2015

Between:

SLC College of Pharmacy,
And others.

... Petitioners

AND

Jawaharlal Nehru Technological University, Hyderabad,
And others.

...Respondents

Counsel for petitioners: Sri S.Niranjan Reddy
Sri S.Sri Ram
Party-in-person, Rev.K.V.K.Rao

Counsel for the Respondents : Learned Advocate General for the first
respondent University

< Gist:

> Head Note:

? CITATIONS:

1. (2013) 3 SCC 385
2. (1995) 4 SCC 104
3. (2000) 5 SCC 231
4. (2013) 2 SCC 617
5. (2011) 4 SCC 527
6. 2014 (9) SCJ 425
7. (2006) 9 SCC 1
8. AIR 1956 SC 676
9. 1987 (4) SCC 671

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

–
WRIT PETITION Nos.19770, 19858, 19879, 19922, 19929, 19934, 19936, 19937, 19945, 19950, 19953, 19975, 19976, 20004, 20043, 20052, 20053, 20055, 20056, 20057, 20058, 20060, 20061, 20062, 20065, 20068, 20070, 20074, 20075, 20079, 20080, 20081, 20089, 20096, 20097, 20104, 20111, 20112, 20115, 20143, 20145, 20155, 20157, 20168, 20179, 20214, 20249, 20253, 20259, 20261, 20262, 20269, 20270, 20273, 20276, 20285, 20294, 20297, 20304, 20305, 20308, 20313, 20314, 20316, 20321, 20330, 20333, 20335, 20339, 20341, 20342, 20343, 20344, 20347, 20354, 20355, 20356, 20373, 20374, 20376, 20377, 20379, 20388, 20395, 20404, 20405, 20409, 20411, 20412, 20413, 20414, 20415, 20416, 20418, 20422, 20423, 20424, 20427, 20446, 20507, 20511, 20546, 20566, 20567, 20625, 20758, 20760, 20763, 20778, 20798 of 2015

–
COMMON ORDER:

“Real knowledge is to know the extent of one’s ignorance”

– Confucius.

2. Heard learned Counsel, Sri S.Niranjan Reddy and Sri S.Sri Ram for the petitioners, supplemented by party-in-person, Rev.K.V.K.Rao, representing St.Mary’s Group of Institutions, and the learned Advocate

General for the first respondent-University.

3. After hearing the learned Counsel on either side, I thought it fit to dispose of the matters finally at the admission stage itself, with the consent of the Counsel on both sides and accordingly these cases are being disposed of.

4. This batch of cases are filed by the Colleges imparting technical education, which were rejected affiliation by the first respondent – Jawaharlal Nehru Technological University (JNTU) for the academic year 2015-2016 totally or in respect of some courses. The Supreme Court in **Parshvanath Charitable Trust v. All India Council for Technical**

Education ^[1] fixed the schedule as follows:

Event	Schedule
Conduct of entrance examination (AIEEE/State CET/Management quota exams, etc.)	In the month of May
Declaration of result of qualifying examination (12 th exam or similar) and entrance examination	On or before 5 th June
1 st round of counseling/admission for allotment of seats	To be completed on or before 30 th June
2 nd round of counseling for allotment of seats	To be completed on or before 10 th July
Last round of counseling for allotment of seats	To be completed on or before 20 th July
Last date for admitting candidates in seats other than allotted above	30 th July However, any number of rounds for counseling could be conducted depending on local requirements, but all the rounds shall be completed before 30 th July.
Commencement of academic session	1 st August
Last date up to which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 th August
Last date of granting or refusing approval by AICTE	10 th April

Last date of granting or refusing approval by University/State Government	15 th May
---	----------------------

The last date for granting or refusing approval by the University/State Government is 15th May, but that schedule was not adhered to and the University fixed the last date for receipt of applications for affiliation as 07.05.2015 with another period of nearly 45 days for completion of affiliation process as per its own regulations. When some of the Colleges were intimated of the deficiencies pursuant to the applications made by them for affiliation and when they approached this Court with regard to the irregular procedure followed by the University, this Court had to reset the time frame without violating the deadline fixed for commencement of the academic year, by order dated 12.06.2015 in W.P.No.14743 of 2015 and batch. The petitioners therein, who were communicated with the deficiencies were directed to treat the said communication as an order of rejection of affiliation by the University as per Regulations and they were allowed to file appeals before the appellate committee. When that process was going on, some of the institutions approached this Court again and it came to light that both the University as well as the institutions, who were communicated with the list of deficiencies, did not invoke the process of filing appeals. On the other hand, the University conducted reverification contrary to the Regulations framed by it and it was contended before this Court that such reverification was done treating the objections filed to the intimation of deficiencies as an appeal. This Court considered the plea of the institutions and disposed of W.P.Nos.18332 of 2015 and batch by order dated 25.06.2015 by directing the University to upload the report pursuant to reverification and afford an opportunity of hearing to the affected institutions by the competent appellate authority and take a decision. It appears that, out of nearly 283 Colleges, in respect of 235 Colleges the deficiencies were communicated and after considering the objections, granted affiliation in accordance with the Regulations of the University to 220 Colleges. The rest of the Colleges,

whose affiliation was not granted, or who were denied some courses are before this Court. This Court did not examine the legality of the Regulations framed by the University while disposing of the matters on the above two occasions in view of the paucity of time and the stage having not arisen for consideration. Now, after final rejection of affiliation or denial of some courses after undergoing the process of initial consideration by the University and by its appellate committee, the present disputes are brought before this Court.

5. Learned Counsel for the petitioners submitted that in respect of the field covered by the provisions of the All India Council for Technical Education Act, 1987 (for short, the AICTE Act), the State Legislature cannot make any law, and any law repugnant to the said law is nonest and inoperative as per the decisions of the Supreme Court. They supplemented their argument by stating that the duty of the University is to report to the All India Council for Technical Education (AICTE) with regard to the deficiencies noticed by them during the course of inspection and it is for the AICTE to impose penalty as per its own Regulations. The party-in-person, Rev.K.V.K.Rao, submitted that the University should confine itself to the fields of curriculum, academic almanac and examinations and by looking into those parameters it has to grant affiliation, when the AICTE, which is the regulating body had accorded approval. He further stated that in respect of St.Mary Group of Institutions, Hyderabad, though the inspection team found no deficiencies, the affiliation was rejected on the ground that some other information was not uploaded, which is contrary to the facts.

6. Learned Advocate General appearing for the University, on the other hand, submitted that the power of approval is different from the authority to grant affiliation and this distinction was approved by the Supreme Court in various decisions relied on by the learned Counsel for the petitioners themselves. He further submitted that for granting affiliation, the University can fix norms which are not inconsistent with the norms fixed by the AICTE.

In case of violation of their norms, the University is within its power to reject the affiliation even after the institution got approval from the AICTE. The affiliation is not an automatic process in respect of the institutions approved by the AICTE.

7. In the light of the above arguments on either side, the main point that arises for consideration in this batch of cases is with regard to the scope of power of the University and the norms it can prescribe before granting affiliation to the concerned educational institutions imparting technical education.

LEGISLATIVE MANDATE:

8. The All India Council for Technical Education Act was enacted by the Parliament in exercise of its legislative powers under Entry 66 of List I of the Seventh Schedule to the Constitution of India and Entry 66 reads as follows:-

“66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

The AICTE was set up in 1945 by a Government resolution as a national expert body to advise the Central and State Governments for ensuring coordinated development of technical education in accordance with the approved standards. It was noticed that, though during the first three decades, the Council functioned effectively, but due to mushrooming of private engineering colleges and polytechnics which did not maintain the educational standards and had serious deficiencies in infrastructure for imparting proper educational training, it was felt that a statutory power is needed to regulate and maintain standards of technical education in the country. A National Working Group, which was set up in November 1985 to look into the role of AICTE, recommended for vesting the said body with necessary statutory authority. In pursuance thereof, the AICTE Act was enacted. It came into force with effect from 28.12.1987.

9. Section 2(g) of the AICTE Act defines “technical education” and

Section 2(h) defines “technical institution”. Section 10 in Chapter 3 deals with the functions of the Council and they include among others the following:-

“...

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

h).....

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) (m) (n).....

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;
...”

The AICTE made Regulations called, the “All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012”, and notified the same in September, 2012. The grant of approval for Technical Institution/Polytechnic (Technical Institution offering Diploma) is dealt with in clause 4 of the Regulations. Clause 4.2(a) deals with extension of existing approval. Clause 4.3 provides for publication by the Council, from time to time, “Approval Process Handbook” detailing the conditions of approval and procedure to process the applications of institutions and/or promoters. Clause 4.14 enables the State Government/UT Administration and the affiliating University to forward their views on the applications received under clause 4.1 and 4.2 of these Regulations to the concerned

Regional Office of the Council as prescribed in the Approval Process Handbook. Clause 4.28 enables the AICTE to conduct inspections from time to time for checking the violation of norms and standards. Appeal is also provided under Clause 5 thereof. Clause 14 deals with the action in case of violation of Regulations.

10. The AICTE published Approval Process Handbook for the year 2015-2016. It contains the important provisions of the AICTE Act on approval process which reads as follows:

1.4 Important Provisions of the AICTE Act on Approval Process

1.4.1 Clause 10(g)	Evolve suitable performance appraisal system for Technical Institutions and Universities imparting Technical Education, incorporating norms and mechanisms for enforcing accountability.
1.4.2 Clause 10(i)	Lay down norms and standards for course curriculum, physical and instructional facilities, staff patterns, staff qualifications, quality instructions, assessment and examination.
1.4.3 Clause 10(k)	Grant approval for starting new Technical Institutions and for introduction of new Courses or Programs in consultation with the Agencies concerned.
1.4.4 Clause 10(n)	Take all necessary steps to prevent commercialization of Technical Education.
1.4.5 Clause 10(p)	Inspect or cause to inspect any technical Institution.
1.4.6 Clause 11(1)	For the purposes of ascertaining the financial needs of Technical Institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical Institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.
1.4.7 Clause 11(2)	The Council shall communicate to the Technical Institution or University the date on which any inspection under sub-section (1) is to be made and the technical Institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.
1.4.8 Clause 11(3)	The Council shall communicate to the technical Institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical Institution or University the action to be taken as a result of such inspection.

1.4.9 Clause 11(4)	All communications to a technical Institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical Institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section (3).
--------------------	---

11. The applications received from the institutions would be evaluated by a Scrutiny Committee constituted by the Regional Officer by selecting members using automated selection process. The Scrutiny Committee, after pointing out deficiencies and rectification thereof, recommends for Expert Committee visit. The Expert Committee visits the proposed premises of the institution to verify aspects relating to instructional, administrative and amenities area requirements; computer, software, lab equipments, book, journals etc.; essential and desired requirements for technical institution and appointment of Principal/Director and faculty with respect to the norms, standards and conditions prescribed by the Council. The reports of the Scrutiny Committee and Expert Committee would be verified by the Regional Committee along with the views of the concerned State Government, affiliating University and recommend application for further processing. Thereafter only approval would be granted by the AICTE. Thus, it exhaustively deals with the matters relating to grant of approvals for technical institutions.

12. The State Legislature enacted “the Jawaharlal Nehru Technological Universities Act, 2008 (for short, JNTU Act)”, repealing JNTU Act, 1972, and Section 2(2) defines an “affiliated college” as a College within the University area affiliated to the University in accordance with the conditions prescribed. Section 4 deals with the objects, powers and functions of the University. The relevant portion of the said Section reads as follows:-

“(1) Subject to such law as may be made by the Parliament as to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions or subject to such directions as may, from time to time, be given in regard

thereto by or on behalf of the Central Government, the objects of the University shall be-

...

(xxi) to affiliate or recognize colleges and institutions located in the University area or to withdraw such affiliation or recognition...

(emphasis supplied)”

The above enactment was made in exercise of the legislative power contained in Entry 25 in List III of the Seventh Schedule to the Constitution of India and Entry 25 reads as follows:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Section 29 of the JNTU Act deals with “Regulations”. Sub-section (1) thereof reads as follows:-

“The Council and the Academic Senate may make regulations consistent with the provisions of this Act, the Statutes and the Ordinances, for all or any of the other matters which by this Act and the statutes are to be provided for by regulations and also for any other matter solely concerning such Authorities and not so provided.”

The Jawaharlal Nehru Technological University also made provisions for affiliation through regulations. The said regulations deal with the conditions to be satisfied by the Colleges seeking affiliation, pre-requisite claim for affiliation and procedure for grant/withdrawal of affiliation to a programme.

The steps involved in affiliation process of JNTUH are indicated in para 26.1 of the Regulations and the stages are as follows:

“26.1 Steps Involved in Affiliation Process of JUTUH

The following stages are involved in granting JUNTUH affiliation to an Institute/College.

1. Submission of application for affiliation and by remitting necessary inspection fees.
2. Inspection of Institute/College by FFCA's

3. Review of Report of Fact Finding Committee for Affiliation (FFCA)
4. Communication of Grant/Rejection of affiliation
5. Appeal for Reconsideration
6. Review of appeal
7. Final Communication of Grant/Rejection of affiliation”

13. At this stage it is necessary to observe that the above Regulations were stated to have been made in exercise of power conferred on the University under Section 4(2)(XIX-b) read with Section 28A of JNTU Act, and those Sections find place in JNTU Act, 1972, which is a repealed enactment under JNTU Act, 2008. When this was pointed out to the learned Advocate General, he made necessary corrections and traced the relevant power to Section 4(2)(XXI) and Section 29 of the Act.

14. The consistent argument of the learned Advocate General in this regard is that they are following the same norms as prescribed by the AICTE for granting affiliation by them and wherever they noticed violation of the norms, they rejected affiliation. Learned Counsel appearing for the petitioners submitted that the University cannot apply the same norms as fixed by the AICTE under its Regulations and if the University, at its inspection, finds any violation of the said norms of AICTE, the said violations have to be pointed out to the AICTE and the University cannot reject affiliation on that ground. They further submit that the area left to University for fixing norms for affiliation is limited.

15. Learned Advocate General submits that the AICTE grants approval based on online applications without actually verifying and inspecting the Colleges with regard to the information furnished by them but the University, after physically inspecting the Colleges, finding inadequacies was disinclined to grant affiliation to the petitioners. When his attention was drawn to the

fact that a copy of the application submitted to the AICTE by the Institutions at the time of seeking approval was being forwarded to the University also, but when the University did not raise any objection at that point of time can it conduct an inspection at this length of time and reject affiliation, the learned Advocate General reiterated that the University cannot fix higher norms than prescribed by the AICTE, but can verify the compliance of the norms by the institutions when they are not repugnant to the norms fixed by the AICTE. Learned Counsel for the petitioners submitted that the law on this point is very clear as it has been repeatedly held by the Supreme Court that in such a case of inspection of the norms fixed by the AICTE, the University can only bring it to the notice of AICTE in case of violation but cannot reject affiliation on the ground of violation.

16. In the backdrop of the above rival contentions, the cases decided by the Supreme Court have to be considered.

-
BINDING DECISIONS:

-
17. The first case that is cited and relied on by both sides is **State of Tamilnadu v. Adhiyaman Educational & Research Institute**^[2]. In the said case, the Supreme Court was considering the issue whether the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act, AICTE Act, after coming into force of the said Act. The issue relating to technical institutions in the State of Tamilnadu were considered in the said decision. The Adhiyaman Educational & Research Institute started a new self-financing private engineering college in terms of the policy of the Government of Tamilnadu. The University granted temporary affiliation for the academic year 1987-1988 to the institution, but rejected the request of the said institution for affiliation for the academic year 1989-1990 and when it issued a show cause notice asking it as to why the affiliation granted to the said institution for the academic year 1987-1988 should not be cancelled, the institution filed a Writ

Petition. A learned Single Judge of the Madras High Court held that after passing of the Central Act, the State Government had no power to cancel the permission granted to the institution and the only course open to the State Government was to refer the matter to the AICTE. He further held that after coming into force of the Central Act, if each State Government and the University was allowed to recognise or de-recognise the technical institutions, each of them would follow different yardsticks which will be against the object of the Central Act. Writ Appeals were preferred against the said judgment and the Writ Appeals of the State Government and the University were dismissed. In the said background of the case, the Supreme Court considered the conflict between the Central Act on the one hand and the Tamilnadu Private Colleges (Regulation) Act, 1976, the Rules made thereunder, the Madras University Act, 1923, and the Statutes and Ordinances made thereunder on the other. The Supreme Court examined the provisions of the Central Act and the State Acts and the Subordinate Legislation made thereunder. The Supreme Court opined that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Supreme Court categorically held that on the subjects covered by the Central enactment, the State could not make a law under Entry 11 of List II prior to Forty-Second Amendment nor can it make a law under Entry 25 of List III after the Forty-Second Amendment. If there is any repugnancy to the provisions of the Central Act, the said law should be adjusted to the provisions of the Central Act. Thus, the Supreme Court considered the provisions of the Tamilnadu Private Colleges (Regulation) Act, 1976 and Madras University Act, 1923 in relation to AICTE Act. In this connection, the Supreme Court made the following observations.

“33. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is

entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or derecognition of that institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges. As has been pointed out earlier, the Central Act has been enacted by the Parliament under Entry 66 of the List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List 111. The provisions of the University Act regarding affiliation of technical colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.”

Ultimately, the Supreme Court, after considering the earlier decisions relevant to the point in issue, culled out the points that emerged from the discussion of the relevant statutes and held in para 41 as follows:

“ 41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union

List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. **This power is absolute and unconditional** and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but if in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short- list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. **So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.**

(emphasis supplied)”

18. In **Jaya Gokul Educational Trust v. Commr. & Secy. To Govt. Higher Education Dept.**^[3], the provisions of the AICTE Act and the provisions of the concerned State enactment were considered. The facts in that case are that Jaya Gokul Educational Trust wanted to establish a self-financing Engineering College and submitted an application during 1994-1995 to the University of Kerala as well as to AICTE. After inspection by the team of professors of the University and on their recommendations, the AICTE granted conditional approval for establishing an Engineering College. The Trust made an application to the State Government requesting to permit it to start a College. University forwarded to the Government a list of Colleges and Courses for affiliation during the academic year 1995-1996 by including the Trust College as one of the Colleges but the Government refused permission. The same was challenged before a single Judge of the High Court of Kerala, who allowed the Writ Petition. However, the Division Bench reversed the said order, but giving liberty to the Trust to make a fresh application to the Government. Against the said decision of the Division Bench, the matter went in appeal before the Supreme Court and the Supreme Court considered the following points.

“8. The following points arise for consideration :

(1) Whether in view of the judgment of this Court in **State of Tamil Nadu & Another v. Adhiyaman Educational & Research Institute & Others**, ([1995] 4 SCC 104), the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority? Whether any statute in the State of Kerala if it required such approval, would be void?

(2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of the AICTE permission?”

So far as point No.1 was concerned, while holding that the matter was covered by **Adhiyaman Educational & Research Institute’s** case (supra), but in view of context of Section 10(k) regarding “approval” for starting a

technical institution, it considered the provisions of the AICTE Act. While considering the role of the AICTE for granting **approval**, the Government's role and university role in the matter of **affiliation**, it held as follows.

"20. The only provision relied on before us by the State Government which according to its learned senior counsel, amounted to a statutory requirement of 'approval' of the State Government, was the one contained in clause 9(7) of the Kerala University First Statute. It reads as follows :

"(9) Grant of affiliation:- (1) to (6)

(7) After considering the report of the Commission and the report of the local inquiry, if any, and after making such further inquiry as it may deem necessary, the Syndicate shall decide, after ascertaining the view of the Government also, whether the affiliation be granted or refused, either in whole or part. In case affiliation is granted, the fact shall be reported to the Senate at its next meeting:"

It will be noticed that clause 9(7) of the statute required that before the University took a decision on "affiliation", it had to ascertain the "views" of the State Government."

19. The following observations are also relevant and they read as follows.

"28. Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31.5.95 to the State Government. The only requirement as per the statute 9(7) was for the University to obtain the "views" of the State Government. Obtaining the 'views' of the State Government, as already stated, did not amount to obtaining its 'approval'. Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular Section 10(k) of the Regulation, and the University could not seek approval of Government. **The University was also one of the agencies consulted by the council of the AICTE under Regulation 8. Once that was over, and approval was granted by the AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of the AICTE so that the latter could take appropriate action.**

29. Reliance for the respondent was placed upon the subsequent report of the Syndicate dated 7.8.97. This report no doubt pointed out that the appellant had not complied with certain conditions mentioned in the approval dated 30.4.95 granted by the AICTE. **Assuming certain fresh facts had come to the notice of the University, it could only place the said facts before the AICTE.**

30. Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

(emphasis supplied)”

20. The other decisions on which heavy reliance was placed by learned counsel on both sides are **Parshvanath Charitable Trust's** case (supra) and **Maa Vaishno Devi Mahila Mahavidyalaya v. State of U.P.**^[4]. Both the decisions were rendered on the same day on 13.12.2012. In **Parshvanath Charitable Trust's** case (supra), the Supreme Court considered Sections 10 and 11 of the AICTE Act and the role of the AICTE, vis-à-vis University and the State Government. The facts in the said case are that Parshvanath College was established in 1984 after obtaining approval of all the authorities for the academic year 1994-1995. The approval by the AICTE was continued till 2008. On 29.04.2008, the college sought a “no-objection certificate” from the University of Mumbai. It also applied for an “occupation certificate” from the Municipal Corporation of Bombay for shifting the college to new premises located at a distance of barely 300 meters. It made an application to the regional office of AICTE seeking its permission to shift the college to the new premises by duly submitting all the requisite documents. In May, 2008, it shifted its location to the new site, but the same was done without taking approval from AICTE and without receiving “no-objection certificate” from the University of Mumbai as well as the State Government. AICTE granted an extension of approval to the college for the academic years 2008-2011. Thereafter, a show cause notice was issued on 18.05.2010 by the AICTE on the ground that the college had shifted to another location without obtaining prior approval of AICTE. Though the college submitted its reply, it was not included in the centralised admission process by the State Government. The said action was challenged in a Writ Petition which was allowed by the Division Bench of the High Court of

Bombay. Thereafter, the AICTE passed an order withdrawing the approval granted to the appellant college in terms of clause 2.11 of the Approval Process Handbook and the guidelines for the academic year 2008-2009. The cancellation of approval was challenged before the Division Bench of the High Court and the High Court dismissed the same with a direction to adjust students in other colleges keeping their welfare in mind. Challenging the same, the matter was taken to Supreme Court. The Supreme Court taking into consideration the decision in **Jaya Gokul Educational Trust's** case (supra), observed as follows:

“24. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. **The concerned department of the State and the affiliating university have a role to play, but it is limited in its application.** They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/ recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system.

(emphasis supplied)”

The Supreme Court on facts dismissed the appeal preferred by the College

and granted some directions with which we are not concerned for the purpose of present case.

21. The facts in **Maa Vaishno Devi Mahila Mahavidyalaya's** case (supra) relate to the conduct of courses in education (B.A., B.Ed.). When the College apprehended that it may not be able to participate in the counselling for the academic year 2012-2013 because of the delay caused by the University and the State Government with regard to affiliation, it filed a Writ Petition in the High Court of Allahabad at Lucknow Bench. The High Court directed the respondents therein to consider the petitioner's case on the basis of their eligibility as required for affiliation. Though the College complied with the objections informed by the authority and when no decision was taken by the State Government, the College filed another Writ Petition seeking a direction to include it in the counselling for B.Ed. course for the academic year 2012-2013. The Writ Petition was disposed of by the Division Bench remanding the matter to the Government. In that context, while considering the relevant cases relating to the said point and considering the provisions of National Council for Teacher Education Act, 1993 (NCTE Act), the Supreme Court held that grant of recognition by the Council is a condition precedent for grant of affiliation by the examining body to an institute and the provisions and the scheme of the NCTE Act are pari materia to that of the Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987 etc. The Supreme Court considered **Adhiyaman Educational & Research Institute's** case (supra) and **Jaya Gokul Educational Trust's** case (supra). It made the following observations.

“59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infra-structure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. **The concerned Department of the State and the affiliating University have a role to play but it is limited in its application.** They cannot lay down any guideline or policy which

would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.

(emphasis supplied)”

The Supreme Court also made following observations in the above case.

“66. From the above consistent view of this Court it is clear that wherever the field is covered by the Parliamentary law in terms of List I and List III, the law made by the State Legislature would, to the extent of repugnancy, be void. Of course, there has to be a direct conflict between the laws. The direct conflict is not necessarily to be restricted to the obedience of one resulting in disobedience of other but even where the result of one would be in conflict with the other. It is difficult to state any one principle that would uniformly be applicable to all cases of repugnancy. It will have to be seen in the facts of each case while keeping in mind the laws which are in conflict with each other. **Where the field is occupied by the Centre, subject to the exceptions stated in Article 245, the State law would be void.**

67. In the present case, we are concerned with the provisions of the NCTE Act which is a Central legislation referable to Entry 66 of List I of the Seventh Schedule. Thus, no law enacted by the State, which is in conflict with the Central Law, can be permitted to be operative.

68. Now, let us examine the conflict that arises in the present cases. In terms of the provisions of the Act, the Regional Committee is required to entertain the application, consider State opinion, cause inspection to be conducted by an expert team and then to grant or refuse recognition in terms of the provisions of the Act. Once a recognition is granted and before an Institution can be permitted to commence the course, it is required to take affiliation from the affiliating body, which is the University.

69. Thus, grant of recognition or affiliation to an institute is a condition precedent to running of the courses by the Institute. If either of them is

not granted to the institute, it would not be in a position to commence the relevant academic courses. **There is a possibility of some conflict between a University Act or Ordinance relating to affiliation with the provisions of the Central Act.** In such cases, the matter is squarely answered in the case of **Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra)** where the Court stated that after coming into operation of the Central Act, the operation of the University Act would be deemed to have become unenforceable in case of technical colleges. It also observed that provision of the Universities Act regarding affiliation of technical colleges and conditions for grant of continuation of such affiliation by university would remain operative but the conditions that are prescribed by the university for grant and continuation of affiliation must be in conformity with the norms and guidelines prescribed by the NCTE.

70. Under Section 14 and particularly in terms of Section 14(3)(a) of the Act, the NCTE is required to grant or refuse recognition to an institute. It has been empowered to impose such conditions as it may consider fit and proper keeping in view the legislative intent and object in mind. In terms of Section 14(6) of the Act, the examining body shall grant affiliation to the institute where recognition has been granted. **In other words, granting recognition is the basic requirement for grant of affiliation. It cannot be said that affiliation is insignificant or a mere formality on the part of the examining body.** It is the requirement of law that affiliation should be granted by the affiliating body in accordance with the prescribed procedure and upon proper application of mind. **Recognition and affiliation are expressions of distinct meaning and consequences.** In Chairman, Bhartia Education Society v. State of Himachal Pradesh & Ors. [(2011) 4 SCC 527], this Court held that

“19. the purpose of recognition and affiliation is different. In the context of the Act, affiliation enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diploma and certificates. On the other hand, recognition is the licence to the institution to offer a course or training in teaching education.”

The Court also emphasised that the affiliating body/examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition.

71. The examining body can impose conditions in relation to its own requirements. These aspects are

- (a) eligibility of students for admission;
- (b) conduct of examinations;
- (c) the manner in which the prescribed courses should be completed; and

(d) to see that the conditions imposed by the NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto.

(emphasis supplied)”

22. In **Bhartia Education Society v. State of H.P.**^[5], the Supreme Court considered the role of the NCTE and the affiliating body. In the said case, the Society applied to the NCTE seeking recognition and the NCTE replied that after obtaining no-objection certificate from the State Government, it would consider the request for recognition. Thereafter, the State Government gave no-objection certificate and on the basis of the same, the Society proceeded with the admission of the students. But those admissions took place without recognition of NCTE which was made only later. The point before the Supreme Court was whether the admissions made prior to the grant or recognition by the NCTE was valid or not. The Society submitted before the Supreme Court that examining body is bound to grant affiliation to an institution in regard to which recognition has been granted by NCTE. The object of recognition and affiliation are considered as follows:

“15. The purpose of ‘recognition’ and ‘affiliation’ are different. In the context of NCTE Act, ‘affiliation’ enables and permits an institution to send its students to participate in the public examinations conducted by the Examining Body and secure the qualification in the nature of degrees, diplomas, certificates. On the other hand, ‘recognition’ is the licence to the institution to offer a course or training in teacher education. Prior to NCTE Act, in the absence of an apex body to plan and co-ordinate development of teacher education system, respective regulation and proper maintenance of the norms and standards in the teacher education system, including grant of ‘recognition’ were largely exercised by the State Government and Universities/Boards. After the enactment of NCTE Act, the functions of NCTE as ‘recognising authority’ and the Examining Bodies as ‘affiliating authorities’ became crystallized, though their functions overlap on several issues. NCTE Act recognizes the role of examining bodies in their sphere of activity.

16...

17. Sub-section (6) of Section 14 no doubt mandates every examining body to grant affiliation to the institution on receipt of the order of NCTE granting recognition to such institution. **This only means that recognition is a condition precedent for affiliation and that the examining body does not have any discretion to refuse affiliation with reference to any of the factors which have been considered by the NCTE while granting recognition. For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State government and/or the examining body.** Even the order of recognition dated 17.7.2000 issued by NCTE specifically contemplates the need for the institution to comply with and fulfil the requirement of the affiliating body and state government, in addition to the conditions of NCTE. We extract below conditions 4, 5 & 6 of the order of recognition issued by NCTE in this behalf:

"4. The admission to the approved course shall be given only to those candidates who are eligible as per the regulations governing the course and in the manner laid down by the affiliating University/State Government.

5. Tuition fee and other fees will be charged from the students as per the norms of the affiliating University/State Government till such time NCTE regulations in respect of fee structure come into force.

6. Curriculum transaction, including practical work/activities, should be organized as per the NCTE norms and standards for the course and the requirements of the affiliating University/Examining body."

The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The state government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the

matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of the NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition. An institution requires the recognition of NCTE as well as affiliation with the examining body, before it can offer a course or training in teacher education or admit students to such course or training. Be that as it may.

(emphasis supplied)”

23. In **Rungta Engineering College, Bhilai v. Chattisgarh Swami Vivekanand Technical University**^[6], the Rungta Engineering College was granted approval by the AICTE on 07.04.2013. The College made an application to the University to grant affiliation and the same was rejected on 13.05.2013. Challenging the said decision, a Writ Petition was filed before the High Court of Chattisgarh at Bhilaspur and the same was disposed of directing consideration of the representation to be made by the petitioners after giving them an opportunity of being heard in person. The petitioner submitted a representation and the university granted affiliation for the academic year 2013-2014 subject to the approval by the Executive Council of the University. When the College once again applied for affiliation for the academic year 2014-2015, the conditional affiliation granted earlier was withdrawn. Challenging the said decision, a Writ Petition was filed. AICTE granted approval for the academic year 2014-2015, but the University communicated its decision stating that the decision to grant provisional affiliation was disapproved. It was followed by another communication stating that consequence of disapproval of provisional affiliation is disapproval for the academic year 2013-2014 also and consequently the extension of affiliation for 2014-2015 does not arise. The Writ Petition was contested by the University on the ground of deficiencies extracted by the Supreme Court in para 26 and it reads as follows.

“ 26. On the other hand, the respondent resisted the writ petition on

the ground that the first petitioner College does not satisfy various conditions contemplated under AICTE norms and also Statute 19 of the University. It is the case of the first respondent University that by a communication dated 26.4.2013 the second petitioner was informed of the various shortcomings. The relevant portion of the communication reads as follows:

“Based on the recommendations of the Inspection Committee constituted by Chhattisgarh Swami Vivekanand Technical University, Bhilai, for the affiliation of courses of your Institution, the institution has been found to be suffering from the following deficiencies:

Teaching staff (Assistant professor, Associate Professor, Professor) appointed on adhoc basis be selected through the University Selection Committee as per statute 19 of CSVTU and as per AICTE norms. Selection of process be initiated at the earliest to maintain Cadre ratio as per norms.

Principal be appointed as per Statute-19 of the University.

Student teacher ratio be improved as per norms.

Govt. NoCs to conduct 1st year classes for the session 2013-14 be submitted.

Journals be procured in the Library as per norms. E-Journals in digital library and other books related to general proficiency be procured.

Proper timing of librarian is needed as proper entry of books in accession register be maintained.

Safety measures be installed at Structure, Library, Labs and Workshop.

Internet connectivity in Computer lab be improved.

Separate strong room be provided in exam control room.

Flow charts, lab manuals of laboratory & layout of lab be displayed.

Lux meter be used to check the illumination in the different areas like Class rooms & laboratory of the campus.

Playground facility be improved.

Licence software & communication skill be developed as per norms.

List of experiments as per University scheme be displayed on the notice boards with signature of Prof. I/c and lab attendant.

All weather roads in general be improved and set back distance of the boundaries be maintained as per municipal bye building.

Anti ragging cell, women's cell and counselling cell be formed & displayed in the campus.

Demarcation of parking, Canteen & other amenities be improved.

Anvil accessories of the workshop be made available.

Gas pipe line be provided with commercial gas cylinder along with shower be provided in the Chemistry lab.

Seating arrangement like stool be provided for the students in the labs.

Supporting laboratory staff be appointed as per norms & working hours of library be displayed.

Specifying class rooms, Labs, Library, Computer centres, Drawing Hall, Workshop, Seminar hall on the approved building plans, floorwise, (on photocopies of the original Approved building Plans without any reductions in size) be submitted to the University.

Sports fee if any be submitted.

Processing fee of Rs.30,000/- be submitted.

An affidavit on non judicial stamp paper of Rs.50/- by Trust/Society/Principal regarding the steps taken for the Compliance of rectifying of the above deficiencies is to be submitted to the University latest by 29.4.2013."

The same was contested by the College and in view of the sharp difference of opinion between the College and the University, the AICTE was called upon to inspect the College and submit a report during the pendency of the Writ Petition before the Supreme Court. The AICTE reported that the College has complied with all the requirements of law. Before the Supreme Court, the University contended that, it being a statutory body brought into existence pursuant to an enactment made by the Legislative Assembly of the State, it is obliged to discharge the duties enjoined upon it and it cannot be prevented from discharging its obligation of being satisfied that the petitioner institution qualifies for affiliation in terms of the norms and standards prescribed by it in discharge of its statutory powers and

compelled to grant affiliation notwithstanding the fact that the University is not satisfied with the eligibility of the College for affiliation. In the light of the above facts, the Supreme Court considered the ratio laid down in **Adhiyaman Educational & Research Institute's** case (supra), **Jaya Gokul Educational Trust's** case (supra) and the case of **Bhartia Education Society's** case (supra) and extracted the relevant portion in para 37 as follows.

“ 37. It was further held:-

“22. ... For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education. Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government and/or the examining body.”

At para 24, this Court indicated the areas where the “examining body” can stipulate norms, the non-compliance with which norms authorise the examining body to cancel the affiliation.

“24. The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubber-stamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition.”

The Supreme Court opined that from the ratio in **Bhartia Education**

Society's case (supra), the areas which are exclusively within the jurisdiction of AICTE and the examining body are clearly spelt out. Ultimately, the Supreme Court allowed the Writ Petition by holding that if the examining body comes to the conclusion that the College has not fulfilled any conditions required and the norms specified by the AICTE, the only course of action available for it is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the College. The Supreme Court also commented that the affiliation was not granted on the premise that the College was admitting wholly ineligible students as per the norms stipulated by the University or that the admission procedure prescribed by the University is not being complied with by the College.

24. In **State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya**^[7], the Supreme Court considered the issue with regard to role of the Government in the matter of granting recognition to an institution wishing to start B.Ed., College. The Supreme Court dismissed the appeals preferred by the State Government and, in conclusion, held as follows.

"79. Before parting with the matter, we may state that at one stage, the High Court has observed that

"in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act. To that extent the provisions of Sections 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void".? (emphasis supplied)

80. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. **As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ('examining body') is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases.**

(emphasis supplied)"

CONCLUSIONS:

25. It is not the case of the petitioners that “affiliation” is an automatic process after grant of approval by the AICTE and they admit that affiliation had to be accorded by the concerned University before admitting the students in the respective courses. The distinction made by the learned Advocate General that “approval” and “affiliation” are two different things is also accepted by the learned Counsel for the petitioners, but the point of controversy is whether the norms prescribed before grant of affiliation by the concerned University can occupy the field covered by the norms prescribed by the AICTE.

26. The learned counsel for the petitioners submits that the norms prescribed by the AICTE are in pursuance of the Regulations made under the provisions of the AICTE Act which is an enactment made under Entry 66 of List I of the Seventh Schedule to the Constitution of India and hence, the University cannot cover the same field which is occupied by the Central enactment. The contention of the learned Advocate General on the other hand is that though AICTE fixed the prescribed norms for grant of approval, the only restriction on the University is not to prescribe higher norms than those prescribed by the AICTE and if the University fixes norms within the norms prescribed by the AICTE one cannot take objection. He relied on the observations made in the above decisions and cited some paragraphs in support of his contention. But from the ratio laid down in the above cited decisions, it is clear that in respect of the field occupied by the Central enactment, the State Legislation has no place and to that extent the provisions of the State enactment are unenforceable.

27. In the instant case, the JNTU Act was passed in the year 2008 repealing the earlier enactment of 1972 and there is no specific provision dealing with the norms for affiliation, except the broad power to grant

affiliation. The power to make Regulations is contained in Section 29. The power to affiliate or recognize colleges and institutions is provided in sub-section (2) of Section 4 as one of the powers and functions. Sub-section (1) of Section 4, to the extent relevant for the purpose of this case, reads as follows:

“(1) Subject to such law as may be made by Parliament as to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions or subject to such directions as may, from time to time, be given in regard thereto by or on behalf of the Central Government, the objects of the University shall be-...”

28. A perusal of the above would clearly show that the objects of the University are stated to be subject to the law made by Parliament as to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions and is further subjected to such directions as may, from time to time, be given in regard thereto. Hence, subordinate legislation of regulations has to yield to the power of the Central enactment and the regulations made thereunder. Though the University made certain Regulations covering the field occupied by the Central enactment, those regulations cannot be enforced in view of the above decisions.

29. This Court has not gone purposely into the facts of each case in view of the general relief granted below. However, the party-in-person, Rev.K.V.K.Rao, brought it to the notice of this Court an instance of non-application of mind by the University in rejecting the approval for affiliation for the Colleges run by his St.Mary's Group of Institutions in respect of some courses. It was stated in the communication of the University that they noticed **faculty deficiencies**, such as non-production of identity proof of faculty i.e., PAN card/Aadhar card and payment of salary particulars for existing staff (bank statement including TDS particulars) and **laboratory deficiencies**, by stating that availability/working of laboratory equipment was not in installed condition. An annexure was enclosed to the said letter of

communication. He pointed out that the Fact Finding Committee members, while inspecting the Colleges on 14.05.2015, noted that the faculty was happy with Management and the lab and computers were adequate. Ultimately, it came to the conclusion that there was no deficiency. In spite of the said finding recorded by the Committee, he submits that, affiliation was rejected to certain courses on the ground that particulars of faculty could not be verified in the absence of PAN Card/Aadhar Card and the laboratory was not in installed condition. In fact, he went to the extent of stating that if the facts stated by him in the affidavit and the enclosed papers are found to be inadequate for granting affiliation when compared to other institutions, he would close the institution totally and leave it. He further submitted that in respect of 90% institutions to which affiliation was granted, there were several deficiencies which were overlooked by the University, and the affiliation was rejected to his institution since he was pursuing the matter vigorously by filing appeal and raising points of law before this Court.

30. Learned Counsel for the petitioners, Sri S.Niranjan Reddy and Sri S.Sri Ram pointed out that even in respect of institutions, which are in existence for more than a decade, which were granted permanent affiliation and recognized by the National Board of Accreditation (NBA), are denied affiliation for some courses on silly grounds. They further submitted that in case of courses having permanent affiliation, if the University does not grant any affiliation for this academic year, it amounts to withdrawal of affiliation and the University has to follow Regulation 25 made by it in this regard. Regulation 25, on which reliance is placed, reads as follows:

“R 25 PROCEDURE FOR WITHDRAWAL OF AFFILIATION OF AN ACADEMIC PROGRAMME

The University may withdraw the affiliation (Provisional/Permanent) of an academic programme(s) of a college, for such period that it may deem fit, provided there are proven evidences for gross violation of statutory requirements of affiliation norms and/or the college has conducted itself in a manner which is prejudicial to the interest of the University education as revealed after

detailed inquiry conducted by a duly appointed committee by the University. The students on rolls are liable to be transferred to other affiliated colleges as per the directions of the State Government. No fresh students shall be admitted to that particular academic programme(s) by the college.

Reasons for Suspension of Affiliation/Withdrawal of Affiliation by the University are as follows:

- Management/Principal/Director/Faculty encouraging mass copying in the examinations.
- Failure to curb ragging and not taking proper steps laid down by anti ragging act.
- Collection of excess amounts of fees/special fees from students than prescribed by Govt. G.O./University.
- Tampering/Fabrication/altering of attendance records of the student against actual attendance.
- Misuse of students scholarships awarded by the Government.
- Conduct of class work in temporary location other than the permanent location approved by the University.
- Not complying with University instructions on academic/administrative matters and maintenance of proper accounts of finances.
- Faculty appointed with bogus/unrecognized degree certificates.
- Shifting of faculty/equipment etc from one institute to another.
- Preventing University Officials for carrying out surprise checks during working hours.
- Admitting ineligible candidates in UG/PG programmes.”

31. The learned Advocate General submitted, in general, that the affiliation was rejected only in respect of institutions which have no infrastructural facilities and are of sub-standard.

32. But these matters cannot be verified by this Court, as this Court is not an expert body. However, in the light of the submissions made by the party-in-person and learned Counsel, this Court compared the report of the Fact Finding Committee with the reasons assigned for rejection of affiliation in order to satisfy itself of the *prima facie* reasons. When the faculty and lab were found to be adequate as found by the Fact Finding Committee, the University ought not to have rejected the affiliation on the ground that some details of the faculty for verification were not furnished and the lab was not in installed condition. If at all such instances are there, the power is always

there for the University to disaffiliate the College whenever it finds the information as not adequate, but it can grant conditional affiliation without totally debarring the institution from participating in the counseling process for such minor deficiencies.

33. Similarly, in the case of institutions having permanent affiliation, the University cannot reject affiliation either totally or in respect of some courses without following Regulation 25 of the Regulations made by them. Such denial of affiliation amounts to withdrawal of affiliation of an academic programme as indicated in Regulation 25 and the procedure prescribed therein has to be followed in respect of those courses. Hence, I have to hold that the decision rejecting affiliation in respect of some courses of institutions having permanent affiliation is illegal.

34. The institutions have been running for several years and they are not seeking affiliation for the first time. If the affiliation is rejected to those institutions which already got approval from AICTE, vast infrastructure provided by the institutions would become useless apart from depriving the students of their opportunity to study, as held by the Supreme Court in **Parshvanath Charitable Trust's** case (supra).

35. Now it is clear from the above decisions, more particularly in view of ratio laid down in **Bhartia Education Society's** case (supra) and **Maa Vaishno Devi Mahila Mahavidyalaya's** case (supra), the role of the University is confined to see whether the students admitted are eligible, the institution is following the proper admission procedure, collecting the prescribed fee, following the curricula, conducting examinations properly etc.

36. In **Adhiyaman Educational & Research Institute's** case (supra), the Supreme Court specifically rejected the argument of the State Government and University that there can be possibility to obey both the laws without

there being any repugnancy, by holding that it is a too narrow a test and there can be cases of repugnancy where both laws say “don’t” but in different ways by relying on the decision of **Tika Ramji v. State of U.P.**^[8]. As an additional ground, it rejected the argument that the institutions cannot be de-recognised or disaffiliated on the ground that they do not fulfill the higher requirements under the State Act although they fulfill the requirements under the Central Act and when the power to recognize or de-recognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. The sentence that “it will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act” occurring in para 34 cannot be read in isolation to imply that the power remains with the University to lay down norms without there being any inconsistency or repugnancy. The said expression has to be read in the proper context. In the said case, the Supreme Court further relied on **Osmania University Teachers’ Assn. v. State of A.P.**^[9] and extracted the following passage in the said judgment with approval:-

“...

1.7 It is unthinkable as to how the State could pass a parallel enactment under Entry 25 of List III, unless it encroaches Entry 66 of List I. Such an encroachment is patent and obvious. The Commissionerate Act is beyond the legislative competence of the State Legislature and is hereby declared void and inoperative.”

In the instant case, there is a comprehensive Central law and the State law of JNTU Act is inadequate to clothe the University with the power to prescribe norms for affiliation occupying the area covered by the Central Act and its Regulations. There is no evidence to trace the power of Regulations of JNTU except under Section 29 of the JNTU Act, but the provisions of repealed JNTU Act of 1972 are taken in aid (Sec.4(2) (xix-b) and Sec.28A). Conditions for Colleges seeking affiliation and procedure for grant/withdrawal

of affiliation are indicated. The said Regulations, to the extent they encroach upon the power given to AICTE under Central Act, have to be held *ultra vires*.

37. The following conclusions can be culled from the above discussion:

1. The power of 'approval' is different from the power to grant 'affiliation'. The power to grant approval vests in AICTE whereas the concerned University has to grant affiliation. But affiliation is not automatic for approved institutions.

2. The norms for grant of 'approval' and 'affiliation' cannot be same and must be different as both should not overlap or be repugnant in view of legislative fields occupied by said enactments under Entry 66 of List I and Entry 25 of List III respectively.

3. At the time of grant of approval, the AICTE takes the opinion of the concerned University and the absence of opinion at that stage cannot empower the University to raise objection with regards to the standards prescribed by AICTE and reject affiliation and the University can only complain to AICTE of breach of standards fixed by AICTE by the concerned institutions.

4. When there is no clarity with regard to the area left to the University for granting affiliation and one has to go by the ratio laid down in **Maa Vaishno Devi Mahila Mahavidyalaya's** case (supra) and the aspects of area left are:

- (a) eligibility of students for admission;
 - (b) conduct of examinations;
 - (c) the manner in which the prescribed courses should be completed;
- and
- (d) to see that the conditions imposed by NCTE or AICTE are complied with.

The conduct of EAMCET examination, prescription of curricula and holding

examinations leading to the award of degree come within the power of the University and it has to ensure them before granting affiliation. With respect to the compliance of conditions imposed by regulating body (AICTE), the University has to bring to its notice of the violations thereto, if any.

38. Before parting with the case, I have to observe that this order or this type of orders cannot be treated as a *carte blanche* to the private institutions, who do not fulfill the minimum requirements of infrastructure and academic standards. The University has to be blamed for this situation. The University did not care to quote proper power for making the Regulations and it quoted the provisions of repealed law as pointed out above. It did not point out any lapses of the Institutions when a copy seeking approval from AICTE was forwarded by the Institutions. The Approval Process Handbook says that the affiliating University should submit its views within fifteen days from the date of receipt of applications. In the absence of such views, the Council shall proceed for completion of approval process. It remained silent but wanted to bring pressure on the institutions at the last moment. Had the University adhered to the schedule fixed by the Supreme Court in **Parshvanath Charitable Trust's** case (supra) and ensured the process of approval, this situation would not have arisen. The University ought to have expressed its views to the AICTE at the time of approval itself, when its views were sought. The University failed to take the caution expressed by this Court in W.P.M.P.No.16507 of 2015 in W.P.No.12546 of 2015 dated 27.04.2015 which is as follows:

“In the information obtained by the 2nd respondent-JNTU if there are any deficiencies or short-comings in respect of the norms laid down by the 3rd respondent-AICTE, the 2nd respondent-JNTU is directed to inform the 3rd respondent-AICTE in terms of the judgements of the Hon'ble Supreme Court in RUNGTA ENGINEERING COLLEGE V. CHHATTISGARH SWAMI VIVEKANAND TECHNICAL UNIVERSITY (2014 SCC Online SC 772) and JAYA GOKUL EDUCATIONAL TRUST V. COMMR. & SECY. TO GOVT., HIGHER EDUCATION DEPARTMENT [(2000) 5 SCC 231]. However, the 2nd respondent-JNTU may take a decision on its own if the short-comings/deficiencies relate to the norms other than those

prescribed by the 3rd respondent-AICTE.

Post after Summer Vacation of 2015”

This continuous disregard of the orders of the Supreme Court and of this Court by the University shows that the University has little respect to the Judiciary. It is not that Judiciary is bereft of power, but that power is exercised cautiously and sparingly. The University should have been more careful and respectful of its duties. In spite of experience for the academic year 2014-2015, the University did not improve and brought the situation to this level at the last moment. It is needless to mention that a smaller State is carved out for a better administration and an academic institution like the University, should have improved its standards of working and it is for the Chancellor to look into the same. The submission of the learned Advocate General that University is lacking in man-power and infrastructure to monitor the activities of all the Technical institutions is not an answer which can be appreciated. The University shall take the guidance from the law laid down by the Supreme Court from time to time and this judgment and see that this type of situation does not recur in future. It should work in coordination with the AICTE, but should not act as ‘super boss’ trying to regulate the private institutions, the power of which is conferred on the AICTE.

39. In view of the above conclusions, the Writ Petitions are disposed of with the following directions:

- (i) the Regulations made by the University fixing norms for grant of ‘affiliation’ to the extent they occupy and overlap the norms prescribed by AICTE for ‘approval’ are held invalid.
- (ii) the ‘approved’ institutions which are in existence for the last three years and getting approval and affiliation continuously till 2014-2015, applied for affiliation within time and whose applications were processed for affiliation and before this Court shall be granted

'provisional affiliation' till the deficiencies pointed out by the University are verified by the Regional Centre of AICTE and pending that decision, the institutions shall be included in the web counseling. Such 'provisional affiliation' shall apply to courses existing as on 2014-2015 also which were denied affiliation now.

(iii) The Regional Centre of AICTE at Hyderabad or AICTE, New Delhi, shall depute its teams of inspection for compliance of the deficiencies pointed out by the University in respect of the concerned institutions as on the date of inspection thoroughly and submit a report to the University, which shall grant final affiliation for the present academic year 2015-2016. The exercise by Regional Centre of AICTE shall be completed on or before 28.07.2015 in order to enable the University to communicate its decision of final affiliation before the start of academic year. The students who choose such institutions under scrutiny shall be informed of the provisional affiliation granted to the institution. In case of ultimate rejection of affiliation of any institution based on the recommendation of AICTE, the University shall relocate the students to other institutions.

(iv) In respect of other institutions, it is open to the JNTUH to verify itself the deficiencies in individual cases and take necessary remedial measures if the institutions approach them on the ground that the deficiencies pointed out were wrongly pointed out or those deficiencies do not exist on ground.

(v) the Executive council of the University shall revise its "regulations for affiliation" in future to be in conformity with this order so as to avoid confusion in future and confine them to the areas pointed out above and more so in **Maa Vaishno Devi Mahila Mahavidyalaya's** case (supra). While making such exercise, it should consult the legal experts, academicians and representatives of private colleges and make it public within six months from today so as

to avoid future litigation.

(vi) the University shall keep an 'eye' on the activities of the institutions within its purview and take necessary action in case of any violation, as the power to grant 'affiliation' includes the power to withdraw also. The University cannot be a mute spectator and should express its views at the time when the institutions apply for approval to the AICTE, as such expression would avoid complications at the last minute.

40. The Writ Petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.07.2015

Note: LR copy to be marked. Yes.

B/o.
VS/TJMR

[\[1\]](#) (2013) 3 SCC 385

[\[2\]](#) (1995) 4 SCC 104

[\[3\]](#) (2000) 5 SCC 231

[\[4\]](#) (2013) 2 SCC 617

[\[5\]](#) (2011) 4 SCC 527

[\[6\]](#) 2014 (9) SCJ 425

[\[7\]](#) (2006) 9 SCC 1

[\[8\]](#) AIR 1956 SC 676

[\[9\]](#) 1987 (4) SCC 671