

*** 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

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> 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

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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

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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
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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).
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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.

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BINDING DECISIONS:

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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

(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

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

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