

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.Nos.3617 and 10053 of 2011  
and  
M.P.Nos.2 and 2 of 2011

W.P.No.3617 of 2011

Association of Management of Coimbatore  
Anna University Affiliated Colleges  
(Registration No.140/2008),  
Rep. by its President,  
145, Thirunagar Colony, Erode 638 003 ... Petitioner

Vs

1.The Government of Tamil Nadu,  
Rep. by its Secretary,  
Higher Education Department,  
Fort St. George, Chennai 600 009.

2.The Anna University,  
Chennai 600 025.  
(R2-cause title amended as per order dated  
28.11.2012 in WP.Nos.3617 of 2011)

3.The Director-Affiliation,  
Anna University of Technology (Coimbatore)  
Mettupalayam Road,  
Jothipuram Post, Coimbatore 641 047

... Respondents

PRAYER : Writ petition filed under Article 226 of the  
Constitution of India for issuance of Writ of Certiorari to call  
for the records of the 3<sup>rd</sup> respondent ending with his order in  
Lr.No.AUTCBE/CA2/1418 /Governing Council/46/2011, dated  
07.02.2011 and quash the same in so far as the members of the  
Petitioner Association are concerned.

For Petitioner :Mr.Kandhan Duraisami

For Respondents:Mrs.A.Annalakshmi, G.A., (for R1)  
Mr.M.Vijayakumar (for R2)  
No Appearance (for R3)

W.P.No.10053 of 2011

Association of Management of Coimbatore  
Anna University Affiliated Colleges  
(Registration No.140/2008),  
Represented by its President,  
119, Bhavani Road, Erode 638 004 ... Petitioner

Vs

1.All India Council for Technical Education,  
Represented by its Member Secretary,  
7<sup>th</sup> Floor, Chandralok Building,  
Janpath, New Delhi 110 001.

2.The Chairman,  
Southern Regional Committee,  
All India Council for Technical Education,  
Haddows Road, Chennai 600 006.

3.The Government of Tamil Nadu,  
Represented by its Principal Secretary,  
Higher Education Department,  
Fort St. George, Chennai 600 009.

4.The Anna University, Chennai 600 025.  
(R4-cause title amended as per order dated  
28.11.2012 in WP.No.10053 of 2011) .... Respondents

PRAYER : Writ petition filed under Article 226 of the  
Constitution of India for issuance of Writ of Certiorari to call  
for the records relating to Composition of Board of Governors on  
AICTE approved institutions as stipulated in Appendix 19 of the  
Approval Process Handbook of the 1<sup>st</sup> respondent Council and quash  
the same.

For Petitioner :Mr.Kandhan Duraisami

For Respondents:Mr.P.R.Gopinathan (for RR1 & 2)  
Mrs.A.Annalakshmi, (for R3)  
Government Advocate  
Mr.M.Vijayakumar (for R4)

C O M M O N O R D E R

W.P.No.3617 of 2011 was filed seeking Writ of Certiorari to  
call for the records of the 3<sup>rd</sup> respondent in  
Lr.No.AUTCBE/CA2/1418/ Governing Council/46/2011, dated  
07.02.2011 and quash the same in so far as the members of the  
Petitioner Association are concerned.

2.W.P.No.10053 of 2011 was filed seeking Writ of Certiorari to call for the records relating to Composition of Board of Governors on AICTE approved institutions as stipulated in Appendix 19 of the Approval Process Handbook of the 1<sup>st</sup> respondent Council and quash the same.

3. These Writ petitions were filed by the Association of Management of Coimbatore, Anna University Affiliated Colleges. The list of members of petitioners association on whose behalf the present Writ Petition filed is enclosed in the documents in the typed set of papers. The Anna University, Chennai has issued a communication by letter No.Lr.No.AUTCBE/CA2/1418/Governing Council/46/2011, dated 07.02.2011. By this communication the members of the petitioners association and others were requested to provide the members of the Governing Council of the individual institution as per the format enclosed with the communication dated 07.02.2011. As per the list of members to constitute Governing Council, the nominee of University, Nominees of State Government and the faculty members suggested by the Anna University, Chennai were included and this would be certainly contrary to the judgment of the Hon'ble Supreme Court in T.M.A. Pai Foundation case. The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the T.M.A. Pai Foundation case reported in 2002 (8) SCC 481. The Hon'ble Supreme Court while dealing with the right to establish and administer the educational institution has held that every institution has got right to constitute the Governing body. In paragraph 53 of the said judgment, the Hon'ble Supreme Court has further held as follows:

"53. With regard to the core components of the rights under Article 19 and 26(a), it must be held that while the state has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance of conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which

qualifications may be prescribed by the state or the concerned university. It will, however, be objectionable if the state retains the power to nominate specific individuals on governing bodies. Nomination by the state, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restrictions on the attorney of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a government body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

4. The impugned communication regarding the composition of Board of Governors as suggested by the Anna University, Chennai is therefore, unconstitutional and contrary to the dictum of Hon'ble Supreme Court in the above referred case.

5. Hence, these Writ Petitions are allowed and the orders impugned in these writ petitions are set aside. However, it is open to the University or AICTE to regulate the formation of Governing Council by the individual institutions by prescribing qualification or by other means permissible under law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sai / pvs

To

1.The Government of Tamil Nadu,  
Rep. by its Secretary,  
Higher Education Department,  
Fort St. George, Chennai 600 009.

2.The Anna University,  
Chennai 600 025.

3.The Director-Affiliation,  
Anna University of Technology (Coimbatore)  
Mettupalayam Road,  
Jothipuram Post, Coimbatore 641 047.

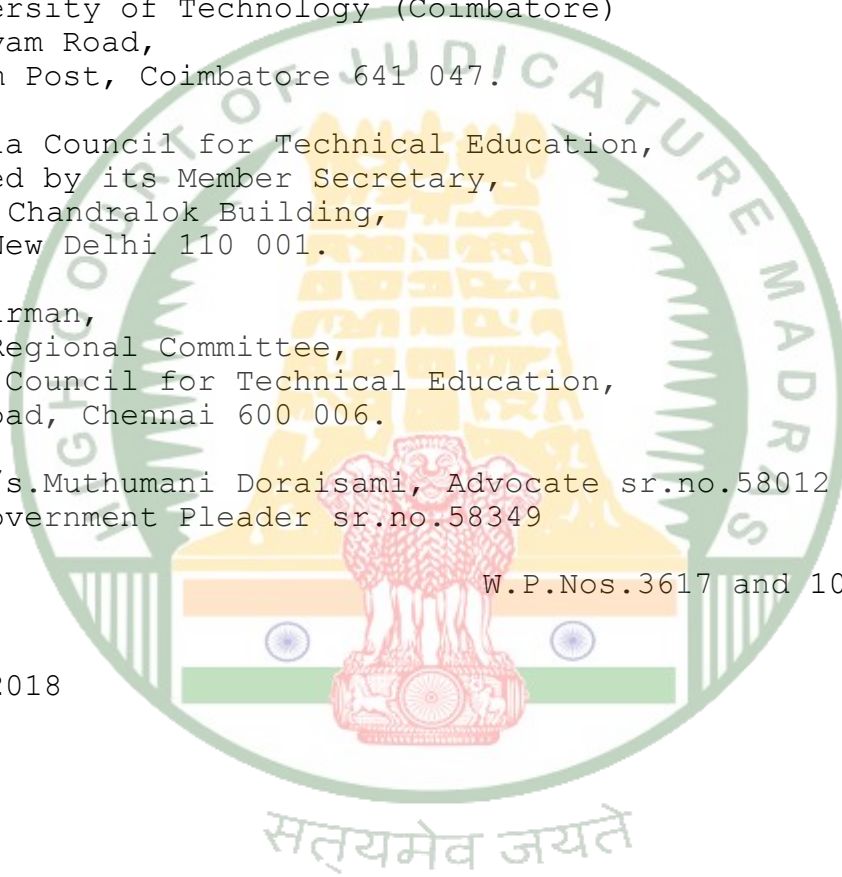
4.All India Council for Technical Education,  
Represented by its Member Secretary,  
7<sup>th</sup> Floor, Chandralok Building,  
Janpath, New Delhi 110 001.

5.The Chairman,  
Southern Regional Committee,  
All India Council for Technical Education,  
Haddows Road, Chennai 600 006.

+2cc to M/s.Muthumani Doraisami, Advocate sr.no.58012  
+1cc to Government Pleader sr.no.58349

W.P.Nos.3617 and 10053 of 2011

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nr 25/09/2018



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