

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

**FOR THE STATE OF TELANGANA AND THE STATE OF AN-
DHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE SRI JUSTICE N. BALAYOGI

**+W.P.Nos.18954, 19819, 19983, 19986, 20126, 21201, 21865,
22231, 22240, 22831, 22851, 22984 and 23573 of 2017**

% Date: 11-12-2018

W.P.No.18954 of 2017 and batch

1. Dr. V.R.K. Educational Society, Regd. No.6383/1994,
Rep. by its Treasurer, Mohd. Shah Alam Rasool Khan,
10-3-307/309, Shah Manzil, Masab Tank, Hyderabad
2. Dr. V.R.K. Womens College of Engineering & Technology,
Aziznagar, Moinabad, R.R. District, Rep. by its
Correspondent Mohd. Shah Alam Rasool Khan
3. Mohd. Shah Alam Rasool Khan S/o Dr. Mohd. Vizarath
Rasool Khan, Aged 37 years, R/o. 10-3-307/309,
Shah Manzil, Masab Tank, Hyderabad

... Petitioners

Vs.

1. Jawaharlal Nehru Technological University, Hyderabad,
Rep. by its Registrar, Kukatpally, Hyderabad
2. The Telangana State Council for Higher Education,
Masab Tank, Hyderabad, Rep. by its Member Secretary
3. The Convenor (TSEAMCET-Admissions) 2017,
C/o The Telangana State Council for Higher Education,
Masab Tank, Hyderabad
4. The Convenor (TSPGCET-Admissions) 2017,
C/o The Telangana State Council for Higher Education,
Masab Tank, Hyderabad
5. The All India Council for Technical Education,
New Delhi, Rep. by its Member Secretary
6. The State of Telangana, Rep. by its Principal Secretary,
Higher Education Department, Secretariat, Hyderabad

... Respondents

! Counsel for the Petitioner : Mr. S. Sri Ram
Mr. Sri Charan Telaprolu
Mr. Tarun G. Reddy

^ Counsel for Respondents : Mr. A. Abhishek Reddy, S.C. for
JNTU

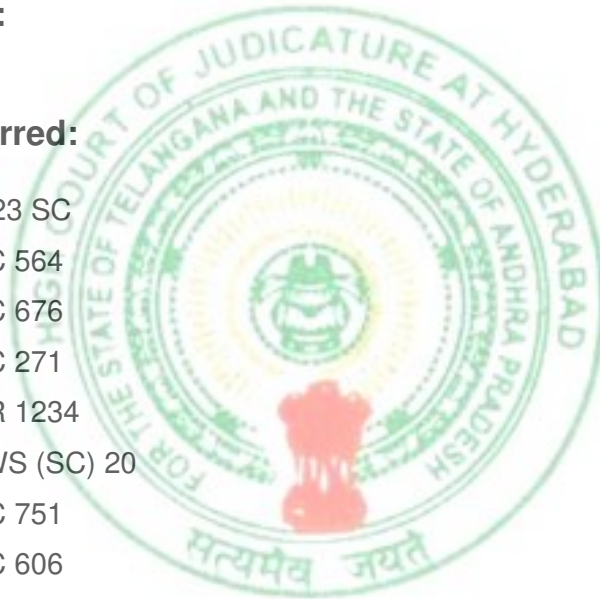
Mr. K. Ramakanth Reddy,
G.P. for Higher Education (TG)

< **Gist:**

> **Head Note:**

? **Cases referred:**

- 1) 1964 AIR 1823 SC
- 2) (2003) 9 SCC 564
- 3) (2001) 8 SCC 676
- 4) (2013) 8 SCC 271
- 5) 2000 (2) SCR 1234
- 6) 2004 (3) LAWS (SC) 20
- 7) (2009) 7 SCC 751
- 8) (2011) 4 SCC 606
- 9) (2011) 15 SCC 242
- 10) (2015) 11 SCC 291
- 11) 2011 MLJ (2) 641
- 12) (2007) SCC 1 386
- 13) AIR 1958 SC 956
- 14) (2005) 6 SCC 537
- 15) 2008 (2) MLJ 593
- 16) (2010) 8 SCC 49



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22231, 22240, 22831, 22851, 22984 and 23573 of 2017**

COMMON ORDER: *(per V. Ramasubramanian, J)*

Minority and Non-minority Educational Institutions offering Professional Graduate and Post Graduate Courses have come up with these writ petitions challenging some of the Regulations notified by the Jawaharlal Nehru Technological University (JNTU) in December 2016, under the title Jawaharlal Nehru Technological University Affiliation Procedure and Regulations, for the Academic Year 2017-2018.

2. We have heard Mr. S. Sri Ram, Mr. Sri Charan Telaprolu, and Mr. Tarun G. Reddy, learned counsel for the petitioners and Mr. A. Abhishek Reddy, learned standing counsel for the University.

3. The immediate provocation for the petitioners to challenge the Regulations issued by the University was that some of the Colleges were put by the University under "No Admission Category", for some others, the University granted affiliation for an intake, lesser than the intake permitted by the AICTE and in respect of two colleges, the University rejected affiliation on the ground that the policy considerations of the State Government did not permit the creation of new courses or new colleges in respect of certain disciplines. Therefore, the petitioners have come up with the above writ petitions challenging not only the Regulations but also the orders passed by

the University (i) either putting them under No Admission Category, or (ii) rejecting affiliation for some of the courses or (iii) granting affiliation for a reduced intake. The reason why the petitioners challenge the Regulations, is that the orders directly affecting the petitioners were purportedly passed on the basis of some of the Regulations.

4. Before proceeding further, we must bring on record one more fact namely that the JNTU issues a set of Regulations, in exercise of the power conferred by Section 29 of the Jawaharlal Nehru Technological University Act, 2008 (JNTU Act), year after year. Therefore, the impugned Regulations issued in December, 2016 in respect of the academic year 2017-2018, were replaced by another set of Regulations issued in December, 2017 in respect of academic year 2018-2019. These Regulations issued in respect of the academic year 2018-2019 have also become the subject matter of challenge in a fresh batch of writ petitions filed in the year 2018.

5. In fact, when the present batch of writ petitions came up at the commencement of the academic year 2017-2018, this Court passed limited interim directions directing the University to reconsider the cases of some of the petitioners at least in respect of some of the courses, without putting against the petitioners some of the norms, which were patently irrational. Pursuant to those interim orders, many of the petitioners in this batch of writ petitions got orders of affiliation for the academic year 2017-18, for the courses for which they deserved affiliation.

6. Therefore, in the natural course of things, we thought that the present batch of writ petitions had become infructuous in view two things namely (i) that the impugned Regulations have now been replaced by a new set of Regulations, which have also come under challenge in a new batch of cases; and (ii) that by virtue of the interim orders passed in some of these writ petitions, many of the petitioners were also granted affiliation and nothing more remained for the petitioners in respect of the academic year 2017-18.

7. But it was pointed out by the learned counsel appearing for the petitioners and rightly so, that when the very same set of Regulations are issued year after year with some cosmetic changes and when it is not possible for this Court to finally decide all the writ petitions year after year within the time schedule available for completion of admissions, it may not be wise to close the writ petitions as having become infructuous. At some point of time, in respect of some academic year, the validity of these Regulations have to be decided so that future litigation can be arrested. If each one of these Regulations which are under challenge, are upheld in one batch of cases, then there can be no challenge to the same or similar set of Regulations in future and to the action taken on the basis of the same or similar set of Regulations year after year. This will ensure the arrest of future litigation. On the contrary, if any of these Regulations is held *ultra vires*, the University will be prohibited from issuing the same or similar Regulations in future. Therefore, despite the fact that the academic year 2017-2018 is already over and despite the

fact that the outcome of these writ petitions will not really have any substantial impact either upon the colleges or upon the University, we have been persuaded to undertake this exercise, so as to avoid future litigation on the very same set of Regulations.

Regulations under challenge:

8. The Regulations under challenge in these writ petitions are Regulations 3.25, 3.4, 5.2, 5.3, 5.4, 7.1 to 7.11 and 12.5. Apart from these Regulations, Annexure-I relating to Faculty Selection Committee and the Guidelines for Adjunct Faculty are also under challenge. While Regulations 5.2, 5.3 and 5.4 of the impugned Regulations in relation to the year 2017-2018 are not adopted in relation to the current academic year 2018-2019, all other impugned Regulations are adopted either with some modifications in substance or with a difference in the language. In order to highlight what these impugned Regulations provide for and as to whether similar provisions are available in the Regulations for the current academic year, we extract below in a tabular column, a comparison between the impugned Regulations relating to the year 2017-18 and the corresponding Regulations relating to the year 2018-19.

S.No.	JNTU Regulations for 2017-18	JNTU Regulations for 2018-19
1.	3.25 Affiliation to PG programs: The PG program(s) proposed to be offered in a Department shall be affiliated, subject to the grant of affiliation of the UG program in the concerned department unless the College/ Institution is a standalone PG college as approved by AICTE/PCI/other statutory bodies.	3.27 Affiliation to PG programs: The PG program (s) proposed to be offered in a Department shall be affiliated, subject to the grant of affiliation of the UG program in the concerned departments, unless the College/Institution is a standalone PG College/Institute as approved by AICTE/ PCI/ other statutory bodies.
2.	3.4 The College shall follow the norms for intake and number of courses at UG level and PG level as approved by the	3.4 The College/Institute shall follow the norms for intake and number of courses at UG level and PG level as

	University, the intake in no case shall exceed those sanctioned by AICTE/PCI/other statutory bodies for that academic year.	approved by the University, the intake in no case shall exceed those sanctioned by AICTE for courses like B. Tech, M. Tech, MBA, MCA etc.; Pharmacy Council of India (PCI) for Pharmacy Courses like B. Pharmacy, M. Pharmacy, Pharma-D, Pharma-D (PB) etc., for that academic year. The University may consider any variation in intake after obtaining approval from AICTE/PCI/State Government/ other statutory bodies, prior to admissions for the current academic year. The Institution shall follow the regulations and norms of the University and will strictly adhere to the intake approved by the University and the courses for which affiliation is granted. The University will follow the approvals granted by AICTE for courses like B. Tech, M. Tech, MBA, MCA etc., Pharmacy Council of India (PCI) for Pharmacy courses like B. Pharmacy, M. Pharmacy, Pharma-D, Pharma-D (PB) etc. The grant of approval by the relevant statutory bodies does not automatically entitle the institutions for the grant of affiliation for the same intake, but is subject to the satisfaction of the University that all the parameters for grant of affiliation are met by the institution.
3.	5.2 A new College proposing to offer technical education with the University affiliation shall first seek a No Objection Certificate (NOC) from the University before applying to AICTE/PCI/other Statutory body.	Similar provision not present in the 2018 Regulations
4.	5.3 The permission for establishing Colleges and starting of new programs in the existing colleges shall be considered by the University as per the priority/policy of the State Government if any.	Similar provision is not present in the 2018 Regulations
5.	5.4 The University shall not grant NOC for starting a PG program without affiliation of UG program in the concerned discipline except for MBA and MCA or in a standalone College.	Similar provision not present in the 2018 Regulations
6.	7.1 to 7.11 contain detailed procedure for evaluation of application for affiliation	7.1 to 7.10 contain almost identical prescriptions
7.	12.5 Non fulfilment of AICTE requirements based on which Approval is granted If the information provided by the Col-	12.5 Non fulfillment of AICTE/ PCI/Other Statutory Bodies requirements as the case may be based on which approval is granted

	lege/Institution to AICTE is found to be false during FFCA inspection, the College/Institution shall be liable to the following action by the University 1. Appraisal to AICTE and the concerned program/course shall be recommended for admission in the current academic year only after clearance from AICTE is obtained by the College/Institution before the completion of admissions.	If the Information provided by the college/Institute to AICTE/PCI/ Other Statutory Bodies is found to be false during FFCA inspection or there is a large discrepancy between the data uploaded to the University and the one uploaded to the statutory authorities by the college/ Institute, they shall be liable to the following action by the University. 1. The University may reject the application for grant of affiliation for that particular course or program. 2. Appraisal to AICTE/ PCI/ Other Statutory Bodies and the concerned programme/course shall be recommended for admission in the current academic year only after clearance from AICTE is obtained by the college/institute before the completion of admissions.
8.	Annexure I: Faculty Selection Committee	Annexure I: Faculty Selection Committee
	Minority Institutions: The relaxation for minority institutions can be availed as prescribed by UGC/State Govt. from time to time. The present relaxation of Vice-Chancellor nominee as per UGC regulations 2010 is as follows: In case of colleges notified/declared as minority educational institutions, two nominees of the chairpersons of the college, from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating University from the list of experts suggested by the relevant statutory body of the College, of whom one should be a subject expert. The minority Institution shall upload the certificates of qualification, experience and appointment letters in the faculty registration portal of the University along with their joining report and obtain a registration number which shall be used for further correspondence. It is 37 open for the University to verify qualification and experience of the appointed faculty including verification of genuines of the certificates.	B. Minority Institutions: The relaxation for minority institutions can be availed as prescribed by UGC/State Govt. from time to time. The present relaxation of Vice-Chancellor nominee as per UGC regulations 2010 is as follows: In case of college/Institutes notified/ declared as minority educational institutions, two nominees of the chairpersons of the college/institute, from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating University from the list of experts suggested by the relevant statutory body of the college/institute, of whom one should be a subject expert. The minority institution shall upload the certificates of qualification, experience and appointment letters in the faculty registration portal of the University along with their joining report and obtain a registration number which shall be used for further correspondence. It is open for the University to verify qualification and experience of the appointed faculty including verification of genuineness of the certificates.

9.	Guidelines for Adjunct faculty: The University will allow the appointment of adjunct faculty in affiliated colleges to the extent of 20% of the faculty required. The guidelines for the appointment of adjunct faculty are as follows: The education qualifications as prescribed by the AICTE for adjunct faculty will be applicable. In the case of candidates working in an organisation/industry he/she shall produce NOC from the parent organisation to act as adjunct faculty and to fulfil the norms as follows: (i) Presence of the adjunct faculty must be as per the time table and also he/she should be present during the inspection by the University/AICTE/UGC/Government Agencies; (ii) The adjunct faculty shall have 10 years of experience and he/she should not be more than 70 years of age by 31st December of that Academic year; (iii) Adjunct faculty must be a member of at least two professional bodies and also his/her services and contributions should be recognised by at least one professional body in his/her field. He/She must be an accomplished professional in his/her chosen field of discipline, comparable at at least the top one third of the regular faculty in professional expertise and reputation in their own fields and organisations. In case of candidates from an industry, his/her domain knowledge should be a part of curriculum with significant value.	Not present in the 2018 Regulations.
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What the impugned Regulations prescribe and why they are challenged:

9. Regulations 3.25 and 5.4 are challenged, because these Regulations mandate that a Post Graduate programme proposed to be offered in a Department shall not be affiliated, unless the Under Graduate program in the concerned department has been granted

affiliation. The only exception to this rule is that if the institution is a standalone Post Graduate Institution or if the institution is offering MBA or MCA, the grant of affiliation for a P.G. programme need not depend upon the grant of affiliation for U.G. programme.

10. These two Regulations are challenged by the petitioners on the ground that they are repugnant to the Regulations of AICTE. According to the petitioners, the Approval Process Handbook issued by AICTE does not contain such a restriction and that therefore, the restriction imposed by the University is repugnant and also irrational, especially when standalone P.G. Institutions are exempt from the applicability of the provision.

11. Regulation 3.4 as it stood when these writ petitions were filed (2017-18) and as it now stands for the current academic year (2018-19), enables the University to grant affiliation for a lesser intake than the intake permitted by AICTE or Pharmacy Council of India or other statutory bodies. This regulation is opposed on the ground that the University cannot act like a superior body to other statutory bodies such as AICTE, Pharmacy Council of India etc., and that the power to grant affiliation for a reduced intake arrogated to itself by the University, directly encroaches into the territory occupied by the statutory bodies like AICTE.

12. Regulations 5.2 and 5.3 mandate an institution which proposes to start a new college, to obtain a No Objection Certificate (NOC) from the University before making an application to statutory bodies such as AICTE/PCI etc. These Regulations enable the Uni-

versity to take a call on the request for NOC, based upon the policy considerations of the State Government. Therefore, these Regulations are opposed on the ground that once a central body is vested with the power to grant approval for starting a new college or a new course, there is no scope for the policy considerations of the State to interfere with the same indirectly through the University. The requirement of a NOC, according to the petitioners, is repugnant to the Regulation 4.14 of the AICTE Approval Regulations 2012 and the PCI Regulations. It is the contention of the learned counsel for the petitioners that the State Government as well as the Affiliating University, are required to participate in the consultation initiated by AICTE and hence, they cannot reserve a veto power for themselves outside the consultative process. The Regulations conferring a power upon the University and upon the State Government to have a final say in the matter, by requiring a NOC, is, according to the petitioners, repugnant to the Regulations issued by the Central Bodies.

13. Regulations 7.1 to 7.11 oblige the institutions to apply online annually as per the schedule prescribed by the University. The applications are to be verified by FFCA followed by a visit of the FFCA with a prior notice of 48 hours in case of annual inspections. The University may also conduct surprise inspections without prior notice. These regulations also empower the University to grant affiliation, course-wise on the basis of the recommendations of the Standing Committee. Based upon the recommendations of the Standing Committee, the University is obliged under the Regulations

to communicate deficiencies, if any, to the college, as per the time schedule. These Regulations are opposed on the ground that they are used by the University to fix their own norms of equivalence in the qualifications fixed for faculty members, thereby belittling the status of the expert statutory bodies such as AICTE, PCI etc. Therefore, these Regulations are assailed as being guilty of overreach. Regulation 12.5 stipulates that if the information provided by the college to AICTE is found to be false during FFCA inspection, the University may apprise AICTE about the same and the University will grant affiliation only after equivalence is obtained from AICTE before the completion of the admissions. The objection of the petitioners to this regulation is that the time frame followed by the University provides very little space or scope for the colleges to take up the matter with AICTE and hence, the colleges get punished even before the grievances of the colleges can be redressed by the AICTE.

14. Annexure-I of the impugned regulations is challenged to the extent that it mandates the nominees of the University to participate in the process of selection of faculties of the colleges. Such of those petitioners who belong to the religious minority, contend that the prescription contained in Annexure-I is *ultra vires* Article 30 (1) of the Constitution.

15. Annexure-III to the regulations contains guidelines for the appointment of adjunct faculties. As per these guidelines, the affiliated colleges are entitled to appoint adjunct faculties to the extent of twenty percent of the faculty requirement but the adjunct faculties (1)

should hold the qualifications prescribed by AICTE (2) should produce NOC from their parent organization, in case they are working in some organization/industry (3) should be present at the time of inspection by the UGC/University/AICTE/ Government agencies (4) should have atleast 10 years of experience (5) should not be over 70 years of age as on the 31st day of December of the relevant year (6) should be a member of at least two professional bodies, one of whom should have recognised his services and contributions (7) should be an accomplished professional in his chosen field of discipline, comparable to at least the top one-third of the regular faculty and (8) should have domain knowledge, if he is from an industry, with such domain knowledge forming part of the curriculum with significant value.

16. The guidelines for appointment of adjunct faculties is challenged on the ground that they are repugnant to the norms stipulated by the AICTE and that some of these prescriptions bear no nexus to the object of appointment of adjunct faculties.

17. Apart from challenging some of the regulations, the petitioners also have a few other grievances. One is that the University is not adhering to the time frame for the commencement of the annual process of renewal of affiliations, strictly in accordance with the law declared by the Supreme Court in ***Parshvanath Charitable Trust v. AICTE (2013 (5) SCC 385)***. The second grievance is the conduct of surprise inspections and the reliance placed upon the findings of surprise inspection, without reference to the findings of

the regular FFCA. The third grievance of the petitioners is to the rejection of affiliation based on the performance of the students of the institutions in the previous academic years. Another grievance of the petitioners is that the University is insisting on the availability of faculties, library and laboratory even for the second, third and fourth year of the additional course or additional intake even when the college is imparting study only in the first year of the course.

Discussion and Analysis:

18. Before proceeding to analyze each of the regulations under challenge and the grounds on which they are assailed, it may be necessary first to have a look at the AICTE Act, the Regulations issued by AICTE and the Approval Process Handbook issued year after year. It is also necessary to trace the source of power for the university to frame regulations and then find out if there is any repugnancy.

AICTE Act, 1987, AICTE Regulations, A.P. Education Act, 1982, JNTU Act, 1972 and the role of AICTE vis-à-vis the role of the University

19. The All India Council for Technical Education is an institution that was established even before India attained independence. It was established in the year 1945, but it gained statutory sanction only under the AICTE Act, 1987. But even before the advent of the AICTE as a statutory body, the State of A.P. had the A.P. Education Act, 1982, Section 6 of which empowered the Government to estab-

lish a Board known as State Board of Technical Education and Training.

20. The Jawaharlal Nehru Technological University was established under State Act No.16/1972, much before the enactment of A.P. Education Act, 1982 and the enactment of the AICTE Act, 1987. ***Despite having been issued at least 15 years before the advent of the AICTE Act, section 4 of the Jawaharlal Nehru Technological University Act, 1972 made it clear that the objects of the University enlisted therein would be subject to any law as may be made by parliament as to coordination and determination of standards in institutions of higher education or research and scientific and technical institutions. Under Section 4(1), the objects of JNTU were made subject to such directions as may be given by or on behalf of the Central Government.*** Section 27 of the JNTU Act empowers the Executive Council of the University and the Academic Senate to make regulations, relating to matters that are required to be provided for by the regulations.

21. But the JNTU Act, 1972 was repealed and replaced by the Jawaharlal Nehru Technological Universities Act, 2008. The primary reason as to why a new Act was passed was that the State Government wanted to restructure the JNTU into four different universities. Section 4 of the 2008 Act also made the objects of the universities subject to any law as may be made by the parliament as to coordination and determination of standards. Similar to Section 27 of the

1972 Act, Section 29 of the 2008 Act also empowered the Executive Council and the Academic Senate to make regulations consistent with the provisions of the Act, the Statute and the ordinances, for all or any of the other matters which are required to be provided for by the regulations.

22. The All India Council for Technical Education, as we have pointed out earlier, was set up in 1945 as a National Expert Body to advice the Central and State Governments for ensuring the Coordinated Development of Technical Education in accordance with approved standards. After the mushroom growth of private Engineering Colleges and Polytechnics and the growing erosion of standards, the Council felt it necessary that it should be vested with statutory powers to regulate and maintain standards of Technical Education in the country. Therefore, a National Working Group was set up in November, 1985. On the basis of the recommendations made by the National Working Group, the AICTE Act, 1987 was enacted. Section 23 (1) of the AICTE Act empowers the Council to make regulations not consistent with the provisions of the Act and the Rules, generally to carry out the purposes of the Act. Section 10 (1) of the Act enjoins upon the Council, the duty to take all such steps as may be necessary for ensuring coordinated and integrated development of Technical and Management Education and maintenance of standards. Clause (i) of sub-section (1) of Section 10 empowers the Council to lay down norms and standards for courses, curricula, physical and instrumental facilities, staff pattern, staff qualifications, quality in-

structions, assessment and examinations. Clause (o) empowers the Council to provide guidelines for admission of students to Technical Institutions and Universities imparting technical education. Clause (k) of sub-section (1) of Section 10 empowers the Council to grant approval for starting new Technical Institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

23. It will be of interest to note that sub-section (2) of Section 23, which enlists the matters that could be provided for in the Regulations framed by the AICTE, does not include any of the powers indicated in Section 10(1). Clauses (a) to (e) of sub-section (2) of Section 23 deal with the manner in which the meetings of the Council are to be regulated, the procedure for conducting business at the meetings of the Council, the terms and conditions of service of officers and employees of the Council, the constitution and powers of the Board of Studies etc. But sub-section (2) of Section 23 makes it clear that the items listed therein are without prejudice to the generality of the powers to make Regulations under sub-section (1), for carrying out the purposes of the Act. This is why Regulations are issued by AICTE in exercise of the powers conferred by Section 23 (1) read with the relevant clauses of sub-section (1) of Section 10.

24. The AICTE Act is to be traced to entry 66 of List-I of the Seventh Schedule to the Constitution. The JNTU Act and the Regulations issued by the University can be traced to entry 25 of List-III.

25. Whenever a contention of repugnancy between a Central Act traceable to Entry 66 of List-I and a State Act traceable to Entry 25 of the List III is raised, the primary duty of the Court should be to see whether both Legislations could survive without detriment to or destruction of the other.

26. In ***R. Chitralekha v. State of Mysore***¹, the Constitution Bench of the Supreme Court pointed out that the question regarding the impact of Entry 66 of List-I and Entry-25 of List-III must be determined by a reading of the Central Act and the State Act conjointly. The Court pointed out ***that a State Law providing for such standards, having regard to Entry 66 of List-I, would be struck down as unconstitutional only if the same is found to be so heavy or devastating as to wipe out or appreciably abridge the Central field and not otherwise.*** The Court also pointed out that if a State law prescribes higher percentage of marks for extra curricular activities in the matter of admissions to colleges, it cannot be said that it would be encroaching on the field covered by Entry 66 of List-I.

27. The decision of the Supreme Court in ***R. Chitralekha*** was followed in several cases including the one in ***State of Andhra Pradesh v. K. Purushotham Reddy***². The decision in ***K. Purushotham Reddy*** arose under very peculiar circumstances. The State of Andhra Pradesh enacted in the year 1986, an Act known as Andhra Pradesh Commissionerate of Higher Education Act, 1986. The constitutional validity of the said Act was questioned on the ground of

¹ 1964 AIR 1823 SC

² (2003) 9 SCC 564

lack of legislative competence, in view of the University Grants Commission Act, 1956. Though a Full Bench of this Court rejected the challenge, the Supreme Court declared the Act as unconstitutional, by its judgment in ***Osmania University Teachers Association v. State of Andhra Pradesh (1987 (4) SCC 671)***. Thereafter, the Government of Andhra Pradesh enacted the Andhra Pradesh State Council of Higher Education Act, 1988. This Act was declared as unconstitutional by a Bench of this court, on the same premise on which the 1986 Act was declared by the Supreme Court as unconstitutional. When the matter was carried to the Supreme Court, a Two Member Bench doubted the correctness of the decision in ***Osmania University Teachers Association***, and hence, the matter landed before a Three Member Bench. While rejecting the challenge to the State Act, the Supreme Court followed the decision in ***R. Chitralekha*** and pointed out that when a State Act is in aid of the Parliamentary Act, the same would not entrench upon the later. Therefore, keeping these principles in mind, let us now take a look at the AICTE Regulations around which the present controversy revolves.

Amended Regulations of AICTE

28. Unfortunately, AICTE has been issuing new sets of Regulations or Amendments to the existing Regulations once in a couple of years, leading to a lot of confusion. There were one set of Regulations known as All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010, notified in the Government of India Gazette on 10.12.2010. Subsequently, they

were amended by the First Amendment Regulations of the year 2011 notified on 30.09.2011. But in supercession of these Regulations, a new set of Regulations known as All India Council for Technical Education (Grant of Approvals for the Technical Institutions) Regulations 2012, were notified on 27.09.2012. But these Regulations were superseded by a new set of Regulations in the year 2016, notified on 30.11.2016. Since the batch of cases on hand relate to the academic years 2017-18, we shall take the Regulations of the year 2016 as the basis.

29. Regulation 4.1 of the 2016 Regulations requires prior approval of the AICTE for setting up new Technical Institutions offering Technical Programs at the Diploma/Post Diploma/Degree/Post Graduate Degree level. Regulation 4.2 requires existing institutions to seek prior approval– (1) for Extension and (2) for increase in intake and various other things. Regulation 4.3 states that no NOC shall be required from the Affiliating University/Board/State Government, for reduction of intake and the closure of Second Shift Courses. Regulation 4.3 reads as follows:

“4.3 – No NOC from Affiliating University/Board/State Government/UT shall be required for reduction in intake to Non-Zero intake and closure of Second Shift Courses.”

30. Similarly, Regulation 4.4 of the 2016 Regulations states that even for the closure of PGDM Courses, NOC from Affiliating University is not necessary, though an inspection by the Expert Visit Committee shall be conducted.

31. Regulation 4.11 empowers the Council to publish, from time to time, an Approval Process Hand Book, detailing the docu-

ments to be attached to the application, the fee to be remitted, norms and standards, requirements and procedure by which the applications are to be processed. Regulation 4.12 mandates that the applications received under Regulation 4.1 or 4.2 shall be processed as per the procedures, norms and standards prescribed in the Approval Process Hand Book as notified by the Council from time to time in addition to the existing Central, State and Local laws.

32. Regulation 4.15 requires all applications for setting up new institutions, to be made online through the AICTE Web Portal. Upon an application being so made, a unique User ID will be allotted to each new applicant.

33. All applications under Regulation 4.1 and 4.2 are to be made online, using the Unique User ID, by remitting the prescribed fee through AICTE's payment gateway on the Web Portal.

34. Regulation 4.18 requires the State Government and the Affiliating University to forward their views on the applications received under Regulation 4.1, supported by valid reasons along with the perspective plan of the State within 21 days of receipt of the applications. The views expressed by the State Government and the Affiliating University will be taken into account under Regulation 4.18 by the Regional Committee for processing the application further.

35. Regulation 4.19 of the 2016 Regulations contains a very important departure from the process that prevailed until the year 2012. Regulation 4.19.a reads as follows:

"There is no scrutiny for applications applied under 4.2. (a) and (f), as the processing is based on self-disclosure. If

there is "Zero Deficiency", then the system shall allot the intake applied for, as per the Approval Process Handbook."

36. As we have stated earlier, a distinction is maintained between the applications made under the Regulation 4.1 for setting up new Technical Institutions and the applications made under Regulation 4.2 for extension of approval. Whenever an application is made under Regulation 4.2, it is processed only on the basis of the self disclosure made by the institution. This is made clear by Regulation 4.19.a and further reiterated by a part of Regulation 4.21, which reads as follows:

"4.21.

For institutions applied under Clause 4.2 (b), (c), (d), (g), (h), (i), (j) and (k) of these Regulations, the Scrutiny Committee shall process the proposals based on the information/documents provided by the applicant.

For Institutions applying under Clause 4.2 (e), (l) and (m) of these Regulations, an Expert Visit Committee shall be conducted to the Institutions."

37. Thus in a majority of cases falling under Regulation 4.2, there is not even an inspection by the Expert Visit Committee. The applications will be processed solely based upon the self disclosure made by the institutions.

38. Regulation 4.30 mandates that Institutions other than Minority Institutions shall appoint teaching staff/ Principal/ Director and other technical supporting staff and administrative staff strictly in accordance with the methods and procedures prescribed by the concerned Affiliating University/Board particularly with reference to selection procedures and selection Committees. Regulation 4.32 makes it clear that a Technical Institution shall not be allowed to par-

ticipate in the Counselling and admission process, without the proper approval of both the AICTE and Affiliating University.

39. ***In view of the fact that the amended Regulations of the year 2016, which primarily followed the Regulations of the year 2012, enable the AICTE to proceed with the processing of applications online, merely on the basis of the disclosure made by the applicant rather than the discovery made during the inspections, the Institutions have now been let off the hook.*** But to instill the fear of god (if not the fear of law) in the Institutions, the 2016 Regulations contain two provisions, in Regulations 4.35 and 4.36, respectively providing (i) for penal action if the disclosure was found to be incorrect or inaccurate and (ii) for surprise inspections without prior intimation. Regulations 4.35 and 4.36 read as follows:

4.35 – The applicants are *expected* to provide the Council true and complete information and documents required for various purposes. If the information given and/or the documents provided to the Council are found to be false, incomplete and/or the applicants have failed to disclose factual information and /or suppressed/misrepresented the information, the Council shall initiate action including Withdrawal of Approval/or any other action as deemed necessary against the applicants.

4.36 – AICTE shall also conduct from time to time inspections with or without notifying dates in such cases where specific complaints of falsification of documents, misrepresentation, violation of norms of standards, malpractices, etc., are received.”

40. Regulation 15 of the 2016 Regulations makes it clear that no Letter of Approval or Extension of Approval shall be granted after the 30th April of every Calendar Year, in view of the order passed by the Apex Court in ***Parshvanath Charitable Trust v. AICTE***, on 13.12.2012.

41. The Regulations of the year 2016 published on 30.11.2016 were amended by the First Amendment Regulations, 2017. This First Amendment, titled as AICTE (Grant of Approvals for Technical Institutions) (First Amendment) Regulations, 2017, were notified on 05.12.2017. The amendments made by the First Amendment, do not have a bearing upon the batch of cases on hand. Therefore, it is not necessary to deal with them in great detail. But in brief it can be stated that the First Amendment Regulations, 2017 –

- (i) Made modifications to the list under Regulation 4.2, Clause (a) of which deals with Extension of Approval to Existing Institutions.
- (ii) Made little modification with regard to the items under Regulation 4.2, for which the processing of applications by the Scrutiny Committee will be solely based upon the documents submitted by the applicants and the items under Regulation 4.2 for which an inspection by the Expert Visit Committee will be conducted.
- (iii) Made the language in Regulation 4.35 with regard to the penalty for suppression or misrepresentation of information in the application form, undergo some change.

But the aforesaid changes brought forth by the 2017 Regulations, are not germane to the issues arising for consideration in these writ petitions.

42. *From the way the AICTE Regulations for grant of Approvals have undergone sweeping changes after the year 2012,*

it is clear that there is increasing reliance placed by AICTE upon the good faith and conduct of the Institutions. Since AICTE has decided to proceed on good faith, after the advent of the 2012 Regulations, the role and responsibility of the Affiliating Universities has increased manifold. Cases abound in this Court where the inspections conducted by the Committees of the University have exposed the falsity of the claims made by the institutions in the information furnished by them to AICTE online. Therefore, the challenges made to the prescriptions issued by the University may have to be scrutinized with a lot of care and caution.

43. Having taken note of the AICTE Act and the Regulations issued thereunder, we shall now take up the challenge to each of the Regulations of the University.

Challenge to Regulation 3.25 and 5.4

44. As we have pointed out in paragraph 9, Regulations 3.25 and 5.4 are challenged, since they mandate that a Post Graduate Programme proposed to be offered in a Department, shall not be affiliated, unless the Under Graduate programme in the concerned Department has been granted affiliation. But if an institution is a standalone Post Graduate institution or if the Institution is offering MBA or MCA, then the grant of affiliation for a Post Graduate programme need not depend upon the grant of affiliation for Under Graduate Programme.

45. These two regulations are challenged on the sole ground that the Approval Process Handbook issued by AICTE does not con-

tain such a restriction and that therefore, the Regulations framed by the University are overreaching and irrational.

46. Neither the AICTE Act nor the AICTE Regulations, 2016 specifically deal with the issue as to whether an affiliation for a Post Graduate programme would depend upon the affiliation to a corresponding Under Graduate programme. The Approval Process Handbook issued by the AICTE for the year 2017-18 merely contains the Norms for faculty requirements and recommended cadre ratio for Post Graduate programmes in Appendix-VII, Table 7.3. Therefore, it is clear that AICTE Regulations are silent on the question whether the grant of approval for a Post Graduate programme, would depend upon the approval for the Under Graduate programme. This is sought to be projected as a case of repugnancy between the AICTE Regulations/Approval Process Hand Book and Regulation 3.25 and 5.4 of the Affiliation Procedure and Regulations of the JNTU.

47. But we are unable to see any repugnancy. There is no express stipulation either in the AICTE Regulations of the year 2016 or in the Approval Process Handbook that deals with this issue. Therefore, the field is left unoccupied by the Regulations of the AICTE. So long as the field is unoccupied by a Central Legislation, there is no bar for the State Law to make a prescription.

48. The 2nd argument as against Regulations 3.25 and 5.4 is that when standalone Post Graduate institutions can be granted affiliation, it is completely irrational to say that the institutions offering both Under Graduate and Post Graduate courses should have af-

affiliation for Under Graduate courses to be eligible for affiliation for Post Graduate courses.

49. But unfortunately for the petitioners, ***the rationality or otherwise of the prescriptions made by Universities and expert bodies, cannot be tested on the touchstone of what we understand as rationale in common parlance.*** If an institution applies for approval to AICTE as a standalone Post Graduate institution, the Norms prescribed in the Table under Appendix-VII at 7.3 of the Approval Process Handbook will apply. If an institution has both Under Graduate and Post Graduate programmes, the tables at 7.2 and 7.3 of Appendix-VII of the Approval Process Handbook will apply. The combined effect of the same can be ascertained only by the University and we are not competent to test a particular Regulation merely on the basis of rationality.

Challenge to Regulation 3.4

50. Regulation 3.4 is challenged on the ground that it enables the University to grant affiliation for a reduced intake, than the intake permitted by statutory bodies such as AICTE or Pharmacy Council of India (PCI). According to the petitioners, this prescription enables the University to overrule the decision taken by the AICTE or PCI and hence it is not permitted by law.

51. At the outset, it should be pointed out that all that is stated in Regulation 3.4 is that the intake in no case shall exceed those sanctioned by AICTE/PCI and that the University may consider any

variation in intake after obtaining approval from AICTE/PCI prior to admissions for the current academic year.

52. In any case, the answer to the argument of the petitioners can be found by taking two possible scenarios. Take for instance one possible scenario where the AICTE/PCI grants approval for a particular intake and the University finds that the institution is entitled to a higher intake. In such cases, Regulation 3.4 prohibits the University from granting affiliation for a higher intake. The 2nd scenario is where the University feels that the college is entitled to affiliation only for a lesser intake. To grant affiliation for a lesser intake, there is no prohibition under the AICTE Regulations.

53. As we have pointed out earlier, after the advent of the 2012 Regulations which is also followed by the 2016 Regulations, the processing of applications by AICTE is based on self-disclosure. ***Regulation 4.19.b obliges the institutions having an approved intake of less than a Division size, to apply for an intake of full Division size. They should also maintain faculty-student ratio*** accordingly. The word "Division" is defined in Regulation 2.15 of the 2016 Regulations. The size of the Division as defined in Regulation 2.15 varies from course to course and between Under Graduate and Post Graduate courses.

54. Therefore, what is controlled by AICTE is only the upper ceiling limit. It does not mean that after taking into account various factors, the University cannot grant affiliation for a reduced intake.

55. ***It may be important to note that the 2016 Regulations do not confer exclusive authority upon AICTE to do what they like. Regulation 4.12 makes it clear that the applications for establishment of new institutions under Regulation 4.1 and the applications for extension of approval under Regulation 4.2, will be processed as per the procedures prescribed in the Approval Process Handbook, in addition to the existing Central, State and Local Laws.*** Regulation 4.12 of the AICTE Regulations, 2016, reads as follows:

“4.12: The applications received under Clauses 4.1 and 4.2 of these Regulations shall be processed as per the procedures, norms and standards prescribed in the Approval Process Handbook as notified by the Council from time to time in addition to the existing Central, State and Local laws.”

56. Regulation 4.18 also gives a role to the State Government as well as the Affiliating University, while processing the applications under Regulation 4.1. ***Therefore, even the Regulations of AICTE do not declare them as having the final word.*** The law is well settled that while the Universities cannot dilute the standards as prescribed by AICTE, the Universities are always free to prescribe higher standards. Therefore, the challenge to Regulation 3.4 cannot be sustained.

57. However, we wish to add a note of caution. If an institution satisfies the norms and standards prescribed by the AICTE and upon physical verification by the University, it is found that the institution does satisfy the norms and standards, it may not be open to the University arbitrarily to grant affiliation for a reduced intake.

Every individual decision of the University to grant affiliation for a reduced intake, is susceptible to challenge before this Court. All that we say in this decision is that Regulation 3.4 *per se* cannot be said to be *ultra vires*.

Challenge to Regulation 5.2, 5.3 and 5.4

58. Regulation 5.2 of the University Regulations requires a new institution proposing to offer Technical Education to first seek a No Objection Certificate from the University before applying to AICTE/PCI. Similarly, Regulation 5.3 of the University Regulations mandates the University to consider the application for establishment of a new college or for starting a new programme, as per the priority/policy of the State Government. These Regulations are assailed on the ground that they are contrary to Clause 4 of Chapter-I of AICTE Approval Process Handbook, 2017-18 and Regulation 4.14 of the Statutory Regulations, 2012.

59. It is true that paragraph-4 of the Approval Process Handbook, 2017-18 issued by the AICTE contains a detailed procedure including the kind of documents to be enclosed to the application for approval. Paragraph-4 of the Approval Process Handbook issued by AICTE does not contain a stipulation that a No Objection Certificate should be obtained from the University before hand. It does not also contain any prescription that the University should take into account the priority/policy of the State Government.

60. But as we have pointed out earlier, the source of the power for AICTE to issue Approval Process Handbook year after year

emanates from Regulation 4.11 of the AICTE Regulations, 2016. Therefore, no prescription contained in Approval Process Handbook can be in conflict with AICTE Regulations, 2016. Keeping this in mind, if we have a look at the AICTE Regulations, 2016, it may be of interest to note that there are two important prescriptions contained therein. They are in Regulations 4.3 and 4.4. Regulations 4.3 and 4.4 of AICTE Regulations, 2016, read as follows:

“4.3: No NOC from Affiliating University/ Board/State Government/UT shall be required for reduction in intake to Non-Zero intake and closure of Second Shift Courses.”

“4.4: For closure of PGDM Course, NOC from Affiliating University/ Board is not applicable. However, EVC shall be conducted and the applicant has to pay the fee as prescribed in Approval Process Handbook.”

61. What is interesting to note is that in the AICTE Regulations, 2016, in entirety, there is no prescription for an institution to take a No Objection Certificate from the Affiliating University. But cases where No Objection Certificate is not required are indicated in Regulations 4.3 and 4.4.

62. In other words, cases in which No Objection Certificates from the Affiliating University are required, are not spelt out in the AICTE Regulations, 2016. But cases in which No Objection Certificates are not required, is specifically spelt out in Regulations 4.3 and 4.4. This itself makes it clear that AICTE was not averse to the idea of the University prescribing the requirement of a No Objection Certificate. If viewed from that angle, the prescription contained in Regulation 5.2 of the University Regulations cannot be found fault with.

63. Insofar as the policy of the State Government is concerned, Regulation 4.18 of the AICTE Regulations, 2016 recognizes the stakes involved for the State Government in the matter of grant of approval. Regulation 4.18 of the AICTE Regulations, 2016 enables the State Government and the Affiliating University to forward their views with valid reasons along with the perspective plan of the State, within 21 days of receipt of the applications under Regulation 4.1. This is a positive recognition of the impact that the policy of the State Government may have on the question of grant of approval. Hence, Regulation 5.3 of the University Regulations obliging the University to take into account the policy of the State, cannot be held to be arbitrary, inasmuch as AICTE itself is obliged to consider the views of the State Government on the basis of their policy and the perspective plan. The petitioners have actually placed reliance upon Regulation 4.14 of the AICTE Regulations, 2012 to assail the University Regulations 5.2 and 5.3. But AICTE Regulations, 2012 were superseded by the Regulations of the year 2016, notified on 30-11-2016. Therefore, we have tested the argument against Regulations 5.2 and 5.3, on the touchstone of AICTE Regulations, 2016. In fact, the language employed in Regulation 4.14 of the AICTE Regulations, 2012 and the language employed in Regulation 4.18 of the AICTE Regulations, 2016 vary. This may be appreciated by presenting them in a tabular form as follows:

Regulation 4.14 of AICTE Regulations, 2012	Regulation 4.18 of AICTE Regulations, 2016
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The State Government/ UT Administration and the affiliating University may 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.	The State Government/UT Administration and the Affiliating University/Board shall forward their views on the applications received under Clause 4.1 as applicable, with valid reasons along with the perspective plan of the State, within a period of 21 days from the date of receipt of applications which shall be taken into account by the Regional Committee for further processing the grant of approval. If the application is not processed further, the processing fee after a deduction of Rs.50,000/- (Rupees Fifty thousand only) shall be refunded to the applicant. If the views of the State Government/ UT Administration and the Affiliating University/Board are not received within a prescribed time schedule as mentioned in the Approval Process Handbook, it shall be presumed that they do not have any objection and the Council shall proceed further for processing of applications. However, the Council shall consider the previous communications, if any, received from the State Government/ UT administration, the Affiliating University/ Board against any Institutions.
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64. Therefore, it is clear that AICTE itself has conceded a greater role for the State Government as well as the Affiliating University and hence there is no use in contending that a demand for No Objection Certificate from the University is contrary to the AICTE Regulations.

Challenge to Regulation 7.1 to 7.11

65. The next set of Regulations under challenge is Regulations 7.1 to 7.11 of the Affiliation Procedure Regulations of the University for the year 2017-18. The grounds on which these Regula-

tions are challenged are that these Regulations are used by the University to fix their own norms of equivalence in the qualifications fixed for faculty members and that by fixing independent norms of equivalence of qualifications, the status of expert bodies such as AICTE, PCI etc., is belittled.

66. As we have stated earlier, while it is not open to the Universities to dilute the norms and standards prescribed by AICTE, it is always open to the Universities to enhance them. The norms fixed by the University as such are not under challenge before us. In any case, there is a long list of decisions of the Supreme Court giving primacy to the Universities over AICTE. The decision of the Supreme Court in this regard in ***Bharathidasan University v. AICTE***³, making it clear that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them, was recognized in subsequent decisions of the Supreme Court in ***Association of Management of (Private) Colleges v. AICTE***⁴, ***Jaya Gokul Educational Trust v. Commissioner and Secretary to Government***⁵, ***State of Tamil Nadu v. S.V. Bratheep***⁶ and ***Modern Dental College and Research Centre v. State of Madhya Pradesh***⁷. That the University can prescribe higher standards than those prescribed by AICTE was recognized in ***Visves-***

³ (2001) 8 SCC 676

⁴ (2013) 8 SCC 271

⁵ 2000 (2) SCR 1234

⁶ 2004 (3) LAWS (SC) 20

⁷ (2009) 7 SCC 751

waraya Technological University v. Krishnendu Halder⁸ and in ***Mahatma Gandhi University v. Jikku Pau***⁹.

67. The learned counsel for the petitioners placed reliance upon the decision of the Supreme Court in ***Rungta Engineering College v. Chattisgarh Swami Vivekanand Technical University***¹⁰, in support of the contention that an authority established under a State Legislation is not empowered to sit in judgment over the decision of the AICTE.

68. But in *Rungta Engineering College*, the Supreme Court primarily relied upon two decisions of the Supreme Court, one in *State of Tamil Nadu v. Adhiyaman Educational and Research Institute* [(1995) 4 SCC 104] and another in *Jaya Gokul Educational Trust v. Commissioner and Secretary to Government* [(2000) 5 SCC 231]. In *Adhiyaman*, the Supreme Court held that in the case of 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, that will have jurisdiction. In *Jaya Gokul Educational Trust*, the question whether the State Government, as a matter of policy, can decline to grant approval for the establishment of a new Engineering College, in view of the perception of the State Government that the opening of a new college will not be in the interest of the students and employment, was answered in favour of the institution.

⁸ (2011) 4 SCC 606

⁹ (2011) 15 SCC 242

¹⁰ (2015) 11 SCC 291

69. But in *Bharathidasan University*, the Supreme Court noted the decisions in *Adhiyaman* as well as *Jaya Gokul Educational Trust* and came to a conclusion that a careful scanning of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition will show that the role of the AICTE vis-à-vis the Universities is only advisory, recommendatory and a guiding factor. Since the decision in *Bharathidasan University* is subsequent to *Adhiyaman* and *Jaya Gokul Educational Trust*, and also since the decision in *Rungta Engineering College* did not take note of the decision in *Bharathidasan University*, we are obliged to follow the decision in *Bharathidasan University*.

70. Similarly, the decision in *Visveswaraya Technological University* also took note of the decision in *Adhiyaman*. In fact, the decision in *Visveswaraya* arose out of a judgment of the Division Bench of the Karnataka High Court, which simply followed *Adhiyaman*. This can be found from paragraph-6 of the decision in *Visveswaraya*. But the Supreme Court found that the original view taken by the Court in *Adhiyaman* stood modified in *Dr. Preethi Srivastava v. State of Madhya Pradesh* [(1999) 7 SCC 120]. In *Visveswaraya*, the Supreme Court pointed out that the observations made in *Adhiyaman* were explained in the correct perspective in *S.V. Bratheep*. Though the decision in *Visveswaraya* was also that of a two-member bench, the Court declared the opinion in paragraph-41(vi) of *Adhiyaman* as not a good law.

71. The decision in *Visveswaraya* was also followed in *Mahatma Gandhi University v. Jikku Paul*. Unfortunately, neither the decision in *Bharathidasan University* nor the decisions that followed *Bharathidasan University* such as *Visveswaraya* and *Mahatma Gandhi University* were cited before the Supreme Court in *Rungta Engineering College*.

72. As a matter of fact, we are not concerned in this batch of cases with any attempt made by the University to belittle the status of AICTE. As we have pointed out in the first portion of our order, Section 4 of the JNTU Act, 2008 itself made it clear that the objects of the University would be subject to any law made by the Parliament as to coordination and determination of standards. The objects of JNTU were also made subject to such directions as may be made on behalf of the Central Government. Therefore, the JNTU Act, 2008 and the Regulations issued in the form of Affiliation Procedure Regulations year after year by JNTU, specifically recognizes the role of AICTE. Similarly, the AICTE Regulations, 2016, more particularly the Regulations 4.18, 4.3, 4.4 etc., recognized the role of the State Government and the Affiliating University. In other words, AICTE itself has fine tuned its Regulations in such a manner that they provide a space for the State Government and the University so that there is no conflict of interest and all the 3 of them can work towards the betterment of standards.

73. Apart from the fact that the decisions of the Supreme Court in *Bharathidasan University*, *Visveswaraya Technological Uni-*

versity and *Mahatma Gandhi University* were not noticed by the Supreme Court in *Rungta Engineering College*, the amended Regulations of AICTE of the year 2016, providing a space for the State Government and the Affiliating University were also not noted therein.

74. Another important aspect which requires reiteration is that after the advent of AICTE Regulations, 2012, the applications for extension of approvals are processed only online, merely on the basis of the disclosure made by the colleges. If all infrastructural facilities as prescribed by AICTE are found to be available on paper, the AICTE grants extension of approval in view of Regulation 4.19.1. Though AICTE has reserved to itself the power to conduct inspections and take penal action against colleges for false declarations, such penal action does not mean anything and does not serve any purpose for the students who get admitted to such colleges. The Regulations of the AICTE are silent as to how the students will get compensated, when penal action is taken against colleges which host false information online in their applications to AICTE.

75. This is why the JNTU has taken upon itself the task of making inspections, for finding out whether the information furnished in the application filed online by the institutions with AICTE is correct or not. In fact, the University has come up in a large number of cases before this very bench, highlighting the discrepancies between the information furnished by the institutions to the AICTE and the information furnished in the applications made to the University for af-

filiation. These discrepancies are sought to be explained by the learned counsel for the petitioners by arguing that AICTE processes the applications and pass orders before 30th April of every year, but the University takes up the applications for affiliation only 3 to 4 months later and that during this interregnum period some faculties leave and some are appointed.

76. But this is hardly an explanation that can be accepted. Take a hypothetical case where Universities also accept applications online and processes the same without physical inspection or verification. In such an event, neither the AICTE nor the University will know what happened after the grant of approval by AICTE and affiliation by University. This will leave the students who join such courses/colleges in the lurch.

77. Regulations 7.1 to 7.11 of the Affiliation Process Regulations issued by JNTU should be seen in the context of Regulation 4.19.a of the AICTE Regulations, 2016. In fact, we have come across several cases where the same person is shown as a faculty in different colleges for getting approval and affiliation. Only after realizing this, the expert bodies came up with a solution to provide unique I.D. to faculty members. Even thereafter it was found that several persons were appointed by colleges just for the purpose of getting affiliation and were discharged immediately after affiliation was granted. To plug these loopholes, JNTU has installed a biometric system of attendance in colleges, but the security of the same has also been compromised. Very recently, the Vice-Principal

of a private college along with a few others were arrested by the police in connection with the illegal sale of cloned finger prints of faculty of colleges to tamper with the bio metric attendance. Thus Colleges have started inventing newer and newer methods of violating the norms, forcing the University to come up with newer and newer solutions. Since the system of administration of justice is not always innovative, we still try and test these issues on old scales. In fact, a time may come when the University may have to create a Research and Development Department to plug the loopholes. Even then they may be lagging behind the dirty tricks departments of some of the colleges. Therefore, the challenge to Regulations 7.1 to 7.11 cannot be countenanced.

Challenge to Annexure-I of the Affiliation Procedure Regulations of the JNTU

78. The next challenge is to Annexure-I of the Affiliation Procedure Regulations of the JNTU, which mandates the nominees of the University to participate in the process of selection of faculties of colleges. Some of the petitioners are run by Religious Minority Institutions and hence they pitch their claim on Article 30(1) of the Constitution also.

79. But unfortunately for the petitioners, the AICTE Regulations, 2016, contained a special prescription in Regulation 4.30 which reads as follows:

“4.30: New Institutions granted Letter of Approval and Existing Institutions granted approval for introduction of new Course(s), Division(s), Programme(s), variation in intake capacity shall comply with ap-

pointment of teaching staff and Principal/Director as the case may be, as per the policy of the Council.

Institutions other than Minority Institutions shall appoint teaching staff/Principal/Director and other technical supporting staff and administrative staff strictly in accordance with the methods and procedures of the concerned Affiliating University/ Board particularly in case of selection procedures and selection Committees.

The information about these appointments of staff in the prescribed format shall also be uploaded on the Web-Portal of AICTE as per the schedule prescribed in the Approval Process Handbook.”

80. Therefore, it is clear that institutions other than the Minority Institutions are required to follow the methods and procedures of the Affiliating University in the matter of Selection Procedures and Selection Committees. Hence, the challenge made by Non-Minority Institutions to Annexure-I of the Affiliation Procedure Regulations of the University, is liable to be rejected even on the basis of Regulation 4.30 of AICTE Regulations, 2016. Regulation 4.30 of the AICTE Regulations, 2016 is not under challenge. Therefore, Non-Minority Institutions will have to follow the selection procedure and go through the Selection Committee as stipulated by University.

81. Insofar as Minority Institutions are concerned, Regulation 4.30 of the AICTE Regulations 2016 will not apply. But it does not mean that the power of the university to prescribe a procedure for the selection of teaching faculties has been taken away by the AICTE Regulations, 2016. The prescription contained in Regulations 4.30 of the AICTE Regulations 2016, cannot be understood to mean that in respect of Minority Institutions, there is a positive mandate from the AICTE not to follow any procedure prescribed by the universities. All that can be inferred from Regulation 4.30 is that the

mandate of the AICTE in this regard is confined only to Non-minority Institutions. It would have been a different matter if Regulation 4.30 had also included a prescription that Minority Institutions need not follow any procedure prescribed by the university. Therefore, the inference is that insofar as Minority Institutions are concerned, the field is left unoccupied by Regulation 4.30 of the AICTE Regulations 2016. If the field is left unoccupied, then there is no repugnancy.

82. But Annexure-I of the Affiliation Procedure Regulations of the JNTU University mandating the inclusion of the nominees of the university in the Selection Committees for appointment of teaching faculties, is challenged not merely on the ground of repugnancy with the AICTE Regulations, but also on the ground of infringement of the right under Article 30(1) of the Constitution. Reliance is placed in this regard on the decision of a Division Bench of the Madras High Court in **The Forum of Minority Institutions and Associations v. State of Tamil Nadu**¹¹.

83. We have carefully considered the above submissions. Fortunately, in the batch of cases on hand, we do not have a Minority Institution receiving grant-in-aid from the Government. Minority Institutions receiving grant-in-aid may stand on a different footing than unaided Minority Institutions.

84. In **The Secretary, Malankara Syrian Catholic College v. T. Jose and others**¹², the Supreme Court analyzed the entire case law on the point, starting from the one **In re. Kerala Education**

¹¹ 2011 MLJ (2) 641

¹² (2007) SCC 1 386

Bill¹³, 1957, up to the decision in **P.A Inamdar v. State of Maharashtra¹⁴** and summarized the principles relating to establishment and administration of educational institutions by minorities in paragraph-19 as follows:

“19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to mal-administer. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).”

85. Keeping the above principles in mind, we shall now turn our attention to the decision of the Madras High Court in *The Forum*

¹³ AIR 1958 SC 956

¹⁴ (2005) 6 SCC 537

of Minority Institutions and Associations. The challenge before the Madras High Court was to Clause-3 of the Annexure to the UGC Regulations, 2000 regarding minimum qualifications for appointment and career advancement of teachers in universities and colleges. The Regulation impugned before the Madras High Court stipulated the constitution of Selection Committees for the appointment of lecturers and principals. The Selection Committees for appointment of principal were required to comprise of – (1) the Chairman of the Governing Body of the College or his nominee; (2) the Principal of the College; (3) one Senior Teacher/Head of the Department; (4) two nominees of the Vice Chancellor of the Affiliating University; and (5) two subject experts not connected with the college to be nominated by the Chairperson of the Governing Body out of a panel of names approved by the Vice Chancellor. Similarly Selection Committees were to be constituted for appointment to the post of university lecturers, readers etc. The Division Bench of the Madras High Court found two issues as arising for consideration, viz., (1) whether the University Grants Commission has power to make Regulations regarding Selection Committees to be constituted by private colleges; and (2) whether the Regulations infringe upon the rights guaranteed under Article 30(1) of the Constitution in respect of Minority Institutions. On the first question, the Division Bench found that the issue was already settled by another Division Bench of the Madras High Court in **the Secretary Kamaraj College v. D.S. Arulmani**¹⁵, to

¹⁵ 2008 (2) MLJ 593

which one of us (VRS,J) was a party. On the second question, the Division Bench of the Madras High Court held in favor of the Minority Institutions and Associations by holding that Regulation 3 of the University Grant Commission Regulations constituted an infringement of the rights conferred upon the minorities.

86. Seeking to distinguish the decision of the Division Bench of the Madras High Court in *The Forum of Minority Institutions and Associations*, it is contended by Mr. A. Abhishek Reddy, learned Standing Counsel for the university that Annexure-1 of the University Regulations does not contain any prescription that will dilute or infringe the rights of the minorities. According to the learned counsel, Annexure-1 of the University Regulations enable the University to provide a list of five names, who are subject experts, from out of whom the Chairman of the Governing Body of the college is entitled to select two. Therefore, it is contended by the learned counsel for the university that in contrast to Regulation 3 of the UGC Regulations that was under challenge before the Madras High Court, Annexure-1 of the JNTU Regulations is too soft, too diluted and does not at all infringe upon the rights of the Minority Institutions.

87. In order to test the rival contentions, it may be necessary to have a look at Clause-VI of Annexure-1 of the Affiliation Procedure Regulations 2017-18 issued by the university. It reads as follows:

“VI. FACULTY SELECTION COMMITTEE

1. The Constitution of the selection committee shall be as laid by State Government G.O's issued/Other Statutory bodies from time to time. The extract of norms are as follows:

A) For Appointment of **Assistant Professor** the members of the Selection Committee shall include -

1. Chairperson of the Governing Body of the College or his/her nominee from among the members of the Governing body to be the Chairperson of the Selection Committee.
2. The Principal of the College.
3. Head of the Department of the concerned subject.
4. Two nominees of the Vice Chancellor of the affiliating University of whom one should be a subject expert.
5. Two subject-experts who are not connected with the College to be nominated by the Chairperson of the governing body of the College out of a panel of five names approved by the relevant statutory body of the University concerned.
6. As academician representing SC/ST/OBC/ Minority/Women /Differently abled categories, if any of candidates representing these categories is the applicant, to be nominated by the VC, if any of the above members of the selection committee do not belong to that category.
7. The quorum for the meeting should be five of which at least two must be from out of the three subject-experts.

B) For Appointment of **Associate Professor**, the members of the Selection Committee shall consist of –

1. The Chairperson of the Governing Body or his/her nominee, from among the members of the Governing Body to be the Chairperson of the Selection Committee;
2. The Principal of the College,
3. The Head of the Department of the concerned faculty from the College.
4. Two University representatives nominated by the vice chancellor, one of whom will be the Dean of College Development Council or equivalent position in the University, and the other must be expert in the concerned subject.
5. Two subject experts not connected with the College to be nominated by the Chairperson of the governing body of the College out of a panel of five names approved by the relevant statutory body of the University.
6. An academician representing SC/ST/OBC/ Minority/ Women/Differently abled categories, if any of candidates representing these categories is the applicant, to be nominated by the VC, if any of the above members of the selection committee do not belong to that category. The quorum for the meeting should be five of which at least two must be from out of the three subject-experts.

C) For Appointment of **Principal** the members of the Selection Committee shall include Chairperson of the Governing Body as Chairperson.

- Two members of the Governing Body of the College to be nominated by the Chairperson of whom one shall be an expert in academic administration.
- One nominee of the Vice Chancellor who shall be a Higher Education expert. In case of Colleges notified/declared as minority educational institutions, two nominees of the Chairperson of the College from out of a panel of five names, preferably from minority communities, recommended by the Vice-Chancellor of the affiliating University of whom one should be a subject expert.
- Three experts consisting of the Principal of a College, a Professor and an accomplished educationist not below the rank of a Professor (to be nominated by the Governing Body of the College) out of a panel of six experts ap-

proved by the relevant statutory body of the University concerned.

- An academician representing SC/ST/OBC/ Minority/ Women/Differently- abled categories, if any of candidates representing these categories is the applicant, to be nominated by the VC, if any of the above members of the selection committee do not belong to that category.
- At least five members, including two experts, should constitute the quorum.”

88. The prescriptions contained in the relevant part of Annexure-1 of the University Regulations clearly show that the Selection Committees are overloaded with the nominees of the Vice Chancellor. Say for example, the Selection Committee for appointment to the post of Assistant Professor should comprise of eight members, only one of whom is the Chairperson of the Governing Body of the institution. The other two members will be the Principal and Head of the Department of the college. The remaining five members will only be the nominees of the Vice Chancellor. Therefore, it is clear that the prescriptions in Annexure-1 of the impugned University Regulations for the constitution of Selection Committees are more serious than Regulation 3 of the UGC Regulations that was under challenge before the Madras High Court. As reiterated by the Supreme Court in **Sindhi Education Society v. the Chief Secretary, Government of NCT of Delhi**¹⁶, the appointment of a teacher is part of the regular administration and management of the educational institution. While it will be open to expert bodies like AICTE and Affiliating Universities like JNTU to prescribe the qualifications or eligibility criteria for a teacher to be appointed, it may not be open to them to interfere with the right of the minority institution to select a teacher of their choice.

¹⁶ (2010) 8 SCC 49

If the institutions select people, who do not satisfy the prescribed criteria, qualifications or eligibility, the university may refuse to recognize such appointment. But the university cannot interfere with the method of selection of teachers by minority institutions. ***Therefore, the contention of the petitioners, who are minority educational institutions, is to be upheld insofar as the prescriptions contained in Annexure-1 about the constitution of Selection Committees is concerned.***

89. The last of the challenges to the impugned University Regulations, is to the guidelines contained in the University Regulations with regard to the appointment of adjunct faculties.

90. The object of allowing institutions to appoint adjunct faculties is to ensure that professionals, who are employed in industries or persons, who are running industries in the relevant field are able to come and share the practical wisdom that they have gained in a particular discipline. All that the university guidelines say is that – (1) such adjunct faculty should satisfy the educational qualifications prescribed by AICTE; (2) such adjunct faculty should produce NOC from the parent organization; (3) such adjunct faculty should be available as per the timetable; (4) such adjunct faculty should have 10 years of experience and not more than 70 years of age; and (5) such adjunct faculty should be a member of at least two professional bodies.

91. We do not know how these prescriptions can be held to be illegal. The very object of appointing adjunct faculties is to enhance

the skills of the students in the practical application of their theoretical knowledge. But this provision should not be used as a handle for appointing all and sundry who have no expertise in the field. As per the University Regulations, 20% of the faculty could be adjunct faculty. When the facility of appointing adjunct faculties, who need not be in the payroll as full-time teachers, is provided to the institutions, the institution should not challenge the eligibility criteria fixed for such adjunct faculties. Therefore, the challenge to these guidelines should also fail.

Conclusion:

92. In view of the above, the challenge to Regulations 3.25 read with 5.4, 3.4, 5.2, 5.3, 7.8, 7.9, 7.10, 12.5, Annexure-1 and the guidelines for adjunct faculty, should fail, except to the extent that the prescription relating to constitution of Selection Committees contained in Claus-VI of Annexure-1 of the Affiliation Procedure Regulations 2017-18 will not apply to minority educational institutions.

Ancillary grievances:

93. As we have stated earlier the petitioners have, apart from challenging the regulations, also ventilated certain grievances. The first is that the University is not adhering to the time frame for processing the applications for affiliations, as fixed by the Supreme Court in its decision in *Parshvanath Charitable Trust*.

94. This grievance is fairly justified. The schedule fixed by the Supreme Court has to be respected and followed by the Universities,

as otherwise the actions of the University may be viewed with suspicion.

95. The second grievance is about the conduct of surprise inspections. We do not know why institutions who have fulfilled all the requirements should be worried about surprise inspections. There can be no denial of the fact that there is a huge trust deficit. Colleges which comply with the statutory requirements need not bother about surprise inspections and others have no right to come to the Court.

96. The third ancillary grievance of the petitioners is about the rejection of affiliation based upon the performance of the students of the institutions in the previous academic years. The contention of the University is that the performance of the students of colleges affiliated to the University has a direct bearing upon the reputation of the University itself. Therefore it is contended by the University that it should be one of the parameters for deciding the issue of affiliation.

97. Technically and legally, the regulations of the University do not prescribe the performance of the students of an institution, as a factor to determine the eligibility of the institution for affiliation. But in practice ***the number of students who come out of an institution with flying colors determines the reputation of the institution. The cumulative reputation of all the institutions affiliated to an University determines the reputation of the University. Institutions which are incapable of imparting quality education and enhancing the skills of the students, have no business to survive, though they may have a business to run.*** But as a matter of

fact, the correlation between the performance of students and the performance of teachers, is at times direct and at times inverse. The more meritorious students always choose the most reputed colleges and even if those colleges engage teachers of relatively lesser quality, the students, by their own efforts, compensate for the lack of efficiency on the part of the teachers. But students at the bottom of the merit list gain admission only to colleges of relatively lesser reputation and unless these colleges engage teachers who are better than those engaged by the best of those colleges, it is not possible to improve the performance of less meritorious students who join these colleges.

98. Therefore even while taking the poor performance of students of the previous batches, as a factor for determining the eligibility of a college for affiliation, the University may give some latitude depending upon the area where the college is located and the social strata from which the students of these colleges come from.

99. The last of the ancillary grievances of the petitioners is that the University is insisting upon the provision of faculties, library and laboratory even for the 2nd, 3rd and 4th year of the additional course or additional intake even when the college is imparting the 1st year of the course of study only. According to the petitioners, they should be permitted to develop the infrastructure over a period. According to the petitioners, the investment in infrastructure even for the 2nd, 3rd and 4th year of the course of study, will be a dead investment when an additional course or additional intake is sanctioned for the 1st

year for the first time. The petitioners claim that when the students complete the first year of their course of study, the managements will put in place the necessary infrastructure for the next year.

100. Logically the above contention appears to be right. But the difficulty is that, if the institutions do not provide sufficient infrastructure when the students move over from the 1st year to the 2nd year, the students will be put into great jeopardy. Students get admitted on the basis of the approval granted by AICTE and the affiliation granted by the University. These two virtually hold out a promise to the students that all infrastructure is available. Students do not take admissions based upon promises. Therefore the last of the ancillary contentions is also liable to be rejected.

101. We are now left with one last contention which revolves around the FAQs issued by the University. The petitioners claim that at the commencement of the academic year 2017-18, a video conference was held by the University with all the colleges. Thereafter the University issued FAQs relating to the affiliation process.

102. According to the petitioners, they altered their position in accordance with the FAQ's by dispensing with the services of some faculty, who were earlier engaged. But the University later went back on the FAQ's.

103. But at the outset we should point out that FAQs cannot go contrary to the Regulations. The University is as much bound by the Regulations as the institutions are. There can be no estoppel

against Statute. Therefore the last contention revolving around FAQ's is also liable to be rejected.

104. In fine—

(a) The writ petitions challenging Regulations 3.25 read with 5.4, 3.4, 5.2, 5.3, 7.8, 7.9, 7.10 and 12.5 and Annexure-1 and the guidelines for adjunct faculty, should fail and accordingly they are dismissed.

(b) But the challenge by minority educational institutions, to the prescription relating to the constitution of Selection Committees contained in Clause-VI of Annexure-1 of the Affiliation Procedure Regulations 2017-18 is upheld and the writ petitions filed by minority institutions, in so far they challenge this prescription, are allowed only to this limited extent.

(c) The University is directed to follow, as far as possible, the time schedule prescribed by the Supreme Court in its decision in *Parshvanath Charitable Trust*.

(d) Whenever the past performance of the students is taken into consideration for fixing the permitted intake, at a level lesser than the one prescribed by statutory bodies like AICTE, PCI etc., the University should take note of several factors such as the location of the college, the social strata from which the students joining the college come from etc. In other words, the pass percentage of students in the past couple of years cannot be the sole criteria for rejecting the request for affiliation or for granting affiliation for a reduced intake. Several factors such as the backwardness of the area in which the

college is located, the social status from which the students joining the college come from etc., are to be taken into account along with the past pass percentage.

The writ petitions are disposed of with the above observations and directions. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 11-12-2018

AK/JS/Ksn

N. BALAYOGI, J



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE N. BALAYOGI



W.P.Nos.18954, 19819, 19983, 19986, 20126, 21201, 21865,
22231, 22240, 22831, 22851, 22984 and 23573 of 2017

11th December, 2018

Ksn