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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2077 of 2019

and

C.M.P.Nos.14030 and 14034 of 2019

Infant Jesus College of Engineering,
Kamarajar Nagar, Tirunelveli Thoothukudi
Highway (NH-7A), Keelavallanadu,
Thoothukudi - 628 851, Rep. by its
Chair Person, Tmt.A.Roselet Bai.

.. Appellant

-vs-

- 1.The Registrar,
Anna University,
Chennai 600 025.
- 2.The Director,
Centre for Affiliation of Institutions,
Anna University, Chennai 600 025.
- 3.The Commissioner of Technical Education,
Directorate of Technical Education (DOTE),
Chennai 600 025.
- 4.The Secretary,
TNEA (Tamil Nadu Engineering Admission),
Directorate of Technical Education (DOTE),
Chennai 600 025.
- 5.The Secretary,
TANCET, Anna University,
Chennai 600 025.



6.The Regional Officer,
Southern Region Office,
All India Council for Technical
Education (AICTE), 'Shastri Bhavan',
26, Haddows Road, Nungambakkam,
Chennai 600 006.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 27.06.2019 passed in W.P.No.15563 of 2019 on the file of this Court.

Prayer in W.P.No.15563 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorari Calling for the records relating to the proceedings issued by the 1st respondent in letter No.282/ CAI/ AU/ CRF/ 2019 dated 11.05.2019 and quash the same and direct the 1st respondent to granted an extension of approval to the Infant Jesus of Engineering College for the year academic 2019-20 as per the extension of approval of the college by AICTE (7th respondent) dated on 10.04.2019 for the sanctioned intake of students BE,ME &MBA Students respectively.

For Appellant : Mr.G.Murugendran

For Respondents : Mr.S.R.Rajagopal
Addl. Adv. General
assisted by
Mr.M.Vijayaykumar, A.G.P.
For RR 1 and 5
(Standing Counsel Anna
University)
: Mr.V.Kadhirvelu
Spl.G.P. (Higher Edn.)
for RR 2, 3 and 4
: Mr.R.Rabu Manohar for R-6

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the parties.

2.The appeal questions the correctness of the judgment dated 27.06.2019 whereby the learned Single Judge has concluded that the respondent Anna University which has the power to grant



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affiliation to the appellant Institution has also the power to reduce the intake of the sanctioned strength of admission of students in respect of the five courses involved in the present dispute. The cause of action for the appeal arose in the background that the appellant had been approved with a sanctioned intake for the year 2018-19 for 5 courses to the extent of 60 seats in B.E. Aeronautical Engineering, 60 seats in B.E. Mechanical Engineering, 60 seats in M.B.A. - Master of Business Administration, 18 seats in M.E. Aeronautical Engineering and 18 seats in M.E. CAD/CAM. This intake was approved and continued for the year 2019-20 by the All India Council for Technical Education (AICTE).

3.The dispute arose on account of the respondent Anna University raising its objections with regard to the deficiencies pointed out by it on the basis of the inspections stated to have been carried out and then, reducing it to 30 in B.E. Aeronautical Engineering and 30 in B.E. Mechanical Engineering for the year 2019-20 and with a Zero intake capacity in rest of the courses. Aggrieved, the appellant filed the writ petition giving rise to this appeal on the ground that Anna University had no authority to reduce the intake capacity as the discretion and power in respect thereof both vest in the AICTE under the All India Council for Technical Education Act, 1987. The submission, therefore, in short, is that this power lying exclusively with the AICTE, there was no option for the University but to honour the same and not to reduce the intake capacity on its own, unless there was an approval to that effect by the AICTE itself.

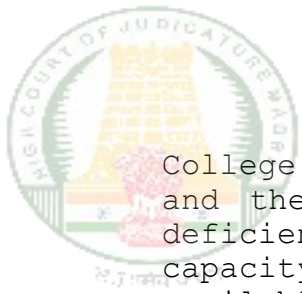
4.On the filing of the writ petition, it appears that there was an interim direction for carrying out an inspection and submission of a report, which has been done during the pendency of the writ petition, but it is undisputed at the bar between the parties that the admissions already taken by the appellant Institution are confined only to the reduced number of sanctioned intake capacity as indicated by the University. In our opinion, the matter, looking from an angle, had become purely academic as the session has already commenced and even if any relief was to be extended, the same cannot be granted because of the timeline of the admissions having expired. But, in order to examine the correctness or otherwise of the exercise of powers by the University, we called upon the learned counsel for the AICTE to assist the Court on the issue so raised by the appellant Institution inasmuch as the very same conflict in exercise of authority may arise in future and therefore, in order to resolve the controversy we are proceeding to dispose of this appeal on merits.



5. Learned counsel for the appellant college relying on the provisions of Section 10(k) of the 1987 Act and the other provisions contained therein, coupled with the regulations framed including the handbook of processing approvals, has urged that the regulations framed by the AICTE under the 1987 Act, will govern the field inasmuch the same is under a central enactment and protected under Entry 66 of List I of the Seventh Schedule to the Constitution of India. The legislative competence, therefore, lies with the central legislature and the 1987 Act having been enacted by Parliament, and the regulations framed thereunder, will have precedence over any other law for the time being in force, more so, keeping in view the provisions of Entry 25 of List III of the Seventh Schedule, which itself indicates that the said entry is subject to Entry 66 of List I.

6. With the aforesaid constitutional mandate and the provisions of the 1987 Act, learned counsel for the appellant has further relied on the judgment of the Apex Court in the case of Parshvanath Charitable Trust and Others vs. All India Council for Technical Education and Others, (2013) 3 SCC 385, followed by the later judgment in the case of Rungta Engineering College and Another vs. Chattisgarh Swami Vivekanand Technical University and Another, (2015) 11 SCC 291, to contend that the law having been laid down by the Apex Court, there is no option for the University except to abide by the same, as it is the law declared by the Apex Court and therefore, the University cannot assume or usurp authority for reducing the intake sanctioned capacity as fixed by the AICTE. The long and short of the argument, therefore, is that the impugned order passed by the University and its action of reducing the intake capacity of admission to various courses is unsustainable in law, which aspect has not been correctly appreciated by the learned Single Judge. It is, therefore, prayed that the impugned judgment be set aside and the writ petition be allowed with a direction to the respondent University to allow the Institution to continue to enjoy the intake capacity of the strength as sanctioned by the AICTE vide its order dated 10.04.2019.

7. Responding to the said submissions raised, learned Additional Advocate General appearing for the respondent Anna University, relying on the Division Bench judgment of this Court in the case of Trichy Engineering College and Others vs. Anna University and Others, (2004 (5) CTC 572), has urged that there is no question of trenching upon the powers of AICTE inasmuch as the University is the acknowledged authority to grant affiliation without which the college cannot run the courses and which stands incorporated under the AICTE Act, 1987 read with the Statutes framed by the University under the 1978 Act. It is urged that this issue was categorically dealt with by the Division Bench of this Court in the case of Trichy Engineering



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College (supra) and therefore, relying on the observations made and the ratio thereof, learned counsel submits that once the deficiencies have been located by the University and the intake capacity has been reduced, this should be read as a power available to the University to be exercised in terms of Statute 7.9, where the power to withdraw, suspend or modify the affiliation vests exclusively in the University. The submission of the learned counsel is that this power would also include the power to reduce the intake capacity, even though in order to increase or otherwise an approval by the AICTE would be necessary. The contention, therefore in short, is that consultation or recommendation to the AICTE would be necessary in order to prevent any violation when it is a matter of increase of the intake capacity, but not in matters relating to reduction where the University itself can reduce the intake capacity depending upon the located deficiencies as has happened in the present case. The contention, therefore, on the strength of the aforesaid submissions, is that the power of the AICTE is not encroached upon and the University continues to enjoy its autonomy through its power of granting affiliation to control the intake capacity of admissions to the courses run and offered by the Institution. Consequently, the University was well within its authority in proceeding to reduce the intake capacity subject to the conditions of affiliation imposed by it as has been done in the present case. Accordingly, the learned Single Judge did not commit any error in presuming authority available with the University to reduce the intake capacity, hence the impugned judgment does not call for any interference.

8. With the aforesaid contentions having been advanced, we had found it necessary to call upon the AICTE to be assisted by its officials and to inform the Court as to the powers which are available with the AICTE, particularly, vis-a-vis the problem raised herein about the reduction of the intake capacity in respect of the courses being run by the appellant Institution.

9. Learned counsel for the AICTE, upon being instructed by the concerned officials of the Regional Office, has today advanced his submissions contending that Chapter VII of the Regulations framed for the purpose of approval clearly indicates that the intake capacity of the courses is to be exclusively controlled by the AICTE, the limited role of the University being to inform the AICTE about any deficiencies, that too even prior to the cut-off date as fixed by the Apex Court, namely 30th of April each year, as extended to 15th of May. The contention is that if any such deficiencies are pointed out by the University, then, in that event the AICTE can take into consideration such material that may be placed before it, but the ultimate power to either reduce or enhance the intake capacity is exclusively within the control of the AICTE and not



with the University. In essence, the submission raised is that the power for reducing the intake capacity does not lie with the University and has to be processed by and through the Council itself. The University can however act in relation to the status of affiliation of a College where it has the independent power to disaffiliate an Institution.

10. We have considered the submissions raised and in view of the provisions Constitutional and the judgments of the Apex Court in the case of Parshvanath Charitable Trust (supra) and Rungta Engineering College (supra), we find it difficult to accept the argument raised on behalf of the University on the strength of the Division Bench judgment of this Court rendered in the case of Trichy Engineering College (supra), that the University itself has the exclusive power to reduce the intake capacity for the reason that in the judgment in the case of Parshvanath Charitable Trust (supra), even though the role of the University had been commented upon and observations made in paragraph 20 of the said judgment, yet while concluding in paragraph 24, the Apex Court clarified that the grant of approval either by the State or an affiliation by the University for an increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. For ready reference, we extract herein paragraph 20 and 24 of the said judgment:-

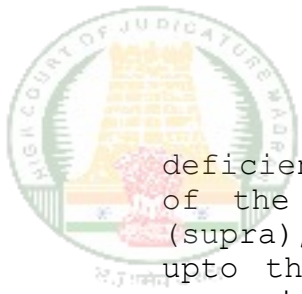
20. All these vitally important aspects go to show that the Council (AICTE) created under the AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting teaching in technical education or programmes in any of their departments or units. A careful scanning of the provisions of the AICTE Act and the provisions of the University Grants Commission Act, 1956 in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and one of providing guidance, thereby subserving the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself. Reference can be made to the judgments of this Court in the case of Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale [(2012) 2 SCC 425], State of Tamil Nadu v. Adhiyaman Educational & Research Institute [(1995) 4 SCC 104] and Bharathidasan University v. All India Council for Technical Education [(2001) 8 SCC 676].



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

11. Learned counsel for the respondent University has vehemently urged that the said judgment would bind only in relation to the increased intake of seats and not in relation to the decrease or reduction of seats, which falls within the domain of the University. We are unable to accept this submission inasmuch as the power to increase the intake also includes the power to decrease the intake capacity. The power to do on general principles also includes the power to undo, whatever power is being exercised under the 1987 Act. We, therefore, find it difficult to read a parallel exercise of power in the hands of the University in the matter of reduction, which is only available to the extent of pointing out



deficiencies to the AICTE for taking appropriate action in terms of the judgment in the case of Parshvanath Charitable Trust (supra), that too even in respect of the courses in question upto the timeline as provided therein. In the instant case, even if the deficiencies have been located and have been reported during the pendency of this proceeding, the same would be relevant for the purpose of coming year and therefore, any action which the University would desire to take in the light of the deficiencies pointed out would be available as relevant information to the AICTE for the session 2020-21. Accordingly, in the background of the facts of the present case, we find that this information which has been tendered by the University, according to the AICTE, was after the cut-off date as prescribed in the judgment and therefore, the same would be relevant for taking any action in future.

12. Not only this, we find that the subsequent judgment in the case of Rungta Engineering College (supra) has further consolidated this position of law in paragraph 32 and 33 of the said judgment that are extracted hereinunder:-

"32. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the 1st petitioner college reported that the 1st petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the petitioner college.

33. We are, therefore, of the opinion that the decision of the respondent not to grant the affiliation to the first petitioner college is wholly untenable and is required to be set aside. The same is accordingly set aside. Since the respondent did not decline the affiliation to the first petitioner college either on the ground that the petitioner



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college is admitting wholly ineligible students as per the norms stipulated by the respondent University or that the admission procedure prescribed by the respondents is not being complied with by the petitioners or on any other ground that the petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the respondents to grant affiliation to the petitioner college. The operative portion of the judgment of this Court has already been pronounced on 01.9.2014. Therefore, we are not reiterating the same."

13.This would further fortify the conclusions drawn by us hereinabove and therefore, it will not be possible for us now to be persuaded by the observations made by the Division Bench in the case of Trichy Engineering College (supra), in paragraph 34 to 38 thereof. A careful reading of paragraph 20 in the judgment in the case of Parshvanath Charitable Trust (supra) would also indicate that the Apex Court has observed that the role of AICTE vis-a-vis the Universities is only advisory, recommendatory and one of providing guidance, thereby subserving the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself. We find these observations to be weighing enough to grant sufficient authority to the University to take appropriate action in the event any such deficiency is found, but the route and the process of taking such action has to be through the AICTE itself by tendering appropriate information timely and for taking action by the AICTE. We may, therefore, also observe that the AICTE, upon receiving such information, shall be bound to consider and pass appropriate orders and not shelve the issue by avoiding to take action on a report submitted by the University, as it would directly affect the affiliation of the University, the running of the courses and also importantly the fate of the students, who are to be admitted against such courses. We hope and trust that the University and the AICTE will act in coalition and coordination in future in order to ensure that timely action is taken for the purpose of deciding the running of the courses with their intake capacity in accordance with the 1987 Act as well as the terms of affiliation of the University.

14.Consequently, for all the reasons aforesaid, we do not approve of the conclusion drawn by the learned Single Judge, but, at the same time, we dispose of this appeal subject to the observations hereinabove. It goes without saying that the University has the authority either to affiliate or disaffiliate or suspend the affiliation as per the Statutes in the event it



is found to be appropriate to exercise in any appropriate eventuality. It is also necessary that the University, if it has to submit any report for taking action by the AICTE, the same should be done within a reasonable period of time and the AICTE should endeavour and make efforts to take a decision before the cut-off date of admissions as prescribed by the Apex Court.

15.The Writ Appeal is, accordingly, allowed and the impugned judgment of the learned Single Judge date 27.06.2019 is set aside. There shall be no order as to costs. Consequently, C.M.P.Nos.14030 and 14034 of 2019 are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

sra

To

- 1.The Registrar,
Anna University,Chennai 600 025.
 - 2.The Director,
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 - 3.The Commissioner of Technical Education,
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+lcc to Mr.G.Murugandran, Advocate SR.No. 106423

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