

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.10.2020

DELIVERED ON : 13.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.940, 941, 942 and 945 of 2020 and
W.P.9571/2020,35174/19,35250/19 and 9601 of 2020
and C.M.P.Nos.11436, 11425, 11427 and 11432 of 2020

W.A.No.940 of 2020:

The Anna University
rep. by its Registrar
Guindy, Chennai - 600 025.

... Appellant

vs.

1. ARS College of Engineering
Rep. by its Chairman
Sattamangalam, Maraimalai Nagar
Chengalpet Taluk, Chengalpet District.
2. All India Council for Technical Education
Rep. by its Director (Approval)
Nelson Mandela Mark
Vasanthkunj, New Delhi - 110 070.
3. The Regional Director
All India Council for Technical Education
Sastri Bhavan, No.26, Haddows Road
Chennai - 600 006.
4. The Government of Tamil Nadu
by its Principal Secretary to Government
Department of Higher Education
Fort St. George, Chennai - 600 009.
5. The Directorate of Technical Education
Guindy, Chennai - 600 025.

... Respondents

W.A.No.941 of 2020:

1. The Anna University
rep. by its Registrar
Guindy, Chennai - 600 025.
2. The Director
Centre for Affiliation of Institutions
Anna University, Chennai - 600 025.
3. The Controller of Examinations
Anna University, Chennai - 600 025. ... Appellants

vs.

1. ARM College of Engineering
Rep. by its Chairman
Sattamangalam, Maraimalai Nagar
Chengalpet Taluk, Kancheepuram District.
2. The State of Tamil Nadu
by its Principal Secretary to Government
Department of Higher Education
Fort St. George, Chennai - 600 009. Respondents

W.A.No.942 of 2020:

1. The Anna University
rep. by its Registrar
Guindy, Chennai - 600 025.
2. The Director
Centre for Affiliation of Institutions
Anna University, Chennai - 600 025.
3. The Controller of Examinations
Anna University, Chennai - 600 025. ... Appellants

vs.

1. ARS College of Engineering
Rep. by its Chairman
Sattamangalam, Maraimalai Nagar
Chengalpet Taluk, Kancheepuram District.

2. The State of Tamil Nadu
by its Principal Secretary to Government
Department of Higher Education
Fort St. George, Chennai - 600 009. .. Respondents

W.A.No.945 of 2020:

The Anna University
rep. by its Registrar
Guindy, Chennai - 600 025. .. Appellant

vs.

1. ARM College of Engineering
Rep. by its Chairman
Sattamangalam, Maraimalai Nagar
Chengalpet Taluk, Chengalpet District.
2. All India Council for Technical Education
Rep. by its Director (Approval)
Nelson Mandela Mark
Vasanthkunj, New Delhi - 110 070.
3. The Regional Director
All India Council for Technical Education
Sastri Bhavan, No.26, Haddows Road
Chennai - 600 006.
4. The Government of Tamil Nadu
by its Principal Secretary to Government
Department of Higher Education
Fort St. George, Chennai - 600 009.
5. The Directorate of Technical Education
Guindy, Chennai - 600 025. .. Respondents

Prayer: Appeals filed under Clause 15 of the Letters Patent
against the order dated 4.9.2020 passed in W.P.Nos.35174 and
35250 of 2019, and W.P.Nos.9571 and 9601 of 2020.

Prayer in W.P.Nos.35174 and 35250 of 2019, and W.P.Nos.9571 and
9601 of 2020:

Prayer in W.P.No.9571 of 2020:

Writ Petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Certiorarified Mandamus

Calling for the records of Impugned order "NO Admission" for the Academic year 2020-2021 dated 30.6.2020 in F. NO . AICTE/AB/SR/PID 1-9656461 passed by the 1st Respondent and quash the same consequently direct the Respondents to grant admission to the Petitioners college for the Academic year 2020-2021.

Prayer in W.P.No.35174 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of the impugned order dated 9.11.2019 in Letter No.503/CAI/ AU/2019 passed by the 2nd respondent and quash the same consequently direct the respondents 2 to 4 to allow the petitioner college to continue as per the provisional affiliation for the Academic Year 2019-2020 dated 15.5.2019.

Prayer in W.P.No.35250 of 2019:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of the impugned order dated 09.11.2019 in letter No. 504 / CAI / AU / 2019 passed by the 2nd respondent and quash the same consequently direct the respondents 2 to 4 to allow the petitioner college to continue as per the provisional affiliation for the academic year 2019-2020 dated 15.5.2019.

Prayer in W.P.No.9601 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of Impugned order "NO Admission" for the Academic year 2020-2021 dated 30.6.2020 in F. NO . AICTE/AB/SR/PID 1- 457352971 passed by the 1st Respondent and quash the same consequently direct the Respondents to grant admission to the Petitioners college for the Academic year 2020-2021.

For Appellant(s)
in all appeals

: Mrs.Narmadha Sampath
Additional Advocate General
for Mr.L.P.Shanmugasundaram

For 1st respondent
in all appeals

: Mr.N.L.Rajah
Senior Counsel
for Mr.K.Balu

For Respondents 2 and : Mr.Rabu Manohar
3 in W.A.Nos.940 and Senior Central Government
945 of 2020 Standing Counsel

For Respondents 4 and : Mr.E.Manoharan
5 in W.A.Nos.940 and Special Government Pleader
945 of 2020; 2nd
respondent in
W.A.Nos.941 and 942 of
2020

COMMON JUDGMENT

(Delivered by The Hon'ble Chief Justice)

There are two institutions, namely, ARM College of Engineering, and ARS College of Engineering, who being aggrieved by the action of the appellant Anna University under orders dated 9.11.2019, suspending the affiliation granted to these colleges under the Anna University Statutes, filed W.P.Nos.35174 and 35250 of 2019 challenging the same.

2. Pending the said writ petitions, the All India Council for Technical Education (AICTE) passed orders on 30.6.2020 against the two institutions preventing them from taking any future admissions for the academic year 2020-21 based on the orders passed by the Anna University aforesaid, which orders were challenged by the institutions in W.P.Nos.9571 and 9601 of 2020.

3. All the four writ petitions have been allowed by the learned Single Judge under the impugned judgment dated 4.9.2020, against which the present four appeals have been preferred by the Anna University primarily challenging the observations made by the learned Single Judge that the Regulations of the Anna University are subservient to the authority of the AICTE, and in violation of principles of natural justice and mala fides as well as other grounds, which we shall deal with herein after.

4. We have heard Mrs.Narmadha Sampath, learned Additional Advocate General for the appellant; Mr.Rabu Manohar, learned Senior Central Government Standing Counsel appearing for the AICTE; Mr.E.Manoharan, learned Special Government Pleader for

the State, and Mr.N.L.Rajah, learned Senior Counsel assisted by Mr.K.Balu for the private respondent Colleges.

5.1. Advancing her submissions on behalf of the University, Mrs.Sampath has urged that the learned Single Judge has erroneously construed the powers of the appellant University to suspend affiliation of a college academic programme to be subservient to the authority of the AICTE by adopting an incorrect understanding of the judgment in the case of Infant Jesus College of Engineering v. The Registrar, Anna University and others, 2020 (3) CTC 273, as also the other judgments that have been referred to therein, in as much as the power of affiliation or suspending the same is an independent power of the University, the statutes having the force of law and saved by virtue of Entry 25 of List III of the Seventh Schedule to the Constitution of India.

5.2. She submitted that the learned Single Judge framed four issues that have been catalogued in paragraph (15) of the impugned judgment and while answering Issue (D), in paragraphs (16) to (25), the learned Single Judge has applied an incorrect logic to conclude as if the AICTE had the exclusive domain so as to eclipse the powers of the University to suspend the affiliation of courses/programmes being run in the institutions.

5.3. She has then urged that while deciding Issue (A) in paragraphs (26) to (28) of the impugned judgment, the learned Single Judge has drawn inferences of malice against the facts on record, and has arrived at a conclusion by adopting an incorrect chronology of events, which is an error apparent on the face of record, as it does not indicate any malice, much less established malice.

5.4. She then contends that the conclusion drawn in respect of Issue (B) in paragraph (29) of the impugned judgment on the basis of reports generated on the web portal of the AICTE are not reports based on any actual physical inspection, and even the generation of such information on the web portal was not based on actual facts that were contained in the report of the University while passing orders dated 9.11.2019. The said web portal reports dated 9.3.2020 and 10.3.2020 could not have been relied on by the learned Single Judge to interfere in the matter. The institutions never informed the AICTE of the orders passed on 9.11.2019 by the University while furnishing the information to the AICTE for extension of approval, and which does not even find mention in the reports dated 9.3.2020 and

10.3.2020. Thus, the learned Single Judge has based his finding on an incorrect material which has no probative value and is based on the web portal downloaded information that has no legal sanctity.

5.5. She submits that the reliance placed by the learned Single Judge in paragraphs (35) and (38) on the screen-shots of the web portal of extension of approval dated 19.6.2020 by the AICTE has also been erroneously relied on, in as much as the same is a computer generated information without any exercise carried out by the AICTE, and is based on the incomplete and incorrect information tendered by the respondent institutions. She further contends that relying on the screen-shots was contrary to the stand taken by the AICTE counsel himself, which is recorded in paragraph (37) of the impugned judgment by the learned Single Judge that the AICTE did not grant extension of approval to the respondent institutions. She, therefore, submits that this clear incongruity in assumption of facts has resulted in a gross error of judgment. It is urged that when the AICTE itself has countered the said screen-shots on specific instructions of the AICTE, then in that event, the institutions cannot be presumed to be having the extension of approval by the AICTE. Once the very presumption is not based on actual facts, the impugned judgment is vitiated.

5.6. Advancing her submissions on the principles of natural justice, which was framed as Issue (C) by the learned Single Judge, it is urged that as per Statute 7.9 read with Regulation 25 of the Regulations for Affiliation, 2004, the satisfaction of the University is based on prima facie evidence and preliminary investigations by the University, which was done, and it is only after receiving the Three Member Committee inspection report dated 16.9.2019 that the impugned orders came to be passed on 9.11.2019.

5.7. Her contention on the finding of mala fides is that it is against record, in as much as the University has acted on earlier reports dated 16.9.2019, much prior to the orders passed in the writ petitions and the contempt petitions and, therefore, to construe that the order of suspension was a product of some mala fides on the part of the Registrar of the University is an erroneous conclusion, in as much as there was no such proceeding or order in existence relating to the student matters against the Registrar when the report came to be submitted on 16.9.2019.

5.8. She, therefore, submits that on all counts, the impugned judgment is vitiated and the orders passed by the University dated 9.11.2019 deserve to be upheld.

6. We may point out that the AICTE has not assailed the impugned judgment by filing any appeal, and the learned counsel for the AICTE has urged that notices have been issued as a consequence of the impugned judgment calling upon the two colleges to answer the show cause notices for taking a decision as directed by the learned Single Judge.

7.1. Mr. Rabu Manohar, learned counsel for the AICTE, on a categorical question posed by the Court, has stated that the University had not informed the AICTE of the orders dated 9.11.2019 prior to 18.3.2020. He has also stated that the reports dated 9.3.2020 and 10.3.2020 uploaded on the web portal of the AICTE are not based on any inspection or physical verification. He submits that that is entirely based on the information furnished by the Colleges, or any other information that was collected by the AICTE. His contention is that for the purpose of extension of approval, no such inspection is carried out as a matter of practice and the Regional Office at Chennai has a 10 Member Staff unit, which has to deal with a large number of institutions and in order to receive such information, the experts of the AICTE allocate a certain day for each institution to furnish their information, which upon being received is verified on the basis of the documents produced in support of the information given and is accordingly uploaded. He, therefore, submits that there is no question of any physical inspection at the time of grant of extension of approval, which is done in a routine manner.

7.2. He submits that physical inspection is necessary only when there is a change of intake capacity or there are complaints. In the present case, since none of these issues were involved, the AICTE did not carry out any physical inspection to verify the correctness or otherwise of the information tendered by the institutions, either with regard to its infrastructure or in respect of the faculties.

7.3. He then submits that the decision which was taken by the AICTE on 30.6.2020 was only on the basis of the information received from the University on 18.3.2020 about the orders dated 9.11.2019 and relying upon the same, the no admission order was passed. He submits that this exercise of power is in accordance

with the Regulations of the AICTE and consequently, the AICTE will abide by the direction of the Court, which it has already done by issuing notices to the respondent institutions.

8.1. Mr.N.L.Rajah, learned Senior Counsel for the institutions contends, on the strength of the judgments that have been referred to by the learned Single Judge, that the University cannot independently proceed to take action in respect of affiliation based on such information which is statutorily controlled exclusively by the AICTE, namely, the strength of faculties in the institutions. He submits that the standards and norms of verifying, and fixing any liability with regard to deficiency or otherwise is the exclusive domain of the AICTE that has already found no deficiency in any form in the information available with the AICTE and recorded by it in its website on 9.3.2020 and 10.3.2020. This is further supported by the fact that the institutions have been shown to have been granted extension of approval, which was only a consequence of the no deficiency information and was reflected on the web portal of the AICTE, the screen-shots whereof were placed before the Court.

8.2. He has then emphasized with the aid of the judgments that have been relied upon by the learned Single Judge to contend that the University may have the power relating to affiliation or its suspension, but its exercise has to be routed through the AICTE, and after the AICTE records any deficiency in this respect in accordance with law.

8.3. He submits that the AICTE in the present case has recorded no deficiency and, therefore, such material establishes that the AICTE was fully satisfied with the entire infrastructure and the number of faculties as per the norms of the AICTE. The fixation of norms and its deficiency, if any, being in the exclusive domain of the AICTE, the appellant University cannot conduct a parallel independent exercise to arrive at a different conclusion, and which can be culled out from the judgments that have been rightly relied upon by the learned Single Judge.

8.4. He contends that the University did not inform of any such deficiency to the AICTE, as a consequence whereof the AICTE having found the entire infrastructure and faculties in order, rightly granted extension of approval, and the subsequent information tendered by the University about the orders dated 9.11.2019 is of no avail and cannot override the acceptance of

the status of infrastructure and number of faculties according to norms by the AICTE that had been tendered to it by the institutions for extension of approval, the process whereof begins in February normally each year. In the instant case also, the institutions have tendered all such information indicating that there was no deficiency and all the norms are fulfilled by the institutions, which was rightly accepted by the AICTE on 9.3.2020 and 10.3.2020.

8.5. It is urged by Mr.Rajah that the deficiencies alleged in the order of the University were not in existence and, therefore, the AICTE could not have relied on the said order to pass any orders contrary to the status of the institutions, that too even without giving any notice or opportunity to the respondent institutions.

8.6. He has then contended that both the impugned orders by the University as well as by the AICTE were in violation of the principles of natural justice and without giving any opportunity to the institutions to explain or satisfy the authorities about the status of the faculties, which was made the basis of the passing of the impugned orders. He submits that these principles are engrained being part of Article 14 of the Constitution of India and have to be implicitly read into Statute 7.9 read with Regulation 25, on which reliance has been placed by the appellant University. The University has to conduct an enquiry which is to be participative and not ex parte and, therefore, an opportunity is a must, which has not been admittedly provided in the present case. Hence, the impugned orders deserved to be quashed, which has rightly been done by the learned Single Judge.

8.7. He has submitted that the University cannot take advantage of its own lapses and deficiencies as well as incorrect information, and so far as the findings recorded by the learned Single Judge on mala fides is concerned, Mr.Rajah, submits that it is open to this Court to draw any inference, as the said facts have been taken into account by the learned Single Judge while arriving at a conclusion that the decision had been taken in haste. He, therefore, submits that such an inference drawn by the learned Single Judge is not required to be debated, in as much as the inference is not a finding and does not in any way prejudice the University.

9. In rejoinder, the learned Additional Advocate General has invited the attention of the Court to the undertaking dated

22.5.2019 given by the respondent institutions that they will abide by the norms, but in the instant case, the University has nowhere taken any action by fixing its norms independent of the AICTE norms. The University has taken action on the basis of the statutory norms of the AICTE, and in its inspection has found the faculties to be deficient as well as other infrastructural facilities to be not in accordance with the norms of the AICTE. The exercise of the University is, therefore, not contrary to what the AICTE norms require, and on the other hand is an action in conformity with the same while proceeding to pass an order of suspension of affiliation, which power is exclusive to the University. It is urged that the AICTE is nowhere concerned with the powers to be exercised by the University regarding affiliation or disaffiliation, which is in turn based on the norms of the AICTE.

10. The major contest between the University and the respondents is about the competence and authority of the University to pass orders of suspension of affiliation of an academic programme. The power to be exercised by the University which is provided for in Statute 7.9 of the Statutes for Affiliation, 2004 is extracted herein under:

"7.9 Suspension/Withdrawal of Affiliation of an Academic Programme

The affiliation (provisional/permanent) granted to any academic programme(s) in a college may be suspended/withdrawn after adopting the procedures laid down in the Regulations, if the college fails to comply with the provisions made in this behalf or the college has failed to observe/implement any of the conditions of affiliation, or the college has conducted in a manner which is prejudicial to the interests of university education and/or students."

11. The procedure is provided for in Regulation 25 of the Regulations for Affiliation, 2004. The same is extracted herein under:

"R 25 PROCEDURE FOR SUSPENSION OF AFFILIATION OF AN ACADEMIC PROGRAMME

(Vide Section 7.9. of the Statutes)

The University may suspend the affiliation of any academic programme (Provisional/permanent) in a college, provided the University is satisfied that there are prima-facie evidences after preliminary investigations by an University authorized inquiring committee to verify the authenticity of the complaints received and/or non-compliance of statutory provisions pending final decisions

regarding withdrawal of affiliation. During the period of suspension of any such academic programme the college shall not admit fresh students to the said programme."

12. Having perused the same, we are of the opinion that this power of suspension of affiliation is a distinct power to be exercised by the University, if it is satisfied about deficiencies or any complaints in this regard. It further recites non compliance of statutory provisions as also a reason available to the University for suspending affiliation. In the instant case, the appellant University has come out with a clear case that the norms for fixing the number of faculties has been clearly violated by the institutions. For this, the University has relied on the reports, particularly the Re-inspection Report and Deficiency Report dated 16.9.2019.

13. Mrs.Sampath, learned Additional Advocate General has in addition thereto urged that it is not only the violation of the norms as fixed by the AICTE, but also the undertaking given by the institutions that has been violated. This undertaking has been filed on record and is dated 22.5.2019 that recites that all the facilities and faculty strength will be maintained as per norms. The learned Counsel has invited the attention of the Court to some of the actual deficiencies on a course wise evaluation, for example Classroom and Computing Facilities in respect of ARM College of Engineering, which is as follows:

1.1. Class rooms and Computing Facilities

Sl. No.	Details	Required (R)	Available (A)	Deficiency (R - A)
1.	Class Rooms	38	26	12
2.	Computing Facility (such as No. of Terminals, LAN Connections and Softwares)	367	90	277

In respect of faculties course wise evaluation for B.E. Civil Engineering, the following deficiency was pointed out:

3. Faculty

Category	Faculty Cadre	Required (R)	Available (A)	Deficiency (R - A)	Actual Deficient
Civil Engineering	Professor	1	NIL	01	
	Associate Professor	2	NIL	02	
	Assistant Professor	6	03	03	
	Total faculty	9	03	06	

The deficiency in respect of B.E. Computer Science and Engineering is as follows:

3. Faculty

Category	Faculty Cadre	Required (R)	Available (A)	Deficiency (R - A)	Actual Deficient
Computer Science and Engineering	Professor	1	NIL	01	
	Associate Professor	2	NIL	02	
	Assistant Professor	6	NIL	06	
	Total faculty	9	ZERO	NINE	

Similarly, the deficiency in the faculties in respect of the other departments were pointed out.

14. Mrs.Sampath then pointed out the deficiencies in the second institution, namely the ARS College of Engineering, where also practically the same position continues to exist.

15. The deficiencies persisted even on the date of re-inspection on 16.9.2019, for which the data has been placed on record. It is on the strength of such reports that the orders dated 9.11.2019 were passed against both the institutions that are on record. It is these orders which came to be challenged before the learned Single Judge in the two writ petitions in the year 2019 itself.

16. Learned counsel contends that there was sufficient material to demonstrate that the approved faculties were deficient of the number which was required, which is according to the norms of the AICTE. It is, therefore, submitted that the University on its own has not fixed any norms, so as to find out any deficiency in the institutions. To the contrary, the aforesaid deficiencies were persisting and that were as per the norms of the AICTE itself. The University, therefore, has not taken any action contrary to the norms fixed by the AICTE.

17. Her contention is that the subsequent uploading of information on 9.3.2020 and 10.3.2020 by the AICTE is based on the paper information given by the institutions, which was palpably incorrect. It was the duty of the institutions to have brought the orders passed by the University to the notice of the AICTE, which it deliberately did not do. The effect of the orders had not been eclipsed in any manner as on the date when the information was uploaded by the AICTE indicating that there was no deficiency in the institutions. Thus, the assessment by the AICTE was only on the basis of ex parte information provided by the institutions, which did not reflect the correct picture, nor did it in any way satisfy that the deficiencies as pointed out by the University were not in existence. It is urged that the information dated 9.3.2020 and 10.3.2020 therefore are of no probative value, hence the AICTE was justified in passing the orders dated 30.6.2020. There was, therefore, no conflict in the assessment and orders of the appellant University and the AICTE.

18. It is also evident that the information of the University reached the AICTE on 18.3.2020. Even though it has been argued by the learned counsel for the appellant that the information had been tendered earlier as well, there was nothing on record before the learned Single Judge, nor is it before us to demonstrate that the University had sent the information about the deficiencies to the AICTE prior to 10.3.2020. Nonetheless, the fact remains that the information uploaded by the AICTE on the web portal was bereft of any consideration of the order passed by the University on 9.11.2019. In this background, the genuineness and probative value of the information about no deficiency existing as on 9.3.2020 and 10.3.2020 is highly doubtful.

19. The learned Single Judge without assessing these facts in the said chronological order has assumed as if the information uploaded on the web portal of the AICTE was correct.

In our opinion, such an assumption is clearly contradicted by the facts, referred to above, and this aspect of the matter could not be successfully disputed before us by the learned counsel for the respondents that the information about the action taken by the University was not before the AICTE when the information seeking extension of approval was uploaded on 9.3.2020 and 10.3.2020. It is not understood as to why the said information did not reach the AICTE, but it is also surprising as to why the respondent institutions did not bring this fact to the notice of the AICTE. Not only this, in the two writ petitions that were filed challenging the orders of the appellant University, the AICTE was not made a respondent.

20. We are, therefore, of the opinion that the learned Single Judge could not have placed heavy reliance on the reports dated 9.3.2020 and 10.3.2020 that were just ex parte information uploaded at the instance of the respondent institutions, and was not based on any inspection carried out by the AICTE. The conclusion drawn by the learned Single Judge in paragraph (21) that the reports dated 9.3.2020 and 10.3.2020 were based on exhaustive inspection is, therefore, a finding against record. The learned counsel for the AICTE has clearly and categorically admitted before us that the said reports are not based on any physical inspection of the institution. As a matter of fact, he has made it clear that the extension of approval matters are not carried out after physical inspection, nor any such physical inspection had been carried out in respect of both the institutions.

21. Mr.N.L.Rajah, learned Senior Counsel tried to explain the phrase "exhaustive inspection" employed by the learned Single Judge in paragraph (21) of the impugned judgment as meaning to state an exhaustive scrutiny of the papers. We cannot accept the same, in as much as the entire tenor of the judgment indicates that the learned Single Judge found the reports dated 9.3.2020 and 10.3.2020 on the web portal to be based on inspections and, therefore, to construe the finding of the learned Single Judge otherwise does not arise.

22. On the issue of mala fides, it is evidently clear that the inspection had been carried out by the University in September, 2019, whereas the orders were passed in the student matters by the High Court, where the Registrar was a party in the writ petition and even in the contempt petitions, much thereafter on 4.10.2019, 6.11.2019 and 6.11.2019.

23. The above said finding as contained in paragraph (27) of the impugned judgment, therefore, does not appear to be in terms of the facts as narrated on record. This issue has however not been seriously contested by the respondents and, therefore, we find that the observation made by the learned Single Judge in that respect also cannot be sustained.

24. The University under the Statutes is empowered to grant and suspend affiliation. The question is how far is it subservient to the authority of the AICTE or can it be said that the said powers are eclipsed keeping in view the norms of the AICTE. We may incidentally observe that an University is meant to impart higher education through the best of faculties and the best of facilities. The same is equally obligated on Colleges that seek affiliation. The examinations, or in modern terms, the test of excellence of the students is directly dependent on faculties that shoulder the responsibility of the noble and erudite role of a teacher. It is not just physical numbers but also qualitative presence that is an essential component of a teaching faculty. The University therefore is not an alien to these components when it comes to maintaining standards of education regulated by other bodies like the AICTE. There is a definite participative role of the University in the engagement and ensuring the physical as well as qualitative presence of faculties in the affiliated Colleges. This role is participative and should not be assessed as merely a subservient role so as to denude the dignity and authority of the University which is co-existent and has to work in tandem with the AICTE. The AICTE equally subserves the ultimate purpose of regulating standards to ensure that Colleges do not deviate from the set bench marks so as to deprive students of the tools of achieving successful standards in the learning process.

25. To understand the legal position, we will revert back to the very same judgment that has been referred to by the learned Single Judge of a Division Bench of this Court in the case of Infant Jesus College of Engineering (supra). The issue in the said case was with regard to the action taken by the Anna University in passing an order, whereby the intake capacity for admission in the institution was reduced by the University under the garb of exercising powers of conditions of affiliation. The matter was dealt with threadbare by the Division Bench and after placing reliance on the Supreme Court decisions in the case of Parshvanath Charitable Trust v. All India Council for Technical Education, (2013) 3 SCC 385 and Rungta Engineering College v. Chattisgarh Swami Vivekanand Technical University, (2015) 11 SCC 291, it was held in paragraphs (10) to (13) that the University had sufficient authority to take appropriate action in the event

any deficiency is found, but the route and the process of taking such action should be through the AICTE itself by tendering appropriate information timely and for taking action by the AICTE.

26. We may point out that the aforesaid decision was with regard to specific provisions relating to the control of intake capacity of students depending upon the infrastructure and the availability of the faculties, etc., wherein it was held that the AICTE was empowered to fix the same. It is in this context that the Division Bench indicated that the University could take appropriate action, provided the University had approached the AICTE by tendering appropriate information timely. It was further held that the AICTE upon receiving such information would 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 courses and more importantly the fate of the students. Paragraph (13) of the said report is extracted herein under:

"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."

27. In the instant case, the University has not disputed that the authority to fix the number of faculties and prescribing its norms is with the AICTE, but this is not a case where the University had taken a decision by fixing its own norms, or norms beyond the norms prescribed by the AICTE. The University, as urged by the counsel, had found the deficiency as per the norms of the AICTE and then passed the orders dated 9.11.2019. The Deficiency Report and the Inspection Report were statutorily supported, in as much as the University has the power to make inspection and also take appropriate action in that regard. The AICTE nowhere disputed the stand taken by the University and rather acted upon it and then passed the orders dated 30.6.2020. This action was, therefore, not contrary to the law laid down in the case of Infant Jesus College of Engineering (supra).

28. The case of the University is that the institutions had not complied with the statutory provisions of maintaining the minimum number of faculties as desired by the AICTE norms. The institutions, on the other hand, have relied on the web portal reports dated 9.3.2020 and 10.3.2020. In our considered opinion, as already indicated above, the web portal reports are not on the basis of any exhaustive inspection, as indicated by the learned Single Judge, and is only on the basis of paper information provided to the AICTE, which is admitted by the learned counsel for the AICTE. On the other hand, the report of the University was conducted by a Three Member Enquiry Committee and was the basis of the passing of the orders dated 9.11.2019. The learned Single Judge did not assess the reports dated 9.3.2020 and 10.3.2020 on the basis of the Deficiency Report and the Re-Inspection Report that had preceded the passing of the order dated 9.11.2019 by the University. In the absence of any such assessment, the learned Single Judge, in our opinion, committed an error in entirely placing reliance on the reports dated 9.3.2020 and 10.3.2020.

29. However, the other ground relating to violation of principles of natural justice found favour with the learned Single Judge, who held that the University had not provided any opportunity to the institution, nor had the AICTE provided any

such opportunity and, therefore, the impugned orders could not have been passed. In this regard, a reference again to the procedure prescribed for suspension of affiliation under Regulation 25 of the Regulations for Affiliation, 2004 would demonstrate that the University has to satisfy itself that there is prima facie evidence, after preliminary investigation by a University authorized Enquiry Committee for verification of authenticity of information or non compliance of statutory provisions.

30. Regulation 25 does not provide for any specific opportunity of hearing or a participation of the institution in any proceedings after the information has been collected by the Enquiry Committee. The suspension of affiliation has serious consequences, both for the institution as well as for the students. The suspension can be carried out if the college has failed to observe or implement any of the conditions of affiliation. If the college has failed to adhere to the undertaking given by it for maintaining the standards and norms as fixed by the AICTE, then it amounts to violation of the said undertaking, which is a pre-requisite for grant of affiliation. The University on the basis of an Enquiry Report proceeds to suspend the affiliation. The power of suspension also includes the power to withdraw such an order by the University in case the institution is able to satisfy the University about the sufficiency of the faculty members or other infrastructure facilities. This mechanism, therefore, inheres in itself a space for opportunity being afforded to the institution in order to explain its stand and thereby get its affiliation restored. This is necessary in the interest of the continuity of the institution and the courses run by it, which ultimately has an impact on the students. In the event the institution is able to satisfy the University about the existence of the faculties as per the norms of the AICTE, then the University can pass appropriate order, but for that the institution does require an opportunity. We may, however, hasten to add that when the University carries out an inspection, it is a physical inspection, and which is in the presence of the College/Institution authorities. This participation at the time of inspection gives considerable opportunity to the institution itself to produce such document or proof in support of the sustenance of the standards and norms that are to be followed. It can be pointed out at the time of inspection itself and can be given in writing to the Enquiry Committee. Thus, the Colleges/Institutions are not at any prejudicial or disadvantageous position so as to deprive them of any participation in the investigations and enquiry to be carried out by the University through physical inspection. A physical inspection is not a cloistered activity so as to denude the

College/Institution authorities from providing information in respect of either the infrastructure or the faculties, or even the number of students, as the case may be.

31. Thus, in the light of the above, the participation of the College/Institution during a physical inspection gives ample opportunity to the College/Institution to inform the inspection or enquiry team about the existence of facts, or even immediately upon its conclusion to the University, before the University proceeds to take any action.

32. The order dated 9.11.2019 in respect of ARM College of Engineering reads as under:

"Lt. No 503/CAI/AU/12019 09.11.2019

To
The Principal Chairman
ARM College of Engineering and Technology
Sattamangalam, Maraimalai Nagar Post
Chengalpattu Taluk
Kanchipuram Dist 603209

Sir,

Sub: ARM College of Engineering and
Technology, Kanchipuram - Re-Inspection
conducted - Acute shortage in Faculty
observed - Reg

Ref: 1. College Chairman Undertaking Dated:
22.05.2019
2. Re-Inspection Report Dated:
16.09.2019
3. Deficiency Report Dated 09.10.2019

1. Some irregularities were found during April - May 2019 examination held at ARM College of Engineering and Technology by the Controller of Examinations, Anna University. As per the Statutes for Affiliation, the University reserves the right to do Inspection any time vide Section 43

2. In this regard, Re-inspection was conducted on ARM College of Engineering and Technology, Kanchipuram on 16.09.2019 based on the directions of the Vice Chancellor. A copy of the deficiency report is enclosed as Annexure. The Inspection Committee has observed and noted the following

Comments:

- The entire College is severely in shortage of faculty members, classroom and computers.
- Librarian, Physical Director, Placement Officer Posts are lying vacant.
- There are no computers inside the library and library cards are not issued to students. 5 ledgers are being maintained but there are no entries against S.No.15596-36174.
- Most of the equipment / kits and measuring instruments are lying one above the other and they have to be properly arranged
- Rooms in hostels, all laboratories, all classrooms require massive cleaning.
- Most of the windows in Classrooms, laboratories have been damaged and they have to be repaired to avoid entry of animals especially rats inside laboratories, etc.

3. Although the Chairman of the College has submitted an Undertaking Dated 22.05.2019 during grant of affiliation stating that faculty strength will be maintained as per the norms, the College has not maintained the required faculty strength in the College. An acute shortage of faculty has been observed by the University

Sl.No	Degree	Courses	Deficiency
1	B.E.	Civil Engineering	68% Deficiency in faculty
2	B.E.	Computer Science and Engineering	93% Deficiency in faculty
3	B.E.	Electrical and Electronics Engineering	60% Deficiency in faculty
4	B.E.	Electronics and Communication Engineering	51% Deficiency in faculty
5	B.E.	Mechanical Engineering	76% Deficiency in faculty
6	B.Tech.	Information and Technology	93% Deficiency in faculty
7	MBA	Master of Business Applications	83% Deficiency in faculty
8	M.E.	Computer Science and Engineering	67% Deficiency in faculty

Sl.No	Degree	Courses	Deficiency
9	M.E.	Engineering Design	67% Deficiency in faculty
10	M.E.	VLSI Design	100% Deficiency in faculty

4. Even though you satisfied the requirements of the University during Inspection in March 2019, you have not maintained the faculty strength as per norms during the academic year 2019-20 as revealed by the re-inspection in September 2019.

5. There should be 84 faculty members excluding Science and Humanities for all the courses conducted in the college as per the prevailing norms.

6. As there are only twenty faculty members teaching about 252 Theory Courses and 115 Laboratory Courses in the College in an year for all the courses. Hence, it is confirmed that many classes are not conducted by the College. In view of the acute shortage of faculty members in the College, the College has conducted in a manner which is prejudicial to the interests of University Education and students.

7. Hence, the University has decided to issue suspension of affiliation for a period of Three academic years for all the Courses conducted in the College with effect from the academic year 2020-21 as per Regulations R 25 vide Section 7.9 of the Statutes, based on the recommendations of 88th SCA approved by the Syndicate of the University.

Encl: 1. Copy of College Chairman's Undertaking
2. Deficiency Report - Annexure

sd/-
REGISTRAR
Anna University
Chennai - 600 025."

33. At this juncture, it is relevant to note the pleadings contained in W.P.No.35174 of 2019 filed by ARM College of Engineering challenging the order of the University dated 9.11.2019. The writ petition (W.P.No.35174 of 2019) in paragraphs (11) and (12) indicates as under:

"11. I respectfully submit that there is no specific allegation against the petitioner college as per the compliance report dated November 2019. However, some allegations against the petitioner College is that students have been admitted this petitioner college without following the norms, but it is clearly stated that during the enquiry 359 students were identified as genuine. It is further submitted that nowadays no one has offered to study the Engineering course and therefore, entire student ratio has been reduced $1/3^{\text{rd}}$ viz., total intake for the B.E., Civil @ 240, but, available strength 63. Hence, as per the availability of the students, the college is having the faculty strength and other facilities as per the students' availability in the petitioner college. Hence, the observation of the inspection committee is totally against the real situation and also failed to consider the interest of students.

12. I respectfully submit that no notice was issued to the petitioner college for rectify the defects found in the inspection report as well as the deficiency report dated 09.10.2019. It is submitted that the observation of the Inspection Committee are totally unsustainable in view of the real and factual position in the petitioner college. It is pertinent to note that I have submitted a letter of undertaking dated 22.05.2019 to the 3^{rd} respondent for granting affiliation for the academic year 2019-2020 and stating that as per the intake of the students, the undertaking was given before the 3^{rd} respondent, but the students' ratio has been reduced at the rate of $1/3$ ie., 63 out of 240. But, the said fact has been not considered by the respondent and suspended the petitioner college for admission from the academic year 2020-2021 Hence, the impugned order is totally illegal and against the interest of institution."

34. The entire writ petition narrates about the explanation given by the College that there was no deficiency pointed out when inspection had been carried out in March 2019 and the affiliation was renewed by the University on 15.5.2019. The other pleadings are with regard to admission of students and their examinations, and the genuineness of the admission of students. The main argument that was taken was that the impugned order dated 9.11.2019 was passed without giving any notice or opportunity to the College/Institution to rectify the

defects as found in the Inspection Report and the Deficiency Report dated 16.9.2019. The writ petition nowhere indicates any break-up of the faculty members to meet the specific deficiencies in the strength of faculties as detailed in the order dated 9.11.2019, which was the main basis of the suspension of affiliation. It is not understood as to why there was no indication about the number of faculties and the status of faculties in the writ petition that was filed challenging the order dated 9.11.2019. The grounds also do not indicate about the status of the existing facilities and, therefore, in effect no fact was pleaded with regard to the status of the faculties in the said writ petition.

35. Coming to the other College, namely ARS College of Engineering, that filed W.P.No.35250 of 2019, the same position exists.

36. However, in the two subsequent writ petitions filed challenging the orders of the AICTE dated 30.6.2020, the ARS College of Engineering, in W.P.No.9571 of 2020, made the following statement of fact in paragraph (14):

"14. I respectfully submit that the 5th respondent university is having animosity and malafide intention against the petitioner college and depriving the right of the petitioner college without any reasons or whatsoever. By common order dated 09.01.2020 in W.M.P.Nos. 360 & 363 of 2020 in W.P.Nos.35174 and 35250 of 2019, the petitioners' colleges are permitted to submit faculty strength manually with necessary particulars for the academic year 2020-2021 to the concerned authority under written acknowledgment, which shall be merely received without prejudice to contentions of the respondents in the writ petition and subject to their outcome. In pursuant to the said order, the petitioner college submitted the faculty list and the same was duly acknowledged by the 5th respondent university. Besides, the allegations made against the petitioner college is totally frivolous and no true or any iota in the allegations stated by the 5th Respondent. However, the Petitioner college is facing lot of hardships from the 5th respondent diversity and denied the right of petitioner college guaranteed under Article 19 (1) (g) of the constitution of India."

37. From the aforesaid disclosure it appears that in January, 2020, i.e., after filing of the two writ petitions challenging the orders of the University dated 9.11.2019, orders were passed on 9.1.2020, whereafter some list of faculties is alleged to have been submitted before the University. The same paragraph is repeated in the writ petition filed by ARM College of Engineering, namely, W.P.No.9601 of 2020.

38. The University filed counter affidavits disputing the same in detail. The respondent AICTE also filed their counter affidavits in effect supporting the stand of the University and clearly reciting that no approval was granted by the AICTE, as claimed through the web portal, which aspect has already been indicated herein above.

39. The learned Single Judge did not analyze these facts and pleadings in order to test the correctness of the reports dated 9.3.2020 and 10.3.2020 and, therefore, the stand taken by the University was not assessed at all on the merits of the deficiencies, and the judgment came to be delivered on the strength of the reports dated 9.3.2020 and 10.3.2020, which only represented an ex parte untested version that ought to have been confirmed or assessed on the basis of the reports of the University. This having not been done, the conclusions drawn by the learned Single Judge, therefore, in our opinion, suffer from an error.

40. However, on the question of extending a further opportunity to the Colleges/Institutions by the University to explain their position and to ensure fairness in action, the University could have given an opportunity to the Colleges/Institutions before passing orders of suspension, which would have set the matter at rest.

41. As a matter of fact, in our opinion, the matter could have been very easily resolved with the University itself having informed the AICTE about the above position, after having passed the orders dated 9.11.2019.

42. There is yet another aspect of the matter. If the University proceeds to inform the AICTE, as in the present case was done on 18.3.2020, then, in view of the conflict of the information on the web portal of the AICTE and the orders of the University based on the inspection report, the AICTE ought to

have put the institutions to notice about the same and then could have passed an order accordingly. This procedure was not followed and taking advantage of the same, the college/institutions contend that had any opportunity been given, the colleges/institutions would have explained their stand with the aid of the own documents of the AICTE, namely the reports dated 9.3.2020 and 10.3.2020.

43. We may further clarify that the judgment in the case of Infant Jesus College of Engineering (supra) in paragraph (13) has indicated that the AICTE has to be informed by the University in order to attach finality to a decision in respect of suspension of affiliation, when there is an alleged violation of the norms fixed by the AICTE, and where the AICTE has to pass orders. The role of the University is, therefore, not eliminated altogether, nor the grant of affiliation or otherwise can be treated as an action divorced from the orders passed by the AICTE. The judgment, referred to above, clearly indicates that the action of the University would be justified in the event the AICTE also concurs with it.

44. In the instant case, the chronology of events, as unfolded herein above, demonstrates that the University and the respondent Colleges/Institutions did not inform the action taken by the University to the AICTE. This resulted in the uploading of an ex parte information provided by the Colleges/Institutions on the web portal of the AICTE, which was based on material without considering the objections that were taken by the University in its reports that resulted in the orders dated 9.11.2019. The AICTE passed orders thereafter on 30.6.2020 referring to the action taken by the University, but again without contradicting its own information uploaded on 9.3.2020 and 10.3.2020, and without giving any opportunity to the Colleges/Institutions.

45. This, therefore, raised a complicated situation and the writ petitions were entertained and the learned Single Judge proceeded to quash the orders primarily on the ground of violation of principles of natural justice.

46. The directions given by the learned Single Judge, however, are that the University and the AICTE are to issue fresh show cause notices to the Colleges/Institutions, after conducting personal inspection, and thereafter to give an opportunity to the Colleges/Institutions to give their explanation and then take a decision. In order to appreciate

the relief as granted by the learned Single Judge, we may reproduce paragraph (32) of the impugned judgment herein under:

"(32) The Anna University and the AICTE are directed to issue a fresh Show Cause Notice to the petitioner - Institutions / Colleges, by pointing out the deficiencies and if necessary, after conducting personal inspection and the petitioner - Institutions / Colleges shall be given an opportunity to give their explanation and thereafter, a decision can be taken strictly in accordance with law."

47. In the light of the law as indicated in the case of Infant Jesus College of Engineering (supra), and in the given circumstances that the University has already carried out an inspection in 2019 and passed an order on 9.11.2019 pointing out the deficiencies, and that the AICTE has not conducted any physical inspection, and since we are of the considered opinion that the ultimate decision of the AICTE would have an impact on the issue of affiliation, we do not find it necessary for the University now to give any opportunity to the Colleges/Institutions, to face the University after a second round of inspection. In our opinion, the material is already there and this material has reached the AICTE. It would, therefore, suffice that the University and the authorities of the Colleges/Institutions are both given an opportunity of hearing by the AICTE itself, where the Colleges/Institutions will have the opportunity to rebut the material on the basis whereof the University has taken its decision on 9.11.2019. The said decision dated 9.11.2019, therefore, shall not be given effect to till the AICTE passes a final order after giving an opportunity of hearing to the University and the authorities of the Colleges/Institutions in order to assess the nature of the deficiencies. The AICTE shall conduct a physical inspection of both the Colleges/Institutions itself preferably within fifteen days from today, and then give an opportunity to the Colleges/Institutions and the University within fifteen days thereafter, and then pass final orders accordingly.

48. We, therefore, in the light of the discussion herein above and the reasons given in support thereof, partly allow the appeals and set aside the order passed by the learned Single Judge quashing the orders of the University dated 9.11.2019, but we direct, as observed above, that they shall not be given effect to and shall be subject to any final orders to be passed by the AICTE in the light of the directions herein above. We uphold the judgment of the learned Single Judge in quashing the orders passed by the AICTE dated 30.6.2020.

49. In fine, W.A.Nos.941 aand 942 of 2020 challenging the judgment of the learned Single Judge arising out of the orders dated 9.11.2019 passed by the Anna University are, therefore, partly allowed, and W.A.Nos.940 and 945 of 2020 arising out of the orders dated 30.6.2020 of the AICTE are disposed of in the light of the observations made herein above for carrying out the directions of inspection, hearing and passing of orders in the time period referred to by us.

In the result, all these appeals stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sasi

To:

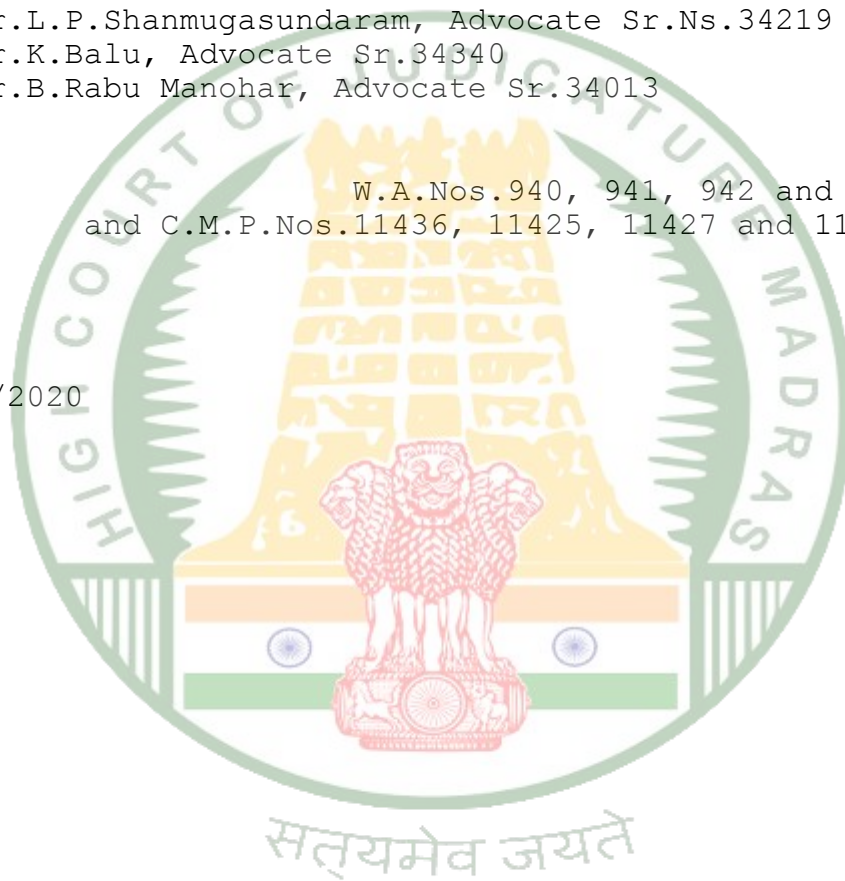
1. The Director (Approval)
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Anna University, Guindy,
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Centre for Affiliation of Institutions
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+4cc to Mr.L.P.Shanmugasundaram, Advocate Sr.Ns.34219 to 34222
+1cc to Mr.K.Balu, Advocate Sr.34340
+1cc to Mr.B.Rabu Manohar, Advocate Sr.34013

W.A.Nos.940, 941, 942 and 945 of 2020
and C.M.P.Nos.11436, 11425, 11427 and 11432 of 2020

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