

(2002) 07 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Appal No's. 190, 197 and 302 of 2002

All India Council for Technical Education

APPELLANT

Vs

The Osmania University and Others

RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10(1), 2, 23(1)

Andhra Pradesh University Act, 1991 — Section 19(16)

University Grants Commission Act, 1956 — Section 12, 12A

Citation : (2002) 5 ALT 722

Hon'ble Judges : Ar. Lakshmanan, C.J;Gopalakrishna Tamada, J

Bench : Division Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; K. Subrahmanya Reddy, for K. Ramakanth Reddy, E. Manohar, for M.S. Prasad, G.P. for Higher Education, for the Respondent

Final Decision : Allowed

Judgement

AR. Lakshmanan, C.J.—These Writ Appeals arising out of a common Judgment of the learned single Judge in W.P.Nos. 10435 and 18687 of 2001 were heard together and are being disposed of by this common Judgment.

While Writ Appeal Nos.302 and 197 of 2002 are preferred against the order of the learned single Judge in W.P.No.18687 of 2001, Writ Appeal No.190 of 2002 is directed against the order passed in W.P.No10435 of 2001.

2. Briefly noted the facts leading to the controversy involved in these writ appeals are:

One Azeezia Educational & Welfare Society, Nalgonda is a registered society (for short "society") established with an intention to establish educational institution in the field of higher learning for the welfare of Muslim minority students. The society applied for permission to start a college for conducting three-year full time course in Master of Computer Applications (MCA) at Varkala village,

Chintapally Mandal, Nalgonda district with an intake of 40 students to the All India Council for Technical Education (AICTE), New Delhi. According to the Society, the Osmania University within whose jurisdiction the college is proposed to be established, issued No Objection Certificate on 18.11.1998 for starting the academic year 1999-2000. This fact was however disputed by the University in their counter filed in W.P.No.10435 of 2001. The AICTE after due inspection, had issued the letter of viability, vide letter dated 17.2.1999. Thereafter, according to the society, in order to fulfil the norms and standards of AICTE, it had proposed to establish the college at Kanakamamidi village of Moinabad Mandal, Ranga Reddy district instead and at the place of Varakala village, Nalgonda district and accordingly purchased Ac.2.20 guntas for construction of building etc. The society applied to AICTE for permission to establish the college permanently at the new place and also sought for permission to temporarily conduct the course at the leased premises at building Nos.50 and 51 of Mahaboob Mansion, Malakpet, Hyderabad. An expert committee sent by the AICTE visited the proposed permanent accommodation at Kanakamamidi village as also the temporary accommodation at Malakpet. On the basis of the recommendations of the expert committee, the AICTE by letter dated 17.12.99 informed the Government -1st respondent of its approval to establish the college with an annual intake of 30 students with permanent accommodation at Kanakammidi and temporary accommodation at Malakpet during the academic year 1999-2000 provided the days as decided by the University could be made up by the proposed college, otherwise the approval may be deemed for the academic year 2000-2001. The approval was subject to the condition that the college shall shift to the permanent accommodation within a period of two years from the date of approval and also subject to the condition that it shall not shift to any unapproved location under any circumstances.

3. Thereafter, the State Government has issued G.O.Ms.No.8, Higher Education (EC.1) Department dated 17.1.2000 according permission to the society for starting the MCA course at Malakpet with an annual in take of 30 seats for the academic year 1999-2000 as a supplementary batch subject to the specific and general conditions laid down by the AICTE. Government also issued directions to the Osmania University to give affiliation to the society for the academic year 1999-2000 and to take necessary action to complete the academic work within the academic year 1999-2000. It appears that an independent inspection was conducted by the University and on the basis of the decision taken by the Standing Committee of the Academic Senate at its meeting held on 9.2.2000 with reference to the recommendations of the Inspection Committee, the University by letter dated 14.2.2000 had declined to accord provisional affiliation to the society for starting the course. The request of the society was again turned down by the University on 22.3.2000, which was challenged by the Society in W.P.No.6583 of 2000. The said writ petition was disposed of on 26.12.2000 wherein this Court directed the AICTE to inspect the premises at Mahaboob Mansion and decide as to whether the same is suitable for temporarily

establishing the proposed college, taking into consideration the area, topography and other relevant factors for making over all realistic assessment and to communicate its decision to the University and thereafter University to consider grant of affiliation. Pursuant to the same, an inspection team of the AICTE inspected the premises at Malakpet and based on the recommendations of the inspection committee, the AICTE by its letter-dated 30.1.2001 informed the University that the proposed college may be allowed to function temporarily at Malakpet. The society approached the University through its letters dated 9.2.2001 and 17.2.2001 for starting the course for the academic year 2000-2001, but the University rejected the request of the society for grant of provisional affiliation by their letter No.9991/11/2000-2001/MCA/ACAD/IV-1 dated 17.4.2001 on the ground that there were unhygienic conditions at the temporary place and the site is being used as a market yard exclusively for selling agricultural products and live stock.

4. Being aggrieved, the society filed W.P.No.10435 of 2001 for a Writ of Mandamus declaring the action of the Osmania University, Hyderabad in refusing to grant provisional affiliation to the society vide letter dated 17.4.2001 as illegal, null and void and for a consequential declaration that the University cannot refuse to grant affiliation to the society on the grounds which are already approved by the AICTE.

5. It may also be relevant to note herein that pending disposal of W.P.No.10435 of 2001, this Court in W.P.M.P.No.13016 of 2001 suspended the operation of the order dated 17.4.2001 passed by the University declining to grant affiliation but the same was set-aside in W.A.No.1159 of 2001.

6. It further appears that subsequent to the directions of this Court in W.P.No.6583 of 2000, the University constituted an Inspection Committee comprising of Prof. P. Subba Reddy, Dean, Faculty of Informatics as its Chairman, Prof. A. Venugopal Reddy, Head, Department of CSE, Prof. M. Laxmipathy Rao, Director, Academic Audit Cell and Sri B. Vshnu, Dy. Registrar, Academic Branch as members to cause inspection for considering the case of the society for affiliation. For better appreciation of the facts, it is appropriate at this stage to quote the observations and recommendations of the Inspection Committee of the University.

1. The College is situated in a wholesale market yard intended for shops where agricultural products as grains and spices like chillies etc. are being sold. The surroundings are unhygienic, unhealthy and unsuitable for running any educational institution affiliated to Universities.

2. As per the G.O.Ms.No.649, dt.9.10.1990 the premises should be exclusively used for selling agricultural products and live stock while leasing the premises to dealers of Agricultural products. One of the dealers in turn leased the premises for running MCA College. When inspection committee asked to submit the original 99 years lease document of the lessor (issued by the Agricultural

marketing Committee) who in turn leased the shops to the college, the management did not submit the same. A letter to the management was issued in this regard during the last inspection dt.6.11.2000.

3. As per the University guidelines approved by the academic senate dt. 30-3.1996 for MCA, "The Institution should provide independent premises of at least 600 sq. Yds. and sufficient building space, which meets the requirement of the existing and proposed courses. The entire building shall be used by the college only. Portion of the multi-storeyed building shall not be permitted for running PG College. In the present case, the college is situated in a portion of multi-storeyed commercial complex, which is not permitted as per the University norms.

4. The entry to all the toilets is through lecture halls and laboratories. They are not accessible from the office, Girls waiting room, staff room and principal's room when the class work is being held.

5. There is no improvement in the premises since the last inspection except that one old 1.5 ton capacity Air Conditioner was installed in the Lecture Hall. The Air Conditioner capacity is not sufficient for lecture hall of 600 sq. ft. without false ceiling which requires a minimum of 6 tons as per norms.

Recommendations:

In view of the above, the committee does not recommend starting of the college in the existing premises. The committee members were surprised to note that the ICTE Inspection Committee recommended for running MCA, college in such an unhygienic and unhealthy premises even on temporary basis without even going through the records for which it is intended for.

7. According to the University, the AICTE without considering the vital aspects like rudimentary infrastructure, health, hygiene, environment, academic standards etc. has mechanically allowed the society to start functioning of the college at the temporary place and it has not recorded its satisfaction as to on what basis it was convinced with regard to topography, environment, location etc. and how a college can be allowed to function in a market yard which exclusively falls under the A.P. (Agricultural Produce and Live Stock) Markets Act, 1966.

8. The University, therefore, challenged the approval granted by the AICTE dated 30.1.2001 and the subsequent renewal dated 22.6.2001 in W.P.No.18687 of 2001.

9. A learned single Judge of this Court heard the writ petitions together and by order dated 24.1.2002 dismissed W.P.No.10435 of 2001 and allowed W.P.No.18687 of 2001. The learned Judge held that the objection raised by the University to locate the College in a market area notified under the A.P. (Agricultural Produce and Live Stock) Markets Acts, 1966 is justified. It was further held that the grant of affiliation to a College is the sole discretion of the concerned University and the same cannot be interfered with in exercise of the

jurisdictions under Article 226 of the Constitution of India unless the decision of the University is illegal, arbitrary or without application of mind and the learned Judge accordingly declined to interfere with the letter dated 17.4.2001 of the University refusing affiliation to the society.

10. As regards the approval made by the AICTE in their letter dated 30.1.2001, the learned Judge held that the AICTE without assigning any reasons and without recording its satisfaction and without adverting to any one of the crucial aspects observed by this Court in W.P.No.6583 of 2000 simply accepted the recommendations of the inspection committee and the same cannot be said to be realistic assessment of the premises. It was further held that the decision as to the suitability of the premises cannot be on the mere subjective satisfaction of the AICTE but it should reflect the application of mind to all the aspects indicated by this Court. Holding so, the learned Judge held that the impugned letter dated 30.1.2001 of the AICTE reiterating its decision to allow the society to locate the college at Mahaboob Mansion, Malakpet temporarily cannot be sustained and the same cannot form basis either for granting permission by the Government or affiliation by the University. Consequently, the letter of AICTE in F.No.A042/ET-APR (MCA)/99 dated 22.6.2001 granting extension of approval to the society for temporarily establishing the college at Malakpet was declared as illegal. The learned Judge also held that the affiliating University which has a vital interest in maintaining the standards of the University and in ensuring the welfare of the students is entitled to maintain a writ petition challenging the decision of the AICTE permitting the society to locate the technical institution in a market area.

11. Aggrieved by the aforesaid Judgment of the learned Judge, AICTE has preferred W.A.No.302 of 2002 and the society has filed the other Writ Appeal Nos.190 and 197 of 2002.

12. We have heard Sri M.V.S. Suresh Kumar, learned counsel appearing for the appellant-AICTE in W.A.No.302 of 2002, Sri E. Manohar, learned Senior Counsel appearing for the appellant-society, Sri K. Subramanya Reddy, learned Senior Counsel appearing for the Osmania University and the learned Government Pleader for Higher Education.

13. Sri M.V.S. Suresh Kumar appearing for the AICTE submitted that an expert committee of the AICTE visited the college pursuant to the directions of this Court in W.P.No.6583 of 2000 and after considering the overall environment, location, topography etc. recommended to permit the college to function at the temporary premises for a limited period. He would further submit that the University could prescribe any conditions for grant of affiliation not inconsistent with the provisions of the AICTE Act and its regulations and the AICTE had applied its mind before granting permission to the college. The provisions of the University Act relating to technical education became unenforceable after coming into operation of AICTE Act and the regulations made thereunder. He would further submit that in view of the Full Bench decision of this Court in *M. SAMBASIVA RAO v. OSMANIA UNIVERSITY*¹ it may not be mandatory or

compulsory for the Universities to accord affiliation wherever the approval is accorded by the Council and that the University shall not refuse the affiliation on matters or grounds which are already considered and covered by AICTE Act. The University can only refuse to grant affiliation to the institution approved by the AICTE on any other ground on its own not covered or concerning the matters according approvals under the AICTE Act. The expert committee constituted by the AICTE consists of reputed persons in the field of education and they have visited the temporary premises of the society and submitted report to the AICTE after taking into consideration all the aspects including environment, location, topography. The AICTE has considered the report and the recommendation made by the expert committee and accorded approval for starting of the college at the temporary premises for a period of two years and as such the approval made by the AICTE cannot be found fault with.

14. Mr. E. Manohar, learned counsel appearing for the appellant-society submits that the AICTE established under the Central legislation alone is primarily concerned with the development of technical education and the refusal of affiliation by the University cannot be on any grounds which are already considered by the AICTE. Since the expert committee of AICTE has already considered the feasibility of establishing the institution at the temporary place on all aspects and recommended for approval of starting the college at the temporary place, it is not open to the University to refuse affiliation on the very same ground that the said premises is not up to the standard. In support of the same, reliance has been placed on the decisions of the Apex court in STATE OF TAMILNADU v. ADHIYAMAN EDN. & RESEARCH INSTITUTION², JAYA GOKUL EDUCATIONAL TRUST v. COMM. & SOCCY. TO GOVT. HIGHER EDUCATION DEPARTMENT³ and MADANAPALLE INSTITUTE OF TECHNOLOGY AND SCIENCE, MADANAPALLE v. STATE OF ANDHRA PRADESH, HIGHER EDUCATION⁴.

15. Sri Manohar, then submits that in matters of technical education including engineering, technology, management etc. the AICTE alone is primarily concerned with the "Coordinated and integrated development of technical education" at all levels in India and that it alone is primarily entrusted with the power to provide guidelines for admission of students and to regulate proper maintenance of norms and standards of technical education and it alone has the power and authority to lay down standards of technical education, including the power to prescribe norms of admission which have a direct impact on the standards of education. Therefore, the learned counsel would submit that in the matters of granting affiliation or recognizing the institutes and also prescribing the standards of admission, the body created under the State Act, namely, the 2nd respondent though has the power to deal with the situation, but any refusal by the State Government or such body created under the State Act, shall not be on matters or grounds which are already considered and approved by the Council. Sri Manohar placed reliance on the judgments of the Apex Court in UNNI KRISHNAN v. STATE OF ANDHRA PRADESH and Adhiyaman's case which considered the constitutional validity of the AICTE Act and other relations

questions.

16. Sri Subrahmanyareddy, learned Senior Counsel appearing for the University submits that where a technical institution seeks affiliation with the University, the AICTE under the Act has no authority or say in the matter, both for affiliation and for granting permission to the institution to start the institution. Only in cases where the institutions want to stand on its own independently, then the University need not be consulted. Referring to sub-clauses (g), (h) and (i) of section 2 of the AICTE Act, he would submit that the technical institution excludes University. Referring to Sections 11 and 22(b) of the Act, Mr. Subrahmanaya Reddy submits that the Act clearly maintained a distinction between a technical institution and a University and there may be institutions imparting technical education without affiliation to the University and such technical institutions will have to obtain permission from the council. Drawing our attention to Sections 12(a), 12-A, (a), (b), (d) and (h) of the University Grants Commission Act, 1956, learned counsel submits that it is the University Grants Commission that has jurisdiction to see if any thing is violated and it is the Commission which is competent to take action in such a case.

17. Referring to the decisions of the Apex Court in *STATE OF TAMILNADU v ADHIYAMAN EDUCATIOINAL AND RESEARCH INSTITUTE* and *JAYA GOKUL EDUCATIONAL TRUST v. GOVT. HIGHER EDUCATION DEPARTMENT* Mr. Reddy submitted that both the cases proceeded on the footing that Council is the authority. He would submit that in both the cases, the effect of Section 10(k) to the effect that the definition of "technical institution" excludes University has not been considered. He would further submit that these two decisions were considered by the Supreme Court in *BHRATHIDASAN UNIVERSITY v. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION*⁵ and declared that the definition of "technical education" excludes University and held that the AICTE is not intended to be an authority either superior to or supervise and control the Universities and any directions issued by the AICTE are only recommendatory and not binding on the University.

18. Mr. Subrahmanya Reddy then submitted that the place where the College is sought to be established temporarily being a market yard, the premises is not congenial for running the College. The inspection committee of the AICTE without regard to the unhygienic conditions at the temporary place recommended for starting the college. Referring to sub-clauses (f), (j) of Clause 4 of Rules of Affiliation of Colleges or Recognition of Colleges or Institutions (Statute No.(LL) of Osmania University), Mr. Subrahmanya Reddy would submit that as the affiliation falls within the exclusive field of the University, the University after considering the report of the inspection committee declined affiliation and the same cannot be termed as arbitrary. Such decision cannot be interfered with unless it is arbitrary, illegal and without application of mind.

19. Referring to All India Council for Technical Education (Grant of Approval for starting new technical institutions, introduction of courses or programmes and

approval of intake capacity of seats for the course or programmes) Regulations, 1994, he would submit that when there is disagreement in the recommendations made by the State Government, University or the Regional Committee, the Central Task Force shall invite representatives of the respective agencies for further consultations before making final recommendation and when there is such a provision for conciliation, Mr. Subrahmanaya Reddy contends, all should have sat together and resolved the dispute. He would also submit that since the University is the assemblage of colleges, what applies to the University applies to the affiliated colleges also.

20. As regards the maintainability of the Writ Petition by the University, the learned Senior Counsel would submit that after four inspections by the expert committees, the academic Senate refused to grant affiliation. Finally, the Executive Council approved refusal of affiliation. The Registrar of the Osmania University communicated the decision of the executive Council on 17.4.2001 as directed by the Council. In spite of the same, AICTE extended the permission for the years 2001-03 directing the Registrar Osmania University to complete the process of affiliation for facilitating admission when already affiliation was refused. Questioning the proceedings of the AICTE dated 22.6.2001, the AICTE filed the writ against the University. Hence, the writ is maintainable. In *Bharathidasan's* case, the AICTE filed the writ against the University. Similarly, when affiliation was refused four times, the AICTE cannot grant further extension by proceedings dated 22.6.2001 and further directed the Registrar to finalise the affiliation process. Hence the writ was filed against AICTE questioning the proceedings of AICTE dated 22.6.2001 as illegal and invalid and as such the writ petition by the Osmania University is maintainable.

21. According to Mr. Subrahmanya Reddy, the role of AICTE vis--vis the University is only advisory, recommendatory and a guiding factor and thereby subserve the course of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself. In view of the latest judgment of the Supreme Court in *Bharatidasan's* case, the Council cannot direct the University to grant affiliation as the council is satisfied for location of the College temporarily at 50, 51 of Mahaboob Mansion. Further, the Supreme Court at paragraphs 13 and 14 of the Judgment held that the regulations insofar as it compels the Universities to seek for and obtain prior approval and not to start a new department or course or programme in technical education and empower itself to withdraw such approval in a given case of contravention of the regulations are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable. It is further submitted that a college, which seeks affiliation, cannot be disassociated with the University, which has to grant affiliation. What applies to the University as held in *Bharathidasan's* case equally applies to colleges also. The principles held in the said case equally apply to constituent units. He would further submit that there is an apparent conflict between the judgments of the Supreme Court in *Adhiyaman's* case and *Bharathidasan's*

case. He would further submit when there is a difference opinion on any issue between the two judgments of Supreme Court of coordinate jurisdiction, the latest judgment of the Supreme Court has to be followed as a precedent and relied upon the following decisions:

1. Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another,
2. M.M. Yarangatti Vs. Vasant and Others,
3. Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others,
4. Vasant Tatoba Hargude and Others Vs. Dikkaya Muttaya Pujari,
5. U.P. State Road Transport Corporation Vs. The State Transport Appellate (Tribunal), U.P. Lucknow and Others,
6. Smt. K. Rachamma Vs. Smt. Bimal Bai and Another,

22. As regards the permission granted by the State Government, the learned Senior Counsel would submit that the University is an autonomous body constituted under the Act and therefore it is not bound by the directions issued by the Government unless the University specifically adopts directions in the G.O. in accordance with the provisions of the Act. Hence G.O.Ms.No.8 dated 17.1.2000 is not binding on the University. He would further submit that refusal of the affiliation by the university is legal and valid since under the A.P. University Act, affiliation is to be granted by the university u/s 19(16) read with Statute No.150 of A.P. University Act, 1991 and it is for the Board of Management to grant affiliation in consultation with Academic Senate. Learned Senior counsel would further submit that original regulation for starting new technical institution came into force on 31.10.1994 and the same was amended on 11.4.1997 and according to the regulations, the original regulation 8 was completely replaced by regulation 7 of 11.4.1997 regulations by way of amendment

23. The learned Government Pleader would submit that for an educational institution to survive effectively, to impart technical education, permission from the State Government, approval from AICTE and affiliation from the concerned University are sine qua non. In this context he invited our attention to the decision of the Constitution bench of the Apex Court in UNNI KRISHNAN v. STATE OF ANDHRA PRADESH⁶ wherein it was observed:

(d) If, for any reason, it is held that a citizen or a person has a right to establish an educational institution, the said right does not carry with it the right to recognition or the right to affiliation, as the case may be, It has been repeatedly held by this court that even a minority educational institution has no fundamental right to recognition or affiliation. If so, no such right can be envisaged in the case of majority community or in the case of individuals or persons. Once this is so, it is open to the State or the University according

recognition or affiliation to impose such conditions as they think appropriate in the interest of fairness, merit, maintenance of standards of education and so on. In short, it is open to the Government or the University to make it a condition of recognition /affiliation that the admission of students, in whichever category it may be, shall be on the basis of merit and merit alone. The institutions obtaining recognition /affiliation will be bound by such condition and any departure therefrom renders the recognition /affiliation liable to be withdrawn.

24. We must, however, make it clear and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C. J., stated that this has been "the consistent view of this Court." They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he, or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State - much less have they the right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government or any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance - the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and /or is affiliated to one or the other Universities in the country. Unless it is recognised and /or affiliated as stated above, its certificates will be of no use. No one would join such educational institution. As a matter of fact, by virtue of the provisions of the U.G.C. Act, noticed hereinabove, no educational institution in this country except a University is entitled to award degrees. It is for this reason that all the private educational institutions seek recognition and/or affiliation with a view to enable them to send the students trained by them to appear at the examinations conducted by the Government /University. The idea is that if such students pass the said examination, the Government/University will award its degree /diploma / certificate to them. These educational institutions follow the syllabus prescribed by the Government/ University, have the same courses of study, follow the same

method of teaching and training. They do not award their own degrees/ qualifications. They prepare their students for University /Government examinations, request the University /Government to permit them to appear at the examinations conducted by them and to award the appropriate degrees to them. Clearly and indubitably, the recognised / affiliated private educational institutions, supplement the function performed by the institutions of the State. Theirs is not an independent activity but one closely allied to and supplemental to the activity of the State.

25. The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligatory - in the interest of general public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising / affiliating authority is the "State, it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation / recognition is not there for anybody to get it gratis or unconditionally. In our opinion, no Government, authority or University is justified or is entitled to grant recognition /affiliation without imposing such conditions. Doing so would amount to abdicating its obligations enjoined upon it by Part-III; its activity is bound to be characterised as unconstitutional and illegal.

26. Referring to the Adhiyaman's case, he invited our attention to the observations made by the Supreme Court which are reproduced below:

The provisions of the University Act regarding affiliation of Technical Colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University, shall, however, remain operative but the conditions that are prescribed by the University but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed Council in respect of matters entrusted to it u/s 10 of the Central Act.

27. In Jaya Gokula's case, the Supreme Court held that the University cannot withhold affiliation on the ground that permission of the State Government was not obtained. In Bharati Dasan's case, the Supreme Court ruled that a University need not approach the AICTE for approval to start an educational institution imparting technical education. According to the learned Government Pleader, the said decision has no application to the facts of the present case.

28. The only question to be considered in these appeals is, whether the recommendations made by the Expert Committee of the AICTE as approved by the AICTE are binding on the University for grant of affiliation to the technical institution in question and, whether, independent of the assessment made by the expert committee of the AICTE, the University could also examine as to the realistic assessment of the premises where the institution is proposed to be located temporarily for the purpose of granting affiliation to the University. Another question falls for consideration is whether a technical institution seeking affiliation with the University can be declined affiliation by the University on valid grounds with reference to its statutes and regulations even though the AICTE granted permission to the institution to start the College.

29. The All India Council for Technical Education was set up as a National Expert Body to advise the Central and the State Governments for ensuring the coordinated developments of technical education in accordance with approved standards. By reason of the All India Council for Technical Education Act, 1987, (Act 52 of 1987) the AICTE was conferred with statutory powers to ensure proper planning and coordinated development of the technical education system throughout the country; promotion of qualitative improvement of technical education in relation to planned quantitative growth; and regulation of the system and proper maintenance of norms and standards. The power and functions assigned to the AICTE inter alia provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and according to provide recognition or withhold recognition of programmes and institutions. Chapter II of the Act provides for establishment of the Council.

30. Section 10 of Chapter III deals with powers and functions of the Council. Under sub-clause (k) of Section 10(1) of the Act, the Council may grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Section 11 provides for inspection. Regulations have also been framed by the ACITE in exercise of powers conferred on it by Section 23(1) of the AICTE Act for starting new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for courses or programmes Regulations, 1994. Regulation 2 states that the regulations will be applicable to proposals relating to (a) grant of approval of the Council for establishment of new technical institutions including Universities or University Departments and deemed Universities and for technical institutions functioning on the date of commence of the regulations at degree and diploma levels (b) grant of approval of the council for introduction of any course or programme in the technical institution and technical departments or Universities or deemed Universities, (c) grant of approval of the Council for existing intake capacity of seats and for increasing the annual intake capacity of seats in courses and programmes. Regulation 4 deals

with requirement of grant or approval. Clause (1) of Regulation No.4 states that after the commencement of the regulations, (a) no new technical institutions or University Technical Department shall be started or (b) no course or programme shall be introduced by any technical institution, University Department or College or (c) no technical institutions, Universities or deemed Universities or University Departments or Colleges shall continue to admit students for degree or diploma courses or programmes; (d) no approved intake capacity or seats shall be increased or varied, except with the approval of the Council. Regulation 5 deals with forms of applications and Regulation 6 deals with the conditions for grant of approval. Regulation 7 deals with submissions of applications and regulation 8 deals with scrutiny of applications. As per regulation 8, the Bureau Regional Committee will make a preliminary scrutiny of the applications and if the application is found to be complete in all respects, then the Bureau RC will invite comments/recommendations on the applications from (1) the State Government concerned; (2) the affiliating University" State Board of Technical Education, Bureau MPCD, Bureau BOS, Bureau RA and the Regional Office. Regulation 8(5) provides that the Regional Office shall arrange visit of an Expert Committee constituted by the Council under sub-regulation (2) of regulation 9, and forward the recommendations of the Regional Committee to the Council's Office ordinarily within a period of two months or such other period as may be granted by the Council. Regulation 8(6) provides that the State Level Committee constituted under Regulation 9(4) shall consider the recommendations of the State Government and others mentioned in sub-regulation (4) and shall make its recommendations to the Central Task Force. Regulation 5(7) provides that the Central Task Force constituted under Regulation 9(5) shall consider the recommendations of the State Level Committee and shall make its recommendations to the Member Secretary of the Council. Regulation 6(8) says that if there is a disagreement in the recommendations made by the State Government, University or the Regional Committee, the Central Task Force shall invite representatives of the respective agencies for further consultations before making final recommendation. Regulation 6(9) provides that on the recommendations of the Central Task Force, the Council shall decide the question of grant of approval as sought for the applicant.

31. The observations and recommendations of the Expert Committee of the AICTE, which made inspection pursuant to the directions of this Court in W.P.No.6583 of 2000, which are approved by the AICTE, are:

As per the directions of the Hon'ble High Court of Andhra Pradesh dated 26.12.2000 (reference Writ Petition No.6583/2000 dated 13.11.2000) to AICTE to inspect the premises at Mahaboob Mansion, Malakp, Hyderabad to decide the suitability of the temporary location of the college at Shop No.50 and 51, Mahaboob Mansion for running the MCA programme.

Observations of the committee are as follows:

The temporary location is, indeed, in the market place, where there are

godowns, offices and banks, in and around. However, the area is clam and quite to run the academic activity.

32. There are two approach roads - one is approxm. 50-60 ft. wide and the other is approxm. 20-25 ft wide, without any obstruction.

33. The building is on two contiguous plots, each of 200 sq. yards area.

34. The temporary site (for the college) consists of two floors (I and II) having total plinth area of approxm. 8,000 sq. fit. With adequate space for class-rooms, library, computer laboratory, conference room, office space and other infrastructure.

35. Just at the back of the college there is another AICTE approved MCA institute named Dawar Institute of Computer Technology.

36. The computation facilities with furniture and air conditioners, and relevant legal software are available.

Recommendations:

Talking into account the overall environment, location, topography, facilities and space, the expert committee is of the view that the college be allowed to start functioning immediately at this temporary site.

37. Admittedly, in this case, it appears, that the University in principle has no objection for the grant of approval to the society for establishment of College for the course of MCA by the AICTE. In W.P.No.18687 of 2001, it has only sought for a declaration that the action of the AICTE in permitting the society to locate the technical institution temporarily in a market area and in granting extension of approval for the academic year 2001-2003. It has not challenged the initial permission granted to the society and the permission accorded by the Government in G.O.Ms.No.8 Higher education (EC1) Department dated 17.1.2000 for establishment of the college. Therefore, the dispute in this case centres round the question of temporary location of the college.

38. Before we delve into the matter, we may briefly refer to the decisions of the Apex Court on the issue involved herein.

39. We may first refer to the decision of the Apex court in State of Tamil Nadu v. Adhiyaman Education and Research Institute (supra). In this case, Adhimayan Trust was granted permission by the State Government to start a private engineering college subject to certain conditions. The University granted temporary affiliation for one year ie 1987-88 subject to fulfilment of certain conditions and the same was extended for 1988-89 subject to implementation of the recommendations of the inspection committee. Pursuant to the report of a High Power Committee appointed by the State Government in regard to the functioning of the college, a show cause notice was issued by the Director of Technical Education as to why the permissions should not be withdrawn. In the meanwhile, the University appointed a three-member inspection commission to

inspect the functioning of the college for the purpose of considering the question of continuance of the affiliation of the college for the academic year 1989-90. Even before the receipt of the report of the inspection commission, the Syndicate of the University based on the report of the High Power Committee appointed by the Government issued showcause notice as to why the affiliation already granted should not be withdrawn under Statute 44(A) of Ch. XXVI of the Madras University Calendar. The University rejected the request of the Trust for affiliation and directed it to make alternative arrangement to distribute the students already admitted to other institutions with adequate facilities. Two writ petitions were filed by the trust, one for prohibiting the Director of Technical education from taking further proceedings pursuant to the show cause notice and the other to quash the resolution of the syndicate and for a direction to grant provisional affiliation to the college. A learned single Judge allowed the petition filed for prohibiting the Director from taking further proceedings holding that the State Government had no power to cancel the permission granted to the Trust and under the AICTE Act, the Council has only power to give approval or disapproval and State Government or the University has no power. However, the later petition was dismissed holding that University could take action under Statue 44(A). On appeal by the Trust, the Division Bench quashed the resolution of the University syndicate.

40. The larger issue involved in the above case is (1) the conflict between Central and State Acts and (2) Central Act and Madras University Act and the statutes and the ordinances made thereunder. It was held that the Act falls under Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution and matters covered by Entry 66 of List I always remained within the sphere of Parliament and the State legislation falling under Entry 25 of List III to the extent it is in conflict with Central legislation or subordinate legislation under the same entry of List III or under Entry 66 of List I would be void. It was also held that that so far as the technical institutions are concerned, the norms and standards and their requirements for recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act.

41. The Supreme Court held that as far as the institutions imparting technical education is concerned there is a conflict between the Central Act and the Madras University Act and so far as matters entrusted u/s 10 of the Central Act is concerned, it is not the University Act and the University but it is the Central Act and the Council created under it which have the jurisdiction and to that extent after the coming into operation of the Central Act, the provisions of the University will be deemed to have become unenforceable in case of technical colleges like the engineering colleges.

42. It was however held that the provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for

grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Act.

43. The Apex Court held that the provisions of the Central Statute on the one hand and of the State statutes on the other, being inconsistent are repugnant with each other and consequently the central statute will prevail and the de-recognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

44. A Full Bench of this Court in *M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others*, in extenso dealt with the provisions of the AICTE Act and the University Grants Commission Act. This was a public interest litigation case based on the allegations that many technical institutions imparting MBA course in the State do not possess technical approval from AICTE and are acting in violation of Regulation No.4 and the university is allotting students and affiliating them without the approval of the Council. Relying upon the decision of the Apex Court in *Adhiyaman's* case, it was held that the AICTE Act is not repugnant to University Grants Commission Act and even if there is any repugnancy, AICTE being a later act and a special law for technical education, prevails over the University Grants Commission Act and is binding. According to this Court, the University Grants Commission Act was in the nature of general law in regard to imparting of education by Universities in general in respect of any matters covered thereunder. It was held that there was no excess exercise of power in framing the regulations. It was also held that Government, University and any other agency offering courses in Technical education falls within the definition of technical institute u/s 2(h) of AICTE Act and the regulations made thereunder.

45. It was however held that the provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Act.

46. In *Gokul Educational Trust v. The Commissioner and Secretary to Government Higher Education Departmental, Kerala* following the decision in *Adhiyaman's* case, the Supreme Court held that the procedure for obtaining the affiliation and conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act.

47. From the above two decisions, it is clear that in matters of institutions

imparting technical education, the Central Act will prevail over the State Act or the University Act or the Statutes of the University.

48. The latest decision on the issue is *Bharathidasan University v. All India Council for Technical Education*. The issue involved in this case is whether the Bharathidasan University created under the Bharathidasan University Act, 1981 should seek prior approval to start a department for imparting course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection as envisaged under the AICTE Act, 1987 and the regulations made thereunder, particularly Regulation No.4.

49. The factual aspects involved in this case are that a Writ petition was filed before the Madras High Court by the AICTE for a mandamus to restrain the University from running/conducting any courses and programmes in the technical courses without the prior approval of the AICTE.

50. The contention advanced before the High Court was that the University will not fall under the definition of "Technical institution" as defined u/s 2(h) of AICTE Act, consequently the regulation made for seeking prior approval of the AICTE was in excess of the regulation making powers of the AICTE and consequently are null and void and cannot be enforced against the university to the extent it obligates even Universities to seek and secure such prior approval from the AICTE.

51. A learned single Judge of the Madras High Court following the ratio of the decision of a Full Bench of this Court in *M. Sambasiva Rao alias Sambaiah v. Osmania University, Hyderabad* 1991(1) ALT 629 : 1997(2) ALD 1 allowed the writ petition and directed cancellation of the admissions made by the University which was confirmed by a Division Bench.

52. On a consideration of the various provisions of the AICTE Act, detailed supra, the Supreme Court in *Bharatidasan's* case held:

All these vitally important aspects go to show that the AICTE created under the Act is not intended to be an Authority either superior to or supervise and control the Universities and thereby super impose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its Departments or Units. A careful scanning though of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition will show that the role of AICTE vis--vis the Universities is only advisory, recommendatory and a guiding factor and thereby subserve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to the UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of Universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis--vis Universities and the activities and

functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited attention and consideration in their proper and correct perspective. The ultra activist view articulated in *M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others*, on the basis of supposed intention and imagined purpose of the AICTE or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and Universities irrelevant or even as non-entities by making the AICTE a super power with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them.

53. Referring to *Adhiyaman's* case, the Supreme Court observed that the question in the said case was as to the relative scope and extent of control of a professional engineering college by the State Government in the teeth of the AICTE Act and the powers exercisable by the AICTE under the provisions of the said Act., Rules and Regulations made thereunder. It was held:

The decisions, the correctness of which are under our consideration in this case, have not kept into consideration before the nature and character of the issues raised in the two decisions of this Court noticed above before relying upon the observations contained therein in dealing with the rights of an university constituted under a State enactment, which; apart from the enactment constituting it, is governed by the provisions of the UGC Act, also made by the Parliament.

54. It was further held that the decision of this Court in *Sambasivarao's* case has unduly over simplified and underscored the status, position, as well as the importance of the UGC by stating that the UGC was concerned only with the object of providing grants and financial assistance to educational institutions and serving as a recommendatory and regulatory body completely losing sight of its superior, vital and exclusive role ordained to it by the Parliament itself as an expert body in regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions and the standards of teaching and examination in universities. It was also held that a careful analysis of the various provisions contained in sections 10, 11 and 22 will further go to show that the role of interaction conferred upon AICTE vis--vis Universities is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such universities or scope for any direct action except bringing it to the notice of the UGC or other authorities only of any lapses in carrying out any directions of the AICTE in this regard, for appropriate action. It was also held:

55. While stating that autonomy of universities should not mean a permission for authoritarian functioning, the High Courts by the construction placed by them have virtually allowed such authoritarianism to the AICTE to such an extent as to belittle the importance and elegant role assigned to the universities in the educational system of the country and rendered virtually subordinate to the AICTE Act. Such construction as has been placed by the Court in Sambasivarao's case which found favour of acceptance of the Court in the present case ought to have been avoided and the same could neither be said to have been intended or was ever in the contemplation of the Parliament nor should the UGC and the universities been relegated to a role subordinate to the AICTE.

56. The Apex Court also held that Regulation No.4 compelling university to seek and obtain prior approval of AICTE before starting any new department or course or programme in technical education is void. Overruling the decision of this Court in Sambasivarao's case, the apex Court set aside the Judgment of the Madras High Court.

57. The Supreme Court held that since Section 10(1)(k) does not cover "university" but only a "technical institution, a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of technical institutions to apply for Universities when the Act maintains a complete dichotomy between a university and technical institution and accordingly held that Regulation No.4 compelling university to seek and obtain prior approval of AICTE before starting any new department or course or programme in technical education is void. It was held that Section 2(h) of AICTE Act clearly excludes "university" from the purview of technical institution. The Apex Court was of the view that when by definition a university is excluded from a technical institution, to interpret that such a clause or such an expression wherever the expression technical institution occurs will include a university will be reading into the Act and what is not provided therein.

58. No doubt the full bench decision of this Court in Sambasivarao's case was overruled by the Apex Court in Bhrathidasan's case. But the issue involved in Bhrathidasan's case is relevant only to the extent it was held by the Apex Court that prior approval of AICTE is not necessary in respect of a university before starting any new department or course or programme in technical education by the University. Though Adhiyaman's case was referred to, the Apex Court in Bharatidasan's case has not dealt with the issue of grant of affiliation to technical colleges by the University. Therefore, the law laid down by the Supreme Court in Adhiyaman's case followed by the Apex Court in Gokul's case that the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Act still hold good. In our view, there is no difference of opinion on the said aspect between the judgments of the Supreme Court in Adhiyaman's case and Bharathidasan's case. The overruling of Sambasivarao's case should be confined only to the

extent that the Full Bench of this Court held that the AICTE Act would prevail over the UGC Act.

59. We have also given our anxious consideration to the questions raised and answered by the respective counsel.

60. The main objection of the University for grant of affiliation is that the proposed site for temporarily establishing the college is situated in a market area which is being exclusively used for selling agricultural produce and live stock and the atmosphere is not congenial for temporarily establishing the college. The Inspection Committee of the AICTE visited the permanent accommodation of the college at Kanakamamidi as also the temporary accommodation at Mahaboob Mansion and certified about the suitability of the premises. Pursuant to the directions of this Court in W.P.No.6583 of 2000, another inspection was made by the Inspection Committee of the AICTE and found the places suitable for establishment of the college. We have gone through the Rules of Affiliation of Colleges or Recognition of Colleges or Institutions made under Statute No.(LL) of the University. The Rules do not provide for establishment of the institution at temporary places. But, affiliation is being granted from time to time to the institutions even when they are established at temporary places. In this background, the inspection made by the Expert Committee of the AICTE has relevance. The Expert Committee of the AICTE, which consists of experts in the field of education, has satisfied itself about the temporary location and recommended that the college be allowed to start functioning immediately at the temporary site. The Government also recommended to the University for grant of affiliation to the institution. Except stating that the college is situated in market yard and in unhygienic condition, the University has not stated that any other condition imposed by it is not fulfilled. How the place is unhygienic is also not specified. No material is placed on record that there used to be selling of live stock in the market yard. No doubt the report of the expert committee of the AICTE did refer to the aspect that the college was located in the market place. But, it has satisfied about all the requirements at the place. It was also mentioned in the report that another AICTE approved MCA institute was established in the premises.

61. Further, the approval of the AICTE was subject to the condition that the college shall shift to permanent accommodation within a period of two years from the date of approval. Therefore, in view of the recommendation of the expert committee of the AICTE, there cannot be any objection for the University to grant provisional affiliation. Further, after the shifting of the institution to permanent place, the University will have to again satisfy itself as to the compliance of the conditions for grant of continuance of affiliation after the expiry of two years period. If at the permanent place, the institution has failed to fulfil the conditions, the University would always be at liberty disaffiliate the institution. In this view of the matter, we are of the opinion that the objection of the University is not justified.

62. In our view, the University shall not refuse the affiliation on matters or grounds, which are already considered and covered by AICTE Act. The University can only refuse to grant affiliation to the institution approved by the ACTE on any other ground on its own not covered or concerning the matters according approvals under the AICTE Act. The expert body of the AICTE has satisfied about the suitability of the temporary location for the proposed college and when such expert body found the location suitable, the learned single Judge ought not to have interfered in the matter. In view of the decision of the Apex Court in Adhiyaman's case and Jaya Gokul's case, the University can prescribe any condition for grant of affiliation but such condition should not be inconsistent with the provisions of the AICTE Act and the regulations made thereunder.

63. On the basis of available material, it is always open to this Court to examine and judicially review the suitability or otherwise of the premises shown for locating the college temporarily. Such a review will be on the basis of records, the inspection reports by all the competent authorities like the University and the AICTE. The question as to whether Osmania University can make it's independent inspection or not to examine the suitability of the temporary premises or whether the view of the AICTE on this aspect is final are besides the point. Even assuming that the University or the AICTE has power, it is always open to this Court to judicially review about the suitability of the premises.

64. The learned single Judge opined that the second approval of AICTE was not in accordance with the directions given by this Court in W.P.No.6583 of 2000 dated 26.12.2000. It is not in dispute that the issue of suitability of the premises was agitated by Osmania University in the earlier round of litigation in W.P.No.6583 of 2000 wherein this Court held that the question as to whether the proposed location at Mahaboob mansaion is suitable for temporary establishment of the college is required to be gone into by the AICTE. This Judgment has become final. Therefore, this Court has constructively held that the suitability of location cannot be raised by the Osmania University. As rightly contended by Sri Manohar the above finding derives support from the judgment of the Apex Court in Adhiyaman's case and Jaya Gokul's case. This Court also held that it cannot express any opinion and decide about the suitability of the proposed location for establishing the college and such a course is not permissible in law and it may amount to this Court substituting its own opinion. This Court, therefore, directed the AICTE to forthwith inspect the premises at Mhaboob mansion and decide as to whether the same is suitable for temporarily establishing the proposed college. These directions have become final and the expert committee of the AICTE pursuant to the said directions inspected the premises and submitted its report recommending affiliation and as such the Osmania University is now estopped from raising the same contentions about the suitability of the temporary location. Therefore, the Osmania University is bound to accept the recommendations of the AICTE. The recommendations of expert committee of AICTE made as per the directions of this Court cannot be brushed aside. Our attention in this context was also drawn to para 40 of the Judgment in Adhimayaman's case relevant for

the purpose of this case, which reads as follows:

65. However, when the situations/seats are available and the State authorities deny an applicant the same, on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central Law, they act unconstitutionally. So also when the State authorities derecognises or disaffiliate an institution for not satisfying the standards or requirement laid down by them although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

66. The Apex Court in *Jaya Gokul's* case reaffirmed the judgment in *Adhiyaman's* case. In both the judgments it was held that the University could not impose any conditions inconsistent with the conditions imposed by AICTE. There was a direction to the University to consider the application of the appellant therein for final affiliation or continuance of affiliation on the basis of approval granted by AICTE in that case. The facts of the present case are similar to the one referred to above and the Osmania University cannot refuse to grant affiliation to the appellant college at the temporary premises approved by the AICTE and reconfirmed by the AICTE after the second inspection as directed by this Court in W.P.No.6583 of 2000 dated 26.12.2000.

67. As already held earlier, the Judgment of the Apex Court in *Bharathidasan's* case, has no application to the present case and it is distinguishable on facts and on law. The Apex Court has not differed with its earlier judgements referred to above. The only question of law that arose for consideration in that case was whether Bharathidasan University should seek prior approval of AICTE to start a department of its own for imparting a course or programme in technical education or a Technical Institution as an adjunct to the University itself to conduct technical courses of its choice and selection. In the said case, the Apex Court was interpreting Section 2(h), 2(f) and Section 10(1)(k) of AICTE Act. Paras 9 and 10 of the judgment clearly indicated what is the ratio considered and decided by the Apex Court in that case. The Apex Court clearly held that such prior approval from AICTE is not necessary.

68. In the order under appeal, the learned single Judge has categorically held that "it is clear from the ratio laid down in the above cited decisions that so far as granting approval for starting new technical institution the AICTE Act and Council created under it alone will have jurisdiction". But, the learned single Judge erred in holding that the objection of the University is justified. There is no conflict between the judgments of the Apex Court, which are of coordinate benches, and hence there is no need to consider which one is binding.

69. The argument of the University that the technical institutions proposed by the appellant society is a constituent college of Osmania University and therefore AICTE has no jurisdiction to grant approval, and provisions of AICTE Act and regulation have no application and Osmania University alone is competent to

grant even approval has no merit. The said contention was never advanced either in W.P.No.6583 of 2000 or before the learned single in the Judgment under appeal. We are, therefore, of the view that the learned single Judge erred in declaring the letter of AICTE in F.No.A042/ET-APR (MCA)/99 dated 22.6.2001 granting extension of approval to the society for temporarily establishing the college at Malakpet as illegal. As noticed earlier, the University has no objection for the grant of approval to the society for establishment of College by the AICTE nor it has challenged the permission granted by the State Government in G.O.Ms.No.8 Higher Education (EC1) Department dated 17.1.2000. The only objection it has put forward is as regards the temporary location of the institution.

70. The contention of Mr. Subrahmanyareddy that when there is disagreement in the recommendations made by the State Government, University or the Regional Committee of AICTE, the Central Task Force shall invite representatives of the respective agencies for further consultations before making final recommendation has also no merit. We have earlier noticed Regulation 6(8) of the AICTE regulations, which refers to Central Task Force inviting the representatives of the respective agencies for further consultations before making final recommendation as regards grant of approval. In our considered opinion, the said regulation is applicable in cases where there is disagreement between the agencies in the matter of grant of approval and not in matters of affiliation. In the instant case, already approval has been granted by the AICTE and the State Government has also granted permission to start the College. The dispute is only as grant of affiliation by the University.

71. For the reasons aforesaid, we are of the view that the Judgment under appeal is not sustainable. We are of the opinion that the University shall consider the case of the appellant afresh for grant of affiliation in accordance with its statutes, which are not inconsistent with the provisions of the AICTE Act, and the regulations made thereunder. We, therefore, set aside the order dated 21.4.2002 passed by the learned single Judge in W.P.No.10435 of 2001 and W.P.No.18687 of 2000. Consequently, the appeals are allowed. No order as to costs.