

(2007) 12 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (C) 4037 of 2007

CFA Institute and Another

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 23, 4, 5(2)
Constitution of India, 1950 — Article 254, 372
Indira Gandhi National Open University Act, 1985 — Section 4, 5
University Grants Commission Act, 1956 — Section 2, 22, 3

Citation : (2007) 12 ILR Delhi 38

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Shanti Bhushan, Valmiki Mehta, Manu Nair, Mark D'Souza, Sanjay Pathak, Rajendra Kumar and Ashish, for the Appellant; Neeraj Kishan Kaul H.S. Chandhok, Manu Krishan, Abdullah Hussain and Ravi Nair for R-2 and Gopal Subramaniam, ASG, Jatan Singh, Aman Ahluwalia and Tarun Chandiok for R-1, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The first petitioner No. 1 (the CFA Institute, hereafter called "the Institute") is a non-stock corporation incorporated under the laws of Virginia (USA). It claims to be a global professional association with a membership of over 89,000 individuals and 134 member societies across the world. Its individual members hold either the Chartered Financial Analyst (CFA) designation or are active in the investment business. For membership, or to be awarded the CFA Designation, one should possess at least four years' professional work experience in the investment profession. The CFA Designation was first awarded in 1963; it connotes professional excellence in the global investment community. Employers and investors throughout the world consider the CFA designation awarded by the Institute as the definitive standard to measure investment analysis competence and integrity.

2. To attain the CFA Designation one must qualify in three levels of tests, conducted by the Institute. It provides testing on one day in June for all three levels and in December of each year for the first level alone. The tests are conducted in rented premises in every country, using local proctors and support, with the attendance of one of the Institute's employees to monitor the quality. The institute claims to be only a testing and certifying organization, suggesting a self-study course with tests for its candidates on two days a year in India. It claims that CFA testing does not involve ongoing educational activities requiring a local collaborating partner. The course of study for every level is suggested and a body of knowledge from which the testing is drawn, is provided. Everyone enrolling for the programme has freedom to determine his own method of preparation. No instructional programmes are offered by the Institute; after qualifying the three levels of tests / examinations, an aspirant should further establish his or her professional experience in the financial field and provide professional references; they are closely scrutinized by the Institute. The candidate should also submit to ethical rules of the Institute, and pay professional dues to retain the CFA Designation.

3. The petitioners aver that qualifying in the examination itself does not entitle someone to the CFA Designation. It may be revoked for failure to pay the required membership dues or for ethical violations. The second petitioner is a candidate, aspiring the CFA designation or certification and is a citizen of India. Both petitioners are aggrieved by the order dated 18.05.2007 ("the impugned order") passed by the All India Institute of Technical Education (hereafter "AICTE"). That order dated 18.05.2007 is as follows:

I am directed to refer to the show cause notice issued by this Council vide letter No. 37-3/Legal/AICTE/2005 dated 22.03.2007 as to why action should not be taken against your institution for violation of AICTE regulations dated 16th May 2005 for entry and operation of foreign university/institution imparting Technical Education in India. Your responses dated 02.04.2007, 09.04.2007 and 10.04.2007 received in reply to the show cause notice that the CFA programme conducted by CFA Institute do not come under the purview of AICTE have been considered by the Council and found not acceptable since Technical Education programmes/courses at all levels including certificate, diploma, post diploma, degree, post graduate and research of any duration if they are conducting directly or in collaboration with a foreign university/institution require AICTE approval. All such foreign universities / institutions must obtain AICTE approval as per the regulations notified.

Since your institution has failed to obtain mandatory approval from AICTE under the Regulations notified by the council vide notification No. 37-3/Legal/2005 dated 16.05.2005, the Council has no option but to initiate necessary action against your institution.

You are Therefore advised to cease the operation of your institution in respect of conduct of CFA programme in India with immediate effect. The concerned

authorities including State Govt./UT are being advised to take appropriate measures to shut down / close down operation of your institution by invoking appropriate provisions of civil and criminal laws applicable in such cases.

CFA PLEADINGS and SUBMISSIONS

4. The Petitioners challenge the jurisdiction of AICTE and legality of the impugned order. They rely upon the AICTE Act, 1987 (hereafter "the Act"), particularly the definitions of "technical Education" (Section 2(g)); "technical institution" (Section 2(h)); "University" [Section 2(i)]. It is also urged that the functions of AICTE do not embrace any kind of control over organizations like the Institute. It is further averred the Regulations framed by the AICTE, ostensibly invoked in support of the impugned order i.e the Regulations for Entry and Operation of Foreign Universities in India Imparting Education, 2005 (hereafter called "the Foreign Universities Regulations") in exercise of powers u/s 23 read with Section 10 of the Act, visualize coverage of foreign Universities and Institutions which conduct courses culminating in the award of Diplomas and Degrees including graduate and doctoral programmes. None of these provisions, it is alleged are applicable to the CFA designation programme, designed and conducted by the Institute.

5. The Petitioners allude in some detail to a pending litigation on the file of this Court, CS/OS No. 210/2004 whereby Institute of Chartered Financial Analysts, arrayed as defendants, were enjoined by an order dated 4.8.2006 from using trade and service marks such as CFA, Chartered Financial Analysts, the Institute of Chartered Financial Institute of India, ICFA and ICFAI and other marks which could be identical with or deceptively similar to such marks. It is claimed that on 30.1.2007, the ICFAI, Tripura University, sponsored by ICFAI, notified the CFA Programme, in the guise of a purported legislative mandate, called for admissions. The Petitioner cautioned members of the general public by notifying about the existence of this Court's order in the pending suit. It is alleged that the ICFAI, Tripura University, filed a writ petition before the Guwahati High Court against the Institute alleging that it was operating its educational programme for Indian students without registration under the Foreign Universities Regulations. It is claimed that the Guwahati High Court directed the AICTE to examine the veracity of allegations brought to the notice of the Court and take appropriate action. Pursuant to this order a show cause notice was issued on 22.3.2007, to the petitioner institute, notifying it about the Foreign Universities Regulations and asking it why action should not be taken against it. The Petitioner responded on 4.4.2007, outlining the nature of the course and claiming that it did not fall within the purview of the Act nor was it a technical Institution or conducting technical education. It, denied coverage of the Act and the foreign Universities Regulations.

6. It is claimed that Institute is not a University or a Institution; it does not conduct any classes of education by any means whatsoever. It does not have any faculty class rooms or classes nor is involved in teaching. It also does not issue

any degree or diploma and does not mandate any course of study. Candidates aspiring for CFA Examination train themselves and appear in test held by the Institute. It is claimed that the foreign University Regulations apply to only those institutions which operate in India. The Institute does not operate in India. The impugned order is also challenged on the ground that it nowhere discloses application of mind to the reply given by the Institute to the show cause notice issued by the AICTE.

Pleadings Of The Respondents

7. During the course of proceedings after considering arguments of the parties including the AICTE this Court had by an interim order dated 31.5.2007, felt that the proceedings pending before the Guwahati High Court did not inhibit exercise of jurisdiction. Upon considerations of the materials a prima facie view was formed that the Institute did not fall within the expression "Technical Institution" under the Act and also that it was not imparting "Technical Education". Therefore, the impugned order, was stayed till disposal of the proceedings to the extent that the Institute was permitted to conduct the imminent examinations for all the three levels of its programme, on 3.6.2007.

8. After the above event, an application for intervention was moved on behalf of the CFAI University, Tripura (hereafter called the "Tripura University"). That application was allowed on 11.7.2007.

9. The AICTE in its return on 1.8.2007 denies that it lacks jurisdiction over the Petitioner Institute. It briefly adverts to the objects of setting up of the Council. The AICTE was constituted in 1945 through a Government Resolution, as a National Expert Body, to advise the Central and State Governments to ensure coordinated development of technical education, according to approved standards. It discharged its mandate efficiently, which assisted development of technical education in the country. However, after a large number of private institutions, Colleges and Polytechnics were established in disregard of guidelines evolved by it, due to a felt need to enact a statutory framework, arming the Council with powers to regulate and mandate standards a National Working Group was set up in November, 1985. Based on its recommendations and also the National policy on Education, 1986, the Act was enacted and assented by the President on 23.12.1987. It is claimed that the expressions "Technical Education" and "Technical Institution" are defined expansively to cater to all manner of education and educational programmes by verisimilitude of institutions. The Council's powers extend to diverse activities particularly evolution of coordinated development of technical education in the country at all levels; laying down the norms and standards for course and curricular, physical infrastructure facilities, staff pattern, quality of instructions, assessment and examination; granting approval for starting new technical institutions and for introduction of new courses or programmes; setting up a National Board of Accreditation to periodically conduct evaluation of technical Institutions or programmes on the basis of guidelines, etc. The AICTE also adverts to its powers to frame

regulations, contained in Section 23 of the Act.

10. It is averred that till 2004 the Institute was known as the "Association of Investment Management and Research" (AIMR) and that it had boastfully claimed in the past that its programmes were equivalent to MBA Programmes. Later the Institute designated itself as the "CFA" Institute. It is claimed that the AICTE has sufficient powers to regulate educational activities and prescribe standards. The position of the Petitioner that it is not on imparting education and that it does not fall within the purview of the Act or the foreign University Regulations as disputed.

11. The stand of the ICFAI University, Tripura is that it was established through legislation by the State of Tripura and its status as University was recognized by the University Grants Commission through a Notification dated 1.11.2006. It is alleged that by virtue of provisions of the Act it is entitled to confer degrees, diplomas, charters, certificates and other academic definitions including CFA Charter and designation.

12. A reference has been made to the litigation, by the Trade Mark Authority in the United Kingdom, on 31.10.2006 of the Petitioner Institute's application for registration of the collective trade mark "Chartered Financial Analysts". It claims that by issuing advertisements in the press the Petitioner Institute is seeking to mislead the press of the general public into proving that its Regulations were duly credited whereas actually that was not the case. The ICFAI University also adverts to its petition filed in the Agartala Bench of the Guwahati High Court and the orders made in those proceedings which eventually leading to the impugned order by AICTE.

SUBMISSION OF PARTIES

13. Mr. Shanti Bhushan, learned senior counsel submitted that the CFA designation for which three level tests are conducted by the Petitioner Institute cannot be characterized as technical education; and that the Petitioner Institute is not covered by the expression "Technical Institute". He submitted that since long the Petitioner Institute has been conducting examinations in over 134 countries. The Institute's Examination Centres are located in four metropolis and approximately 7000 students appear from India alone.

14. Learned Counsel submitted that the Institute is neither concerned with any of the activities such as education in Engineering, Architecture, Town Planning, Management, Pharmacy and Applied Arts and Crafts. It is simply an organization of professionals who designate aspiring candidates qualifying in the examination and fulfilling the other notified criteria. The only activity carried out by the CFA Institute is to conduct the three level examinations. It does not have class rooms; it does not have faculty members. The CFA Institute does not involve or engage itself in any educational activity. It merely conducts the tests which lead to award of the Charter, that is recognition of the attainment of a professional standard or milestone, no more, no less. It can never answer the description of a

degree, diploma or a Doctoral Programme. The object of the CFA Institute is to build capacity, certify those who fulfill such criteria and enrich the investment business. Those who enroll in the CFA Programme, have to necessarily hold qualifications and should have atleast four years professional experience in the investment business.

15. Learned Counsel submitted that the CFA Institute have no presence in India and, Therefore, does not fall within the expression "Technical Institution". Indeed it is not even an Institution; it does not offer courses or programmes of Technical Education. Counsel argues that the definition "Technical Institution" and "Technical Education" have definite connotation are to be read in the context of each of the expressions. The Petitioner Institute does not conduct any course which is notified as "Technical Education". In this regard reliance was placed upon Notifications whether the AICTE's jurisdiction was extended to courses such as Hotel Management etc. Learned Counsel has submitted that the CFA Institute has been conducting the tests for the last 40 years; it does not ever claim to award degrees or diplomas. To award degrees and diplomas, the concerned Organization or Institution must necessarily engage itself in imparting education. This in turn implies engaging in various activities. The Petitioner does not carry any of these activities which led to award of such degree or diploma. Counsel contended that the definition of technical Institution and the various provisions of the Foreign University Regulations, particularly Rules 2,4 and 5 read with the prescribed forms suggest that in order to answer the description of "Institution", there must be physical presence and the concerned body should be a "Brick and Mortar" Institution. The Petitioner does not have any such infrastructure. It merely hires temporary space in India, when the tests are conducted twice in a year.

16. Mr. Shanti Bhushan contended that the expression "Education" holds the key in the context of the present dispute. It has to be understood in the context of the AICTE Act and the Foreign Universities Regulations, to include structured education and not interpreted expansively. He relied upon a judgment of the Supreme Court reported as *The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore*, . The various elements that go into education are the existence of the Institution, regular and systematic study by the pupils or candidates, existence of a teaching staff, institutional involvement by the institute through the teaching staff, prescribing curricula or a definite course of study, periodic evaluation of students, culminating in the award of a degree or diploma. It was argued that none of these elements exists and that the Petitioner institution only conducts the three examinations besides suggesting a course of study. The aspiring candidates who have to qualify the examination are left free to study the suggested topics in the manner they choose; there is no interface with any teacher nor is there any contact programme to assist the candidates at any stage.

17. Learned Counsel submitted that although the expressions "degree" and

"diploma" have not been defined by the Act or any of the Regulations, they have to be understood, within the existing regulatory framework to mean those which can be validly issued according to law. The only provision governing Section 22 of the University Grants Commission Act, 1956 clearly defines as to who can award such academic distinctions and degrees. The Petitioner neither claims to be one such nor answers that description.

18. Learned senior counsel next contended that the stand of AICTE, appeared to be that the CFA Institute was conducting technical education in so far the programme syllabi; and testing contained elements of management. He submitted that the CFA designation specifically targets topics on investment business. If some subjects that are taught in management institutes (in Financial Managements Programmes) overlap with the topics leading to the CFA test that alone cannot lead to any inference that the CFA Programmes concerns study in Management. Learned Counsel submitted that in order to be covered by the Act the Regulations framed in it, existence of a few elements or topics, which form part of a Management course are not enough. The entire activity should answer the description of the term, and the course content should pre- dominantly be a technical one. The Petitioner Institute does not fall within the expression "Institute" nor is imparting any technical education. The mere fact that some topics overlap with Financial Management Programmes of Institutions which award diplomas and degrees, Therefore, cannot be conclusive on the issue. The object of the CFA designation or Charter is not to produce Financial Management Professionals but professionals, who would be used in the investment industry.

19. Learned Counsel submitted that the AICTE handbook for approval process for establishing new Technical Institutions illustrate the nature of Management courses as it refers to only three topics of such courses i.e., Post Graduate Diploma in Management, Post Graduate Diploma in Business Management and Masters in Business Administration. It was submitted that the focus of the CFA Programmes is evaluation of competence and the ability of a candidate to work as Financial Analysts. The object of the Management course is to impart skills needed for directing or controlling resources in any business or commercial organization or enterprise. The skills tested by the CFA Programme could include some skills developed by a Management Programme, but that does not make the CFA Programme a Management Programme. Financial analyses requires ability and training in mathematics, financial, modeling and other analytical skills as opposed to management skills which comprehend leadership, planning and organization. It was also urged that just because the CFA Programmes Test Management skills it cannot be suggested that it is a Management institutions Portfolio Management deals with individual securities and the theory and practice of combining securities and portfolios with the object of reducing risks. It is a specialized skill and a Management graduate is not qualified for acting as a Portfolio Manager.

20. It is contended that if the impugned order is left undisturbed it will lead to

excessive coverage of AICTE's jurisdiction over-reaching its mandate under the Act. Professional organizations which issue professional designations would all be covered. Two members of the Actuarial Society of India, Information Systems and Audit Control, Certified Institute of Internal Auditors and even testing Bodies offered by TOFEL; IELTS and GMAT would be covered. If upheld, the impugned order would permit the AICTE to exercise jurisdiction world wide because several overseas Organizations hold tests in India which are attempted by Indian candidates.

21. It was lastly urged that the AICTE's mandate does not extend to Distance Education Systems which are covered by the Indira Gandhi National Open Universities Act, 1985 (hereinafter called "the IGNOU) Act. According to Section 4 of that Act, the IGNOU mandate is to discern knowledge and by diverse means including distance learning, coordinate and determinate mandate in such systems. The IGNOU has every right, and power u/s 5(2) to take steps deemed necessary for promotion of its courses and distance education systems, and for the determination of standard of teaching and evaluation of research in such systems.

22. Reliance has also been placed upon the guidelines evolved by the Distance Education Council concerning minimum standards by the Distance Education Council of the IGNOU. It was contended that these provisions collusively established that AICTE claim primacy and if at all any authority has jurisdiction or power, it is the IGNOU. The impugned order is, Therefore, devoid of jurisdiction.

Submissions on behalf of AICTE

23. Mr. Gopal Subramanian, learned Additional Solicitor General and Mr. Aman Ahluwalia, learned Counsel submitted that a glance at the course content prescribed by the Petitioner for CFA program leaves little doubt it is an intensive educational program in the field of "management". A summary chart comparing the course content of the petitioner Institute with leading Management Schools in the country was relied upon to show a high degree of correlation in the syllabi. Reliance was placed upon a chart showing similarity in the course description on about 15 topics or subjects, with financial management. It is submitted that the course content is of a highly specialized nature. The curriculum includes a section on Quantitative Methods which contains detailed modules on statistical analysis and probability theory, including sub " modules on the measures of skew ness and kurtosis, and the Bays theorem; Skew ness refers to the measures of asymmetry of probability distribution of a real valued random variable, and kurtosis refers to the measures of peaked ness of probability distribution of a real valued random variable. The Bayes theorem is a result in probability theory which relates the conditional and marginal probability distribution of random variables. The module on economics includes sections on basic micro economic theory (Supply, demand, equilibrium price, price elasticity " in both competitive and distorted markets), National Income Accounting, and Macro " economic

theory (Monetary and fiscal policy, and their influence on aggregate demand and supply). The curriculum also includes modules on Financial Statement Analysis, Corporate Finance, Analysis of Equity and debt investments, Derivatives, and Alternate Investments. These include technical concepts such as Dow and Elliot Wave, and a detailed analysis of the Black "Schools model" which is a theory for option pricing. The module on derivatives also includes sections on "delta hedging, "gamma hedging", and "vega hedging. Finally, the curriculum includes a module in portfolio management, which is geared towards training fund managers. The module is highly technical and includes a section on risk adjustment performance measures such as Sharpe Ratio, Treynor Ratio, and Jensen's Alpha.

24. It was submitted that the topics falls within the generic domain of business management, evident from a comparison with the syllabi at leading management schools. Thus, there can be no doubt that the CFA program falls within the ambit of the term "management". It was submitted that the CFA program is an educational program conducted by the petitioner Institute, and not merely a certification procedure where passing the examination is one of several requirements. The CFA Charter is not to the SAT, GMAT, GRE, TOEFL and other such aptitude tests. These aptitude tests are preliminary tests based on which Universities abroad can assess candidates in a standardized manner. Along with a candidate's academic record, references, extra-curricular activities, demonstrated leadership, and personal statement, these test results form an input into the admission process. The standardized tests typically only test candidates on basic mathematics, English vocabulary, and reading comprehension. The CFA Charter, by contrast, requires specialized knowledge of various technical concepts in the financial management field. This is evident not only from the curriculum but also from the sample questions for the CFA examination.

25. The submission of the CFA Institute that it only conducts testing, is challenged as unfounded in fact. Counsel submitted that the Institute provides comprehensive course materials to candidates to equip them for each of the CFA Examinations. In 2007, the Level I curriculum comprised of "six self contained volumes. These volumes include all the required reading materials, problem sets and solutions, and the Curriculum was priced at \$395. The CFA curriculum is thus not a mere syllabus, but inclusive of content. It is the prescribed course material based on which candidates are expected to prepare for the examination. The course materials are put together by purchasing the rights to copyrighted third party material and compiling them. The Petitioner Institute itself declares that "providing the curriculum to all registered candidates serves our educational mission and ensures that all candidates will have equal access to this foundational material. There is no substitute for studying the curriculum". The preparation and distribution of such course materials, followed by testing and certification, amounts to an educational program. It is analogous to any correspondence course or distance-mode education. Further, certain study

materials presume that candidates already have a basic mastery of introductory University level courses " thus indicative of that fact that the CFA is a post " graduate level degree/ diploma/ certification. Even the Financial Times has said that the CFA exam, relatively new outside the US, is effectively a post graduate degree in investment management, focusing on portfolio construction, economics, accountancy and ethics.

26. Counsel submitted that the Petitioner Institute itself describes the CFA program as a "self-study graduate level programme". As of 2008, the CFA curriculum would be mandatorily included as part of the registration fee. Thus, while it was earlier open to candidates to appear for the examination without studying from the prescribed materials " candidates would now have no option but to purchase the CFA curriculum. This "bundled curriculum" lends further credence to the proposition that the CFA program is an educational program.

27. Counsel submitted that the Institute has reached an agreement with several Universities/ Schools so that on complying with certain conditions (such as offering 70% of the CFA curriculum as part of their degree), the University/ School would get CFA Program partner status. The Goodman Institute at the John Molson School of Business at Concordia University is one such CFA Program Partner, which offers the entire CFA curriculum. The Faculty at the Goodman Institute refer to their qualifications as "CFA, Phd" " thus suggesting that the CFA is a masters level qualification. Such accreditation arrangements and the fact that Universities offer a similar curriculum to the CFA indicate that the curriculum offered by the petitioner Institute is a post- graduate level educational program. The petitioner Institute has several CFA program partners including the said business school at the University of Oxford, and the London business school.

28. Counsel urged that in 1991, ICFAI " at the time the Indian collaborator of the Petitioner Institute " had applied to the AICTE seeking recognition of its CFA program as a post " graduate qualification in financial management. Although approval was sought by ICFAI, the letter seeking approval references, at the foot, mentioned the collaboration between the Petitioner Institute and ICFAI. Further, at the time the approval was sought, Dr. Alfred Moreley " the then President of the CFA Institute was on the Board of Governors of ICFAI. In the letter seeking approval, the CFA Program is described a "distance education program". As a collaborating partner at the time the approval was sought, this stand must be attributed to the petitioner Institute as well " and they are estopped from now contending that they are not conducting an education program. It was urged that various universities in India, recognized at ICFAI's request, the CFA program, as equivalent to a post graduation for the purpose of admission to a PhD program. Thus, it is amply evident that both substantively and in terms of the recognition accorded to the CFA Charter " it is a post " graduate level educational program.

29. It is submitted, that the determination of whether a particular course falls within the definition of "technical education" (as defined in Section 2(g) of the

Act) or not, cannot depend on bare and unsupported contentions as to the purport of one or the other term in the statutory definition. Rather, such a determination must be made in a more purposive manner " based on a careful consideration of the role and functions of the AICTE, and the manner in which such functions are to be discharged. The growth of industries in the post " independence period required trained qualified professionals in various fields. The need for management education in a formal way was first felt in the 1950s. In 1954, the Government of India set up the Board of Management Studies under AICTE to formulate standards and promote management education. Several other steps were also taken " including the setting up of the Indian Institute of Management in the 1960s. In the 1980s, there was shift in education policy, and private organizations were involved in the setting up of Technical and Management Institutions on self financing basis. This shift led to an unprecedented expansion of Technical Education Institutions. It is against this backdrop that the Respondent Council was vested with statutory powers, under the AICTE Act, with a view to ensuring the proper planning and coordination of the Technical Education system in the Country.

30. Counsel submitted that the Act was passed under the power vested in Parliament by Entry 66 of the Union List (Seventh Schedule to the Constitution of India), which relates to the " Coordination and determination of standards in institutions for higher education or research and scientific and technical Institutions. The preamble to the Act states that it is an enactment to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the Technical Education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Section 2 (g) defines "technical education"; Section 2(h) of the Act defines " technical institution" .Section 10 (1) sets out the powers and functions of the Respondent Council. It was urged that the importance that the Supreme Court has placed upon the statutory powers of the AICTE can be seen from several decisions. Counsel for the State relied upon the decision in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , to stress the primacy of AICTE as a regulatory body of technical education.

31. Counsel relied on the judgment in Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, , and submitted that AICTE had granted approval to the petitioner to set up an engineering college, but the State Government refused permission. The question was whether it could do so. The Supreme Court again answered the questions in the negative. It specifically held that "the State could not have any "policy" outside the AICTE Act.

32. It was contended that a very specific expectation to the above rule was

carved out in Bharathidasan University and Another Vs. All India Council for Technical Education and Others, . The Court in that case held that Universities were excluded from the definition of technical institutions, and Therefore the AICTE Act only applied to Universities where specific mention was made in the substantive provision. In cases where no additional specific mention was made, Universities were excluded from the ambit of the Act.

33. It was submitted that supremacy of the AICTE in matters related to the coordination of technical education and the maintenance of standards, is recognized by the Supreme court. The fact that even State legislature have been subordinated to the AICTE in matters that fall within its domain, discloses its comprehensive ambit. Effective coordination of technical education in the country can be possible if the AICTE is vested with such overriding powers. It was urged that Section 23 of the Act vests the council with the power to make Regulations for Entry and Operation of Foreign Universities/Institutions imparting Technical Education in India, 2005 (2005 Regulations). Clause b. of the Regulations under the heading "Objectives" declares that they are to systematize the operation of Foreign Universities / Institutions already providing training and other educational services including that of coaching of students, in India leading to award of degree and diploma in technical education, either on their own or in collaboration with an Indian educational institution, under any mode of delivery system such as conventional/formal, non- formal and distance mode. Another important objective is enforcement of accountability of such educational activities by Foreign Universities/ Institutions in India. The reference to "distance mode", and to " all such educational activities" indicates the breadth of regulatory ambit. Thus, it cannot be canvassed that the Regulations are to apply only to brick and mortar institutes conducting technical education programs. Such a contention would be plainly contrary to the board regulatory ambit of the Respondent council, as found in the Act and Regulations. The petitioners rely on the information sought to be elicited in the application forms " and claim that references to land, buildings and factuality imply that only brick and mortar institutes with teaching faculty are intended to be covered. It is submitted by counsel that the comprehensiveness of norms that govern the approval process (in terms of the information that is sought from applicants) cannot be determinative of the scope of the Regulations. Relevant Provisions

34. Before a discussion on the rival merits, it would be necessary to extract relevant provisions of the Act and Foreign University Regulations. They are reproduced below:

The All India Council for Technical Education Act, 1987 [Act No. 52 of 1987]

2. Definitions. " In this Act, unless the context otherwise requires:

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(g) Technical Education" Means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy

and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(h) Technical Institution" means as institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the council, by notification in the Official Gazette, declare as technical institutions;

(i) University" means a University defined under Clause (f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution deemed to be a University u/s 3 of that Act.

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10. Functions of the Council. " (1) It shall be the duty of the council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the council may, -

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education.

(b) co-ordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the fund of the council such grant on such terms and conditions as it may think fit to "

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission;

(d) promote innovations, research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of education process ;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems including research and development organizations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in service training of teachers and

identify institutions or centres and set up new centres for offering staff development programmers including continuing education of teachers;

(i) lay down norms and standards for courses, curricular ,physical and instructions facilities, staff patters, staff qualifications , quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and filed including conduct of examination and awarding of membership certiticates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialization of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the council within the stipulated period time and take such other steps as may be necessary for ensuring compliance of the directions of the Council; take steps to strengthen the existing organizations and to set up new organizations to ensure effective discharge of the council's responsibilities and to create position of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advice the Commission for declaring any institution imparting technical education as deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the council, or to the commission or to other bodies, regarding recognition or de- recognition of the institution or the programme;

(v) perform such other functions as may be prescribed.

xxxxxxxxxxxxxxxxxxxxxx 23. Power to make regulations. " (1) The Council may, be notification in the Official Gazette, make regulation not inconsistent with provisions of this Act, and the rules generally to carry out the purpose of this Act.

xxxxxxxxxxxxxxxxxxxxxx (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) regulating the meetings of the Council and the procedure for conducting business thereat;

(b) the terms and conditions of service of the officers and employees of the Council; regulating the meetings of the Executive Committee and the procedure for conducting business thereat;

(d) the area of concern, the constitution, and powers and functions of the Board of Studies;

(e) the region for which the Regional Committee be established and the constitution and functions of such committee.

ANALYSIS AND FINDINGS

35. The present case involves resolution of the following issues and questions:

(i) Whether the Petitioner Institute is involved or engaged in emerging technical education;

(ii) Whether the provisions of the AICTE Act and the foreign Universities Regulations are obligation to it.

Regarding Point No. 1

36. The principal argument on behalf of the Petitioner was that it is not in any manner engaging in education. Reliance was upon the judgment of Lokshikshana Trust that education, cannot be given a wide and extended meaning because that would result in expanding the object and purposes of the Act. In that sense traveling, reading newspapers and magazines learning by experience are all forms of education, where one learns. Therefore, the expression "Education", it is urged should receive a narrow construction. The interpretive process should focus on the object of enactment which is targeted toward systematic instruction.

37. The Supreme Court had in Lokshikshana Trust said that education "is the systematic, instruction schooling or training given to the young in preparation for the work in life. It also connotes the whole course of scholastic instruction which a person had received".

It was further urged that except holding tests, which lead to the award of a Charter, the Petitioner Institute is not involved in any of the activities which would typically mean education. It has no class rooms; no faculty; no teaching regime; no instructional interface and no contact programme with those aspiring the CFA designation. It merely recommends to the candidates, to undergo study of certain topics and involves itself with the organization of examinations. These, by themselves do not lead to the inference that the Institute is involved in education. It is also urged forcefully that no diploma or degree is awarded to the

successful candidate at the end of the process.

What is education

The central task of education is to implant a will and facility for learning; it should produce not learned but learning people. The truly human society is a learning society, where grandparents, parents, and children are students together.

Eric Hoffer

The only purpose of education is to teach a student how to live his life-by developing his mind and equipping him to deal with reality. The training he needs is theoretical, i.e., conceptual. He has to be taught to think, to understand, to integrate, to prove. He has to be taught the essentials of the knowledge discovered in the past-and he has to be equipped to acquire further knowledge by his own effort. Ayn Rand

38. Apparently there is no one universal definition agreed to by all, about what is education; this state pervades the field of educators. The meanings attached to the word are complex beliefs arising from the concerned individual's values and experience. According to Webster's Dictionary, education is the process of educating or teaching (not terribly instructive). Educate is further defined as ``to develop the knowledge, skill, or character of...'' These give an insight to the purpose of education, which is the development of knowledge, skill, or character of the learner or student. This definition is as opaque as the previous one; it throws up more questions, i.e. what are develop, knowledge, and character. Knowledge is a pre-existing body of information. Considerable research has led scholars and educationists to conclude that knowledge arises in the mind of an individual when he or she interacts with an idea or experience.

39. If the question as to what is education had been asked a few hundred years ago, the answer would have been entirely different; the way life is led, pupils taught and institutions organized has changed, with the times; perhaps too rapidly over the last few years. Thus, the answer to what could have been a fairly simple query has now assumed complex proportions. Knowledge and its dissemination has assumed several dimensions. At one level, knowledge and skills which were gathered from experience, and imparted by professionals and guilds to apprentices, has now been collected and organized in a systematic manner, for sharing with those desiring it; it forms an entire body of professional education (e.g. architecture, medicine, nursing, pharmacy, engineering, applied art, communication, and so on). At the another level, a knowledge driven society, with ever expanding horizons of information availability, which affords to information seekers access to what they seek at incredible speed, gropes and challenges traditionally held methods of knowledge dissemination. Constraints of time, space and method have dissolved, leaving the teacher and the taught multi modal options for delivery and assimilation of education content.

40. The recent development and refinement of systems in distance learning;

which is not constrained by geographic considerations and affords opportunities where traditional educational has difficulty in operating, has exploded previously held strong positions about what is education and learning. Distance learning contain a few, and not all elements that go into the traditional educational programmes. Thus in such situations, there is no need of class rooms, little or no contact programme with the Institution; little or no teaching or teaching through distance process; evaluation through examination mode. The distance in education process may include " but not necessarily " a component of internal evaluation during the programme. Nevertheless it is now accepted as a universal mode of acquiring knowledge, skills and qualifications.

41. If one were to view the Petitioner's case from the interpretive process imported by it through the decision in Lokshiksha Trust, the conclusion would be that it is not imparting any education. Yet subsequent development in technology and the way learning is viewed, would disclose that though seemingly distant from traditional modes of imparting education, yet the content of the Institute's programme in fact fulfills the most important elements. The existence of a three tiered examination process which each aspirant has to, of compulsion qualify in, the description of a mandatory eligibility criteria i.e having worked as investment professional for four years; the existence of a structured syllabi or curricula which is also now part of the programme (and for which the candidate pays), the holding of an examination, do imply a fair degree of structure, and organization in the delivery mechanism. Although the Petitioner Institute does not claim to award degrees and diplomas, yet the successful candidate is awarded a Charter. He or she can declare to have qualified and obtained that Charter and seek employment; he can even seek improvement in qualifications in certain universities.

42. The CFA does not claim to award degrees and diplomas. However, when the candidate succeeds and qualifies in all the three exams and fulfills other eligibility criteria is entitled to the award of a Charter. Significantly its website (www.cfainstitute.org/cfaprg/university/faq.html, accessed on 9.12.2007 at 7.41 pm) talks of the CFA Institute partnering with colleges and educational Institutions around the world, through a CFA Partner Programme initiative. The CFA Institute describes this initiative as a partnership between it and select colleges and universities around the world, which have embedded a significant percentage (70%) of the CFA Programme Candidate Body of Knowledge into Degree programmes. It is also claimed that recognition as CFA partner provides to CFA potential students, current students and the market place with the university curricula that is closely tied to professional practice and is well suited for preparing students to suit for CFA exams. Thus for instance the partner institutions include Lancaster University Management School in its Masters in Finance; University of Stirling, Scotland, U.K in M.Sc. and Investment Analysis; the University of Adelaide, Australia in its Masters in Accounting and Finance and in Master of Commerce and Applied Finance Course has also partnered with the CFA Institute.

43. According to the Merriam and Webster Dictionary "degree" is "title conferred on students by College, University or professional school on completion of a Programme of Study".

The Chambers 20th Centaury dictionary describes a degree as -

a mark of distinction conferred by University, whether earned by examination or granted as a mark of honour.

P. Ramanath Ayiar's Law Lexicon defines a degree as -

a mark of distinction conferred upon a student for proficiency in some art or science.

44. The Supreme Court in its judgment reported as Prof. Yashpal and Another Vs. State of Chhattisgarh and Others, held that a degree is proof of the fact that a person studying a course of a particular higher level has successfully passed the examination certifying his proficiency in the said subject of study to such level. The concept of a degree in India and in the United Kingdom emanated by conferment upon the University established either by Royal Charter or through a statutory enactment, the power to issue such distinction or document. That is not necessarily always the case; in the United States of America, for instance, the most illustrious examples of Universities which award degrees and similar academic distinctions are those which were established as private Trusts e.g. Harvard, Yale, Cornell or Berkeley etc.

45. It is Therefore, not necessary that the body conferring the degree or declaring proficiency, through a formal document, should be officially established. If one sees this reality, the fact that what is conferred by the Institute is not a degree or diploma described as such, is an insignificant factor. In reality it confers recognition of the candidate having successfully qualified the three examination by awarding a Charter. This Charter is then the basis for better employment opportunities or entry into portals of higher learning. In view of the above conclusions I find that the Petitioner is involved in imparting education.

46. The allied question is whether the CFA Programme is a technical education. Now it has not been disputed that till the year 2004 that the CFA Institute described itself as the "Association for Investment Management and Research (AIMR)". The materials produced before the Court, point to close similarity, if not identity in its content with the Financial Management Programmes. In some of the Indian Management schools, such as the Indian Institute of Management, Lucknow, Indian Institute of Management, Calcutta etc. the topics include, inter alia, quantitative methods, economics, financial statement analyses; corporate finance; analyses of equity investments/ equity analyses; analyses of derivatives/ financial derivatives analyses of alternative investments/ management of financial services; portfolio management/ portfolio capital market; behavioral finance; fixed income/ fixed income markets. These overlap with the topic content in CFA.

47. The definition of technical education includes management. Facially the argument that the identity of overlap in few topics with management or financial management programmes, does not lend support to the former being a management course, is undoubtedly attractive. Yet it what must not be overlooked is that in today's era of specialization and hyper specialization, there could be branches and sub-branches of management including financial management. The overreach of technology and scientific methods of dealing with money and investment were surely unanticipated developments when the Act was brought into force 20 years ago. Nevertheless if principles of management as a science are deployed to create a specialized programme with the aim of achieving optimal investment and financial management, its inclusion in the generic description of "management" cannot be ruled out.

48. The Act has to be viewed as a continuing regulatory regime covering not all those aspects which were known at the time Parliament enacted it but also of future developments which would broadly answer its description and concerns. Thus the Act has to be seen as an on-going statute and read in the light of dynamic process assimilating current developments to give new meaning of its language and effect to the original legislative intention. This reasoning was applied in *The State of Maharashtra and P.C. Singh Vs. Dr. Praful B. Desai and Another*, where the Supreme Court held that the reality and effect of dynamic changes provide gradual adjustment and that Parliament in the wording of an enactment is expected to anticipate temporal developments.

49. The dynamic changes brought about by disassociation of time, place and delivery of learning content is, Therefore, to be viewed within the frame work of the objectives of the Act. So viewed, the expression "management" forming part of "technical education" as well as the expression "Education" are to be extended to the CFA programme conducted by the Institute. This Court Therefore, finds, on point No. 1 that the Institute is engaged in imparting technical education and that its charter, though not described as a degree or diploma, is nevertheless descriptive of the candidate attaining an academic standard, entitling him to admission to further courses, and better prospects of employment in investment business.

Reg Point No. 2

50. Technical institution has been defined in Section 2(h). The term "institution" has not been defined. According to Webster's Dictionary, an institution is

1. An organization founded and united for a specific purpose. 2. An establishment consisting of a building or complex of buildings where an organization for the promotion of some cause is situated"?

The main plank of the petitioner's submission was that the entire theme of the Act and the Foreign Universities Regulations disclose that the AICTE had, within its contemplation, institutions which had a corporeal or "physical" presence, and with a "brick and mortar" existence. They cannot apply to the Institute, which

has no physical infrastructure, teaching staff or any equipment, library or teaching aids. This argument is undoubtedly attractive. Para 2(d) of the Chapter dealing with Procedure for Registration reads that the application should contain a Detailed Project Report (DPR) in the prescribed format, giving details regarding availability of infrastructure facilities, faculty, fee to be charged from students, admission procedure, course curricula, mode of delivery availability of requisite funds for operation for a minimum period of three years, terms and conditions of collaboration between the Foreign University/Institution and the Indian Educational Institution etc.

Para 5 of the same Chapter talks of inspection, by a committee, set up by AICTE, of the institution. These, and the forms prescribed along with the Foreign Universities Regulations, lend some degree of support to the petitioner's argument that what was contemplated was a brick and mortar institution.

51. The challenges thrown up by growth of new technology also afford new opportunities. As noticed in the earlier section of this judgment, one can no longer attribute a unidimensional approach to what is education, or what is technical education. If these are today's realities, then, the same dynamics would be attracted to institutions. Traditional forms of knowledge dissemination as in schools and colleges would be of greater relevance where instructional interface is mandatory for overall development of the personality. Thus, in school education and to an extent, in college education, overall growth and development of the human personality, and social skills, apart from a broad outlook of life assume greater value; Therefore, societies insist upon existence of infrastructure such as buildings, playgrounds, laboratories, libraries, classrooms, etc. Yet, as one climbs higher in the educational ladder, there is greater emphasis on learning content the ultimate stage being self study, as in doctoral programmes. Here, the CFA qualification is open to those who have a basic level of educational attainment; the candidates have certain educational qualifications, and a mandatory four year specialist experience. They are aware of the subject, and the needs of the profession. In these circumstances, the design and content of the course is such that a physical or tangible existence is unnecessary.

52. The AICTE's primacy as a standard evolving, co-ordinating and enforcing regulator in the field of technical education has been commented upon by the Supreme Court in the Adhiyaman Educational and Research Institute case. The question there was whether it was open to a State Legislature to prescribe standards for technical educational institutions that were higher than the standards prescribed by the AICTE. The Court answered the question in the negative, and held:

The aforesaid provisions of the Act including its preamble made it abundantly clear that the council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote quantitative improvement of such education in relation to planned quantitative growth. The council is also

required to regulate and ensure proper maintenance of norms and standards in the technical education system. The council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students for admission of students and has power to withhold or discontinue grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner, and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the council. The norms and standards have, Therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily, to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well known consists of regions and populations which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiencies but for want of opportunities to develop and contribute to the total good of the country.... What is further necessary to remember is that the council has on it representatives not only of the states but also of the state Universities. They have, Therefore, a say in the matter of laying down the norms and standards which may be prescribed by the council for such education from time to time. The council has further the Regional Committees, at present at least, in four major geographical zones and the Constitution and functions of the Committees are to be prescribed by the regulations to be made by the council. Since the council has the representation of the States and the professional bodies on it which have also representation from different States and revisions, they have a say in the Constitution and functions of these committees as well. What is further important to note is the subject covered by this statute is fairly within the scope of Entry 66 of lists I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under entry 11

of lists II prior to Forty " Second Amendment nor can it makes a law under Entry 25 of List III after the Forty Second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy . Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

The primacy of AICTE in matters of technical education was once again reiterated in Jayagokul. The only exception, where AICTE's jurisdiction is excluded, was spelt out in Bharatidasan's case, where it was held that Universities did not require prior approval of AICTE for starting a department or unit as an adjunct of the University itself to conduct technical education courses of its choice. Even in such a case, however, the Supreme Court clarified that the University would be obliged to conform to the standards and norms laid down by AICTE. The court held that:

We also place on record the statement of the learned Senior Counsel for the appellant, which in our view, even otherwise is the correct position of law, that the challenge of the appellant...does not mean that they have no obligation or duty to conform to the standards and norms laid down by AICTE for the purpose of ensuring coordinated and integrated development of technical education and maintenance of standards.

The Supreme Court held that

a careful scanning through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-a-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves 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 UGC for appropriate action.

53. As a central regulatory authority, concerned with evolving, co-ordinating and harmonizing standards of technical education, unless the AICTE's determination, as an expert is shown to be manifestly without jurisdiction, or is not bona fide, or illegal, the courts should be slow in donning a primary decision maker's role and upon independent appreciation of materials, conclude that such decisions cannot be sustained. The rule in such cases is deference to the views of the expert body; sans illegality, mala fides or patent unreasonableness, judicial review should not be resorted to. This reflects a balance between the inherent limitations of the judicial process and the need to, in appropriate cases, interdict executive judgment. In a luminescent comment, Bernard Schwartz in Administrative Law, 2nd Edn said that:

If the scope of review is too broad, agencies are turned into little more than

media for the transmission of cases to the courts. That would destroy the values of agencies created to secure the benefit of special knowledge acquired through continuous administration in complicated fields. At the same time, the scope of judicial inquiry must not be so restricted that it prevents full inquiry into the question of legality. If that question cannot be properly explored by the judge, the right to review becomes meaningless. "It makes judicial review of administrative orders a hopeless formality for the litigant.... It reduces the judicial process in such cases to a mere feint.

In view of the above, I hold that the view of the AICTE that the Institute is an "institution" imparting technical education cannot be faulted.

54. That brings me to the question of applicability of the Indira Gandhi National Open University Act. Now, Section 5 of the Act no doubt indicates primacy of the enactment and the views of the Distance Education Council; yet the key area there is harmonizing standards of distance education. IGNOU has been created as an expert body in distance education, and designing delivery of distance education systems. It has to, perforce draw upon the expertise of other specialized or professional bodies, created under special enactments and charged with the responsibility of creating and enforcing standards in their fields. Though IGNOU is a specialist body for development of distance education systems, it has to defer to the standards and regulations evolved in exercise of independent rule and regulation making powers of other institutions, like AICTE. That both these bodies understand this in this perspective, is clear from the AICTE's general letter, addressed to all state governments and union territories, on 13-5-2005 (F-AICTE/Academic/MOU/Dec/2005) stating that the MBA and Master of Computer Applications (MCA) courses of IGNOU stand recognized by AICTE. Thus, in matters over which AICTE has exclusive jurisdiction, its standards and determination has to prevail over that of IGNOU.

55. Now a postscript. The standards evolved by the petitioner may undoubtedly be unique; its existence and growth over the last four decades is testimony to its professionalism and excellence. The requirement of its having to comply with the Foreign Universities Regulations does not in any manner cast a reflection upon its professionalism or the quality of its activities. Yet there can be no exception from the applicability of the Act and the Foreign Universities Regulations, once the preconditions for their application are satisfied. These measures are aimed at safeguarding the rights of students; maybe they are not directed at institutions like the Petitioner; they certainly are designed to protect students and aspirants from unscrupulous institutions. Such being the case, the accomplishments of the petitioner should render the task of its satisfying the standards of AICTE, which has gathered expertise all these years in diverse fields of technical education, all the more easy.

56. In view of the above findings, I find no infirmity with the impugned order. The writ petition and pending applications are, accordingly dismissed, without an order on costs.