

(1995) 11 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 992 of 1995

Gurjeet Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 20-11-1995

Acts Referred:

Constitution of India, 1950 — Article 246, 248, 254, 254(1), 254(2)
University Grants Commission Act, 1956 — Section 10, 11, 12, 13, 14

Citation : (1995) 4 ILR HP 2654

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : Sandeep Sharma, in C.W.P. Nos. 992, 1532, 1600 and 1601/95 and R.P. Singh, in C.W.P. No. 1523/95, for the Appellant; Indar Singh, A.G., K.D. Sood and Abhilasha Kumari, in C.W.P. Nos. 992, 1523, 1532, 1600 and 1601/95, for the Respondent

Judgement

1. This batch of five cases (C.W.P. Nos. 992, 1523, 1532, 1600 and 1601 of 1995) is proposed to be decided by a common judgment since the question involved for determination is the same. However, specific reference would be made to a particular case where-ever it is found necessary.

2. In order to understand the matter, detailed reference to the facts in Civil Writ Petition No. 992 of 1995, (Gurjeet Singh v. State of H.P. and others) is being made. After passing 10+2 examination, Petitioners Gurjeet Singh, Maheep Sharma joined three years degree course in Government Polytechnic College, Hamirpur in mechanical trade ; Petitioner Shiv Ram joined Government Polytechnic College, Sundernagar in Civil Engineering; Petitioner Sunil Kumar joined Government Polytechnic College, Rohru in electronics and communication engineering ; and similarly, Petitioner Shalini Sharma joined Women Polytechnic Kandaghat in electronics and communication engineering. All the Petitioners, except Shalini Sharma, have joined three year diploma course after passing 10+2 examination and secured quite high marks in the respective trades.

3. With a view to improve their qualifications, they sought admission in Regional Engineering College(REC) Hamirpur where one seat is provided in every trade for diploma-holder. Prospectus of this College provides four seats in different trades for the students who have obtained three year diploma and such students are to be admitted in degree courses in the trades in which they have obtained the diplomas. For academic year 1994-95, this College did not provide any seat in mechanical trade for diploma-holders since it had no degree course in mechanical trade. However, All India Council for Technical Education(AICTE) through telegram dated August 17, 1994 informed the District Information Officer, Hamirpur N.I.C. to convey to the Principal, REC, Hamirpur that AICTE had given approval; to REC, Hamirpur for introduction of degree course in mechanical engineering with annual intake of 30(thirty) from academic session 1994-95 vide letter No. F.765/62/101/RC/94, dated August 16, 1994.

4. College authorities were approached for admission against the seats meant for these diploma-holders in the respective trades but the Petitioners have not been able to seek the admission. Petitioner Gurjeet Singh had filed Civil Writ Petition No. 666 of 1994 for 1994-95 session but it was dismissed in default on June 8, 1995. The present writ petitions pertain to academic session 1995-96. Advertisement (Annexure P-4 in CWP. No. 992/95) mentions, inter alia, that diploma-holders are to be provided seat in each trade. But, subsequent to this advertisement, the College prospectus provides seats to all diploma-holders except mechanical and computer engineering thus making clear deviation from the -advertisement issued by it. Though the prospectus of REC, Hamirpur mentions that all Regional Engineering Colleges in the country will follow the common rules and regulations framed by the Ministry of Human Resources and Development but the REC, Hamirpur has taken a curious stand by subjecting the diploma-holders in mechanical trade to vidious treatment without proper justification.

5. In all other Regional Engineering Colleges in the country diploma-holders have been given admission in the second year in the engineering courses in different trades but REC, Hamirpur has given admission to diploma-holders in the first year of such courses. This is another illegal action on the part of REC, Hamirpur although AICTE has specifically directed giving of admission to diploma-holders in the second year of four year courses. The Petitioners have been deprived of their right to improve their qualification by seeking admission in the second year of four year degree course for reasons which are completely unconstitutional, arbitrary, whimsical and lame

6. REC, Hamirpur has filed affidavit through its Principal. It is stated that the Petitioners cannot be admitted in the trade of mechanical engineering since no seat is available at present for diploma-holders, though proposal for creating one seat in" each trade including mechanical engineering and computer sciences & engineering for diploma-holders in Government Polytechnic College in Himachal "Pradesh has been approved by the Board of Governors, REC, Hamirpur in the

12th meeting held on July 31, 1995 for academic session commencing in 1996 subject to the approval of Government of India, Ministry of Human Resources Development (Department of Education). Admission of diploma-holders in the first year of four year degree programme can only be made in the discipline of mechanical engineering and computer sciences & engineering after the approval of Government of India. It is also stated that REC, Hamirpur requested the AICTE to accord approval for starting classes in the trades of mechanical engineering for the last two years but AICTE conveyed this approval at the fag end of admission period 1994-95. Admission could be possible after approval by Board of Governors and Government of India. The advertisement refers to only those seats which had already been earmarked for diploma-holders. Mechanical engineering branch and computer sciences & engineering branches were not mentioned in the advertisement notice since seats for these branches had not been approved by the competent authorities. It has been admitted that all the Regional Colleges in the country follow a common admission pattern and rules. However, it has been clearly mentioned in the prospectus that three year diploma-holders are to be admitted in the first year of four year B. Tech degree course and not in the second year. More over, the minimum qualification prescribed for admission of diploma-holders is only for the first year and not for second year. There is no provision to award three year degree by the Himachal Pradesh University to which the College is affiliated for award of four year degree. With regard to implementation of AICTE guidelines in connection with lateral entry scheme for diploma-holders, it may be stated that this scheme cannot be" implemented in this College as there is no infra-structure created or available with the College for admitting students strictly to the second year course of study to enable them to obtain four year degree in three year. More over, the students cannot be admitted in the second year directly before undergoing formalities of State level entrance test and candidates passing it. In addition to this, a student has to undergo remedial course of study in order to make up the deficiency between diploma course and the first year regular course of study of degree course for which the College has no infra-structure at present.

7. In Civil Writ Petition No. 821/94, (Miss Alka Rani v. State of H.P. and others), the student was given admission in the second year as a special case without making it a precedent in other similar cases. Therefore, REC, Hamirpur will admit diploma-holders in the first year of four year B. Tech degree course and not in the second year course as per the judgment of this Court. The College prospectus permitting admission of diploma-holders in the first year of four year B. Tech degree, course has been duly approved by the Board of Governors, REC, Society, Hamirpur and seats approved by the Government of India. Last date for present admission was over on August 31, 1995. In Alka Rani's case clarification was sought from the Ministry of Human Resources Development (Department of Education), Government of India dated December 5, 1994 in reply to which it has been pointed out by Director (T) dated December 8, 1994 that the College may follow the rules as prescribed by the University to which it is affiliated. The

copy of University Rules which permit the admission of diploma-holders in the first year on the basis of 10th Class examination; has been sought.

8. In the affidavit of the Principal dated July 29, 1995, it has been specifically pointed out that the Petitioners could not be given admission in the second year (third semester) of four year B. Tech degree course under the built up provisions as well as the minimum qualification prescribed for the admission of diploma-holders in engineering courses by the Himachal Pradesh University, Shimla for the following grounds:

(i) There is no provision in the Himachal Pradesh University Shimla to award 3-year degree in Engineering, hence Petitioner cannot be admitted in 2nd year directly.

(ii) It has been provided under ordinance 13.2.: Qualification for admission in B. Tech. 1st year that these Diploma Holders having 3 years diploma are to be admitted in 1st year of 4 year B. Tech. Degree in the same branch in which they are holding the respective diploma.

(iii) that the Petitioner cannot be admitted in 2nd year directly without passing the state level entrance test.

(iv) that the AICTE guidelines in connection with lateral entry scheme cannot be implemented in this college as there is no infrastructure available with the REC, Hamirpur for admitting students directly to the B. Tech. 2nd year.(v) that as per AICTE guidelines for lateral entry scheme, a candidate has to pass the remedial course to make up the deficiencies. There is no staff & other infrastructure available in REC, Hamirpur to offer the remedial courses to such students.

(vi) For creating infrastructures, viz., class rooms for teaching remedial courses, facility for teaching, supporting staff, entrance test etc., the Respondent will have to spend huge amount of money which may run into lacs of Rupees for which no budget provision exists.

9. Learned Counsel for Government of India Ministry of Human Resource Development (Department of Education) placed a communication No. F.5-16/94-TS. III, dated September 4, 1995 on the files of these cases. It is transmitted by Vijay Bharat, Deputy Educational Adviser(Tech) of the Ministry, relevant part of which is quoted:

I am directed to refer to your letter No. Nil dated August 21, 1995 on the subject mentioned above and to say that the proposal of Regional Engineering Hamirpur for two additional seats in the discipline of E&C and Mechanical Engineering Branch for the diploma holding staff of Government Polytechnics in H.P. is under consideration of the Ministry. Since the proposal from the College was received in the Ministry only this academic session i.e., on 3.6.1995 and the college is yet to obtain the approval of the A.I.C.T.E and the Government of H.P.. the request of the College may be considered for the academic session 1996-97.

10. Petitioner Sunil Kumar has not been given admission in the second year of degree course of electronics and communication engineering and he has been admitted in the first year of the four year degree course on August 30, 1995. He is claiming admission in the second year on the basis of directions of this Court in Miss Alka Rani's cases as well as for the reasons stated in Gurjeet Singh's cases, in accordance with the guidelines issued by AICTE. The opposition to his case from R EC, Hamirpur is based on the same grounds which are set up in other cases.

11. The case of the Petitioner Shiv Ram is similar though he is seeking admission in the trade of Civil Engineering and he has also been admitted in the first year on August 31, 1995 instead of second year.

12. Ms. Shalini Sharma, besides making similar plea, has stated that she has not been admitted though she secured 84.4% marks, rather, a candidate with 84.9% marks has been admitted on the ground that marks of 5th and 6th semesters are to be counted. R.E.C. Hamirpur has stated in this case that the admission has been given to Sunil Kumar against the seat meant for diploma-holder in the discipline of electronics and communication engineering since he got 84.9 marks in the diploma examination in May, 1995 as compared to Petitioner's 84.4 marks in diploma examination, therefore, the Petitioner has got no claim against this seat and the Petitioner should not at all have been called for council ling.

13. These are the material facts of the respective cases of the parties.

14. Entry 66 of List I, namely, the Union List of Seventh Schedule of the Constitution reads as follows:

66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

This Entry has not been subjected to any kind of change since the inception of the Constitution. Before the Constitution (Forty-second Amendment) Act, 1976 which came into force from January 3, 1977, Entry 11 in List II, namely, the State List was as follows:

11. Education including universities subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

Entry 25 of List III., the Concurrent List prior to the said Constitution Amendment was as follows:

25. Vocational and technical training of labour.

After the Amendment it is as under:

25. Education including technical education medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I ; vocational and technical training of labour.

15. The constitutional provisions dealing with the scope of the powers of the.

Union and the State Legislature on the subject in question have been discussed comprehensively by the apex Court in recent decision *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, It would be necessary to make extensive reference to some of the important paragraphs of this decision to understand the subject matter of these petitions more clearly and effectively, so that the mis-understanding as to the jurisdiction of AICTE in the field of technical education all over the country is set at rest and the Respondents, more particularly REC, Hamirpur, takes immediate steps for implementing the directions and guidelines of AICTE without further loss of time and diploma-holders are not deprived of their legitimate share in admissions to various trades, in which they obtained diplomas.

15-A. In paras 12 to 15 it has been observed that:

12. The subject coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment since Entry 11 of List II even then was subject, among others, to Entry -66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the ; legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.

13. We may refer to the provisions of Article 246, 248 and 254 in Part II of Chapter I which relates to the distribution of the legislative powers between Parliament and the State Legislatures. It is not necessary to enter into a detailed discussion of these articles since they have been the subject-matter of various decisions of this Court. We may only summarise the effect of these articles as has emerged through the judicial decisions, so far as it is relevant for our present discussion. While Article 246 states the obvious viz., that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I and has also the power to make laws with respect to any of the matter enumerated in List III, the State legislature has exclusive power to make laws with respect to any of the matters enumerated in List II subject, of course, to Parliament's power to make laws on matters enumerated in List I and List III. Parliament has also power to make laws on matters enumerated in List II for any part of the territory of India not included in a State. Article 248 vests Parliament with the exclusive power to make any law not enumerated in the Concurrent List

or the State List including the power of making any law imposing a tax not mentioned" in those lists. This is a residuary power of legislation conferred on Parliament and is specifically covered by Entry 97 of List I. In case of repugnancy in the legislations made by Parliament and the State legislatures which arises in the case of legislations on a subject in List III, the law made by Parliament whether passed before or after the law passed by the State legislature shall prevail and to that extent, the law made by the legislature of a State will be void. Where however, the law made by the legislature of a State is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the law made by the legislature or the State shall, if it has received the assent of the President, prevail in that State. However, this does not prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to amending varying or repealing the law so made by the legislature of the State. The repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be in force by virtue of Article 372 and the post-Constitutional law of Parliament in which case, the law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy to the law made by Parliament.

14. According to some jurists, the repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be in force by virtue of Article 372 and the Post-Constitutional law of Parliament in which case by virtue of the first part of Article 254(1), the law made by Parliament shall prevail, notwithstanding that the Provincial Legislature was competent to make the law prior to the commencement of the Constitution. This is the consequence of the relevant provision of Article 254(1) which reads as follows:

254. (1) Inconsistency between laws made by Parliament and laws made by the legislatures of States.- (1) If any provision of a law made by the legislature of a State is repugnant to any provision of law made by Parliament which Parliament is Competent "to enact ... the law made by Parliament, whether passed before or after the law made by the legislature of such State ... shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void.

15. According to this view, it is to take care of this repugnancy that the aforesaid provision in the first part of Article 254(1) is made. The repugnancy arising out of the two laws made on matters in the Concurrent List is referred to in the other part of Article 254(1) and if the Framers of the Constitution wanted to provide only for the repugnancy arising between the two laws made on the subjects in the Concurrent List, the aforesaid provision of Article 254(1) was unnecessary. However, in view of the repugnancy resulting in implied repeal of the pre-Constitutional provincial law by the post-Constitutional parliamentary law, this controversy need not detain us here.

Again, in paras 17 to 21 of the Judgment, it has been observed that:

17. The Preamble of the Central Act states that it has been enacted to provide for the establishment of an All India Council for Technical Education with a view to (i) proper planning and coordinated development of the technical education system throughout the country, (ii) promotion of qualitative improvement of such education in relation to planned quantitative growth, (iii) regulation and proper maintenance of norms and standards in the technical education system, and (iv) for matters connected therewith. (emphasis supplied) Sections 2(g), 2(h) and 2(i) of the Central Act define "technical education", "technical institution" and "University" respectively as follows:

2. In this Act, unless the context otherwise requires, -

* * *

(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 an 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 and includes an institution deemed to be a University u/s 3 of that Act.

18. Section 3(1) gives power to the Central Government to establish the Council. Since the composition of the Council is important to deal with one of the aspects of an argument, we may cite the" relevant provisions of Sub-section (4) of Section 3 which refers to the said composition. It reads as under:

(4) The Council shall consist of the following members, namely:

* * *

(j) two members of Parliament of whom, one shall be elected by the House of the People and one by the Council of States;

(k) eight members to be appointed by the Central Government by rotation in the alphabetical order to represent the State and the Union Territories:

Provided that an appointment under this clause shall be made on the recommendation of the Government of the State, or as the case may be, the Union Territory concerned;

(1) four members to be appointed by the Central Government to represent the organisations in the field of industry and commerce;

(m) seven members to be appointed by the Central Government to represent;

(i) * * *

(ii) the Association of Indian Universities;

19. Suffice it to say that the Council, besides having on it the representatives of the various ministries, of higher educational institutions, professional bodies in the field of technical and management education and organisations in the field of industry and commerce, also has the representatives of the State in the form of the Members of Parliament and the members to be appointed by the Central Government to represent the States and the Union Territories and also of the State Universities. Section 7 further empowers the Council to associate with itself any person whose assistance or advice it may desire in carrying out any of the provisions of the Act."

20. Chapter III of the Act enumerates the powers and functions of the Council. Section 10 of the said Chapter states that in order to perform its duties and to take all such steps as it may think necessary to ensure the object of and perform the functions under the Act, the Council may, among others,

(b) coordinate the development of technical education in the country at all levels;

* * *

(f) promote an effective link between technical education system and other relevant systems including research and development organisations, 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 institution or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, 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;

(1) 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 privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

- (m) lay down norms for granting autonomy to technical institutions;
- (n) take all necessary steps to prevent commercialisation 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 of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;
- (r) take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions 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;

* * *

(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 recommendations 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;

21. Section 11 provides for inspection to be caused by the Council, of any department or departments of a technical institution or University for the purposes of ascertaining the financial needs of such institutions or a University or standards of teaching, examination and research. It also provides for inspection as well as for communicating the results of such inspection to such institution and University with a view to recommending to it the action to be taken as a result of such inspection. The executive authority of the institution or University is under an obligation to report to the Council, the action if any which is proposed to be taken by it for the purpose of implementing the recommendations made by the Council, pursuant to the result of the inspection made by it. Section 13 requires the Council to establish, among others, an All India Board of Technical Education and an All India Board of Undergraduate Studies in Engineering and Technology and Postgraduate Education and Research in Engineering and Technology. The Council is also empowered to establish such other Boards of Studies as it may think fit. These Boards of Studies are required to advise the Executive Committee of the Council constituted u/s 12 of the Act on academic matters including on norms and standards, model curricula, model facilities and structure of courses. Section 14 requires the Council to establish four Regional Committees; viz., Northern, Southern, Western and Eastern

Regional Committees with their offices at Kanpur Madras, Bombay and Calcutta respectively. The Council has also the powers to establish other Regional Committees if it thinks fit. These Regional Committees have to advise and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region. Section 20 empowers the Central Government to give directions to council from time to time on questions of policy, and the Council is bound by such directions. Section 22 and 23 give power to the Central Government and the Council to make rules and regulations respectively under the Act which are to be laid before Parliament. It is not necessary to refer to other provisions of the Act.

Finally, para 22 summarises the conclusions in the following terms:

22. The aforesaid provisions of the Act including its preamble make 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 qualitative 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 and has power to withhold or discontinue grants and to de-recognise 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 population 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 deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centred around the right of the States to prescribe standards higher than the one laid down by the Council. 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, atleast, 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 regions, they have a say in the constitution and functions of these Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List 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 Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-second Amendment nor can it make 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.

(Emphasis supplied)

16. Dealing with the role of the University to which the Colleges are affiliated, prescribing different standards for recognition of degrees vis-a-vis All India Council for Technical Education Act, 1987, the Court pointed out in paras 30 and 32 that:

30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. u/s 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance

appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or de-recognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. 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 Central Act.

(Emphasis supplied)

32. As pointed out earlier, so far as technical institutions are concerned, the norms and standards and the requirements for their 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. Once it is accepted that the whole object of the Central Act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc. will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the country necessarily implies a set of minimum standards the fulfilment of which should entitle an institution and its alumni, titles, degrees and certificates to recognition anywhere in the country. It is true that the higher than

the minimum standards implies compliance with the minimum standard. But as has been aptly pointed out by Justice Rau while dealing with the meaning of repugnancy in *G.P. Stewart v. Brojendra Kishore Roy Chaudhury* which is a decision approved by this Court in *Tika Ramji v. State of U.P.*

It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say "No Person V. shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time." Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified. This was the type of repugnancy that arose for consideration in *Attorney General for Ontario v. Attorney General for the Dominion of Canada*.

(Emphasis supplied)

In paras 34 and 35, the Court further held that:

34. Shri Rao also contended that in practice, the prescription of higher standards by the State may not be in conflict with the standards laid down by the Council under the Central Act. To bring this home, he gave an illustration that where several institutions apply for starting technical institution and the State Government chooses the one which has the best equipment, infrastructure and resources, compared to others who merely fulfil the minimum requirements laid down under the Central Act, it cannot be said that the preference given to the institution by the State Government was contrary to or inconsistent with the Central statute. Yet another illustration he gave was where the Central Act prescribes minimum marks for admission to a technical institution or minimum qualifications for the teaching staff, but among the applicants, there are enough number of students or teachers with higher marks or qualifications, respectively, than the minimum prescribed to compete for the limited number of seats. In such cases, when a technical institution selects those with more than minimum marks or qualifications, it cannot be said that there is a non-compliance with the provisions of the Central Act. It is true that, in practice, it may happen that institutions with higher resources and students and teachers with higher marks and qualifications, respectively, than are prescribed apply and compete for the places, seats or vacancies as the case may be. However, it is equally true that when the vacancies are available for institutions or students or teachers as the case may be, the applicants cannot be denied the same on the ground that they do not fulfil the higher requirements laid down under the State Act, if they are

qualified under the Central Act.

Similarly, the institutions cannot be de-recognised or disaffiliated on the ground that they do not fulfil the higher requirements under the State Act although they fulfil the requirements under the Central Act. So also, when the power to recognise or de-recognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act."

35. In this connection, we may refer to certain authorities. In *Gujarat University v. Krishna Ranganath Mudholkar* a Constitution Bench of this Court was called upon to decide whether the University was authorised under the Gujarat University Act, 1949 to prescribe Gujarati or Hindi or both as exclusive medium or media of instruction or for examination and whether the legislation authorising the University to impose such media was constitutionally valid in view of Entry 66 of List I, Seventh Schedule. This Court held as follows:

Power to legislate in respect of instruction is, however, not a distinct legislative head; it resides with the State Legislatures in which the power to legislate on education is vested, unless it is taken away by necessary intendment to the contrary. Under Items 83 to 65 the power to legislate in respect of medium of instruction having regard to the width of those items, must be deemed to vest in the Union. Power to legislate in respect of medium of instruction, insofar it has a direct bearing and impact upon the legislative head of coordination and determination of standards in institutions of higher education of research and scientific and technical institutions, must also be deemed by Item 66 of List I to be vested in the Union. The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within Entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an all-India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within power of the Union to legislate in respect of media of instruction so as to ensure coordination and determination of standards, that is to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does

not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions. In enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects coordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of coordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1) even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.

Counsel for the University submitted that the power conferred by Item 66 of List I is merely a power to coordinate and to determine standards i.e. it is a power merely to evaluate and fix standards of education, because, the expression "co-ordination" merely means evaluation, and "determination" means fixation. Parliament has therefore power to legislate only for the purpose of evaluation and fixation of standards in institutions referred to in Item 66

In the course of the argument, however, it was somewhat reluctantly admitted that steps to remove disparities which have actually resulted from the adoption of a regional medium and the falling of standards, may be undertaken and legislation for equalising standards in higher education may be enacted by the Union Parliament. We are unable to agree with this contention for several reasons. Item 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a "narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a "subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in Item 66 or elsewhere in the Constitution which supports the submission that the expression "coordination" must mean in the context in which it is used merely evaluation, coordination in its normal connotation means harmonising or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to coordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by Item 66 List I is not conditioned by the existence of a state emergency or unequal standards calling for the exercise of the power.

There is nothing in the entry which indicates that the power to legislate on coordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to coordinate and of necessity, implied therein is the power to prevent what, would make coordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. It is true that "medium of instruction" is not an item in the legislative list. It falls within Item 11 as a necessary incident of the power to legislate on education; it also falls within Items 63 to 66. In so far as it is a necessary incident of the powers under Item 66 List I it must be deemed to be included in that item and therefore excluded from Item 11 List II

(Emphasis supplied)

We may usefully refer to para 41 of the Judgment:

41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either-impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) 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 de-recognise 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.

17. Having quoted the important paragraphs from the apex Court decision, - further reiteration of the principles laid down therein would burden this judgment unnecessarily. Suffice it to mention that Parliament has retained exclusive jurisdiction to legislate with respect to co-ordination and determination of standards in institutions for higher education, research and scientific and technical institutions under Entry 66 of List I read with Entry 25 of List III. Consequently, any legislation passed by the State Legislature tinkering with this power of Union Parliament, is void to that extent. Similar is the effect of guidelines, instructions issued by the State Government under its executive power or the rules and regulations made by University to which the institution may be affiliated.

18. The preamble to the AICTE Act states that "it has been enacted to provide for the establishment of All India Council for Technical Education with a view to proper planning and coordinate development of technical education system throughout the country, promotion of qualitative improvement of such education in relation to planned qualitative growth, regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. The detailed reference to various provisions of this Act plainly demonstrates that AICTE is the apex Body in the field of technical and scientific education in the country. Its directions and guidelines are mandatory in nature and have to be followed by all the institutions meant for developing and imparting higher education, research, scientific and technical education through the institutions established for achieving this object. In the background of this position, the stand of REC Hamirpur that it is not possible for it to follow the guidelines of AICTE since the State University to which it is affiliated, has laid down a different course to be followed by it, is totally unsound and has to be rejected. It is high time that the REC Hamirpur and the University take immediate steps to make necessary changes in their rules and regulations making them consistent with the Central Act.

19. We have found from the guidelines of AICTE that diploma-holders have to be provided certain number of seats in the degree course in trades in which they have obtained diplomas. Further, these diploma-holders have to be admitted in the second year of four-year degree course. The guidelines also provide how a student has to undergo remedial course of study in order to make up the deficiency between the diploma - course and the first-year regular course of study for degree course. REC Hamirpur ought to have taken prompt steps to start the course from academic session 1994-95 when AICTE had given the approval in August, 1994, in any case, from 1995-96 session. It had sufficient time to adjust to the system and provide for necessary infrastructure. Having failed to sustain any of the pleas raised by REC Hamirpur, Shri K.D. Sood submitted that REC Hamirpur would provide seats in the trades claimed by the Petitioners as per the guidelines of AICTE, in case direction in that behalf is given by this Court. In the light of the apex Court decision, referred to above, and in the facts and circumstances of these cases, we do not comprehend any difficulty in doing so. Although, as noticed above, REC Hamirpur should have provided the seats in 1994-95 session, in any case, there can be no reason to postpone the matter beyond academic session 1995-96. The sanction of AICTE was available with it. All the relevant authorities should have taken the decision to start these courses well in time. Admissions in other trades for academic session 1995-96 ended on August 31, 1995, starting of courses in the trades in question in the next one or two months may not be difficult, provided matter is moved quickly and right earnestly. The students who have to undergo remedial courses, would be able to do so as per the guidelines of AICTE since all the students who have done three-year diploma course, have to be admitted in the second year of 4-year degree course of the institution.

20. No other point was urged by the learned Counsel for the parties.

21. Consequently, it is directed that REC Hamirpur will implement the directions and guidelines issued by AICTE and make available seats to the diploma-holders in the trades in question for academic session 1995-96 and admit them in these trades in the second year of 4-year degree course of the College. The Principal may resort to provisional admission, in case he apprehends delay in seeking approval from the relevant authorities, to avoid delay in the academic session and loss to students in their studies.

22. With the above observations and directions, the writ petitions are disposed of. However, the parties will bear their own costs.