

(2002) 10 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No's. 33256, 33257, 33567, 33861, 33870, 33871, 33889, 34248, 34327, 34328, 34730, 35436, 35532, 35825, 35826, 35861, 35864 and 36417 of 2002

Kannammal Educational Trust

APPELLANT

Vs

The Director of Technical Education, The Anna University, The State of Tamil Nadu and The All India Council for Technical Education

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 10 MAD CK 0027

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : K. Doraisami, SC for Muthumani Doraisami, in WP Nos. 33256, 33257, 34327, 34328, 35825 and 35826 of 2002, R. Krishnamurthy, SC for V. Ayyadurai, in W.P. Nos. 33567 and 35861 of 2002, R. Natarajan, in WP. Nos. 33870, 33871, 33889 and 33861 of 2002 and C. Selvaraju, in WP Nos. 35864 and 35436 of 2002, for the Appellant; Vijay Narayanan, For R-4, V.R. Rajasekaran, Spl. GP for R1 and R3 assisted by S.P. Prabhakaran, AGP and Sundara Gopal, for G.M. Mani Associates for R2, for the Respondent

Judgement

Prabha Sridevan, J.—At the beginning of every academic year there are a spate of writ petitions similar to these. This must make the key

players here, do some introspection. Youngsters out of school, aspire to get a degree. If their goal is to get a degree from a technical institution,

they knock at the doors of institutions such as the ones in these writ petitions. But the institutions can receive them only if 3 `A's are crossed. They,

the courses they offer and the intended intake of students should be granted Approval by AICTE and Affiliation by Anna University ("AU" in

short) and the students should be Allotted seats or Admitted by going through

the Single Window Scheme ("SWS" in short) sponsored by the State. These seats are referred to as SWS Quota ("SWSQ" in short) of course, the Central Counselling Seats (CCS). The institutions are entitled to admit a certain number of students independent of the SWS. We will call these seats Minority Quota (MiQ) if they are minority institutions or Management Quota (MQ) if they are non-minority institutions. Even at the outset, it may be stated that none of the three authorities, viz., the AICTE, the AU or the State has displayed even a modicum of "awareness" that each of them holds in their hands independently the future of youngsters. It is very painful to see this.

2. The writ petitioners are all Educational Trusts providing technical education subject to the regulation and control of the All India Council for Technical Education ("AICTE" in short). They have all been approved of by the AICTE, but were not allowed to admit students through Central Counselling, because the AU did not grant any affiliation. The AU to whom the petitioners forwarded the lists of students that they had admitted refused to grant affiliation. Regardless of the nature of request made by each of the petitioners, the reply of AU is almost identical and the following extract is a sample.

With reference to the above, I am to inform that Single Window System of Admissions are closed for the year 2002-03 on 05-08-2002 and the University has taken a policy decision not to entertain any more fresh affiliation for the academic year 2002-03 with the AICTE approval obtained after Single Window Admission is over. While appreciating your eagerness to start the course(s) forthwith I regret to inform it is too late for the year 2002-03.

Your kind attention is invited to the reference cited above wherein the AICTE itself has given only conditional approval ""That the State

Government is in a position to provide students through Central Counselling as per its schedule for the current academic session. If not so the approval may be revalidated as per rules by the council for the academic year 2003-04.

You are therefore advised to make an application for affiliation for the academic year 2003-04 after obtaining the revalidated approval by AICTE.

3. The AICTE Act provides for the establishment of a Council for the entire country to properly plan and to develop in a coordinated manner, the technical education system and for promoting the qualitative improvement in relation to planned quantitative growth and to regulate and properly maintain the norms and standards in the technical education system and for matters connected therewith. The steps the Council may adopt to perform its functions are laid down in the Act itself.

4. Regulations have been framed on 31-10-1994 by AICTE in exercise of powers conferred on it by Section 23(1) of the AICTE Act. Regulation

2 states that these Regulations will be applicable to proposals relating to:

(a) grant of approval of the Council for establishment of new technical institutions including universities or university departments and deemed

universities and for technical institutions functioning on the date of commencement of these Regulations at degree and diploma levels;

(b) grant of approval of the Council for introduction of any course or programme in the technical institutions and technical departments or

universities or deemed universities;

(c) grant of approval of the Council for existing intake capacity of seats and for increase in the annual intake capacity of seats in courses and

programmes.

5. Regulation 4 deals with the requirement of grant of approval and for the commencement of these Regulations:

(a) * * *

(b) no course or programme shall be introduced in any technical institutions, university or deemed university or university departments or college;

or

(c) no technical institutions, Universities or deemed Universities or University Departments or Colleges shall continue to admit students for degree

or diploma courses or programmes;

(d) no approved intake capacity of seats shall be increased or varied:

except with the approval of the Council.

4. (2) * * *

6. Regulation 5 deals with the forms of the applications and Regulation 6 deals with the conditions for grant of approval. Sub-clause (1) of

Regulation 6 deals with the financial position. Sub-clause (2) with the courses or programmes and sub-clause (3) deals with the power of

admissions and sub-clause (4) with tuition fees etc. and sub-clause (5) with the staff and sub-clause (6) with the Governing Body of the private

institutions and sub-clause (7) with other matters. Regulation 8 deals with scrutiny of applications. There is a preliminary scrutiny of the applications

by the Bureau RC of the Council. Sub-clause (4) of Regulation 8 reads as follows:

8. (4) The Bureau RC shall invite comments/recommendations on the applications referred to in sub-regulation (3) from the following, namely:

- (i) the State Government concerned;
- (ii) the affiliating university/State Board of Technical Education;
- (iii) Bureaus MPCD;
- (iv) Bureau BOS;
- (v) Bureau RA;
- (vi) the Regional Office.

7. Sub-clause (5) of Regulation 8 requires the Regional Office to arrange visits by an Expert Committee constituted by the Council which is to

forward its recommendations to the Council. Sub-clause (6) of Regulation 8 states that the State Level Committee constituted under Regulation

9(4) is to consider the recommendations of the State Government and others mentioned in Regulation 8(4) and that it is to make its

recommendations to the Central Task Force constituted under Regulation 9(5) and consider the recommendations of the State Level Committee

and send its recommendations to the Member Secretary of the Council. Sub-clauses (8) and (9) of Regulation 8 are important and read as follows:

8. (8) If there is a disagreement in the recommendations made by the State Government, university or the Regional Committee, the Central Task

Force shall invite representatives of the respective agencies for further consultations before making final recommendation;

(9) On the recommendation of the Central Task Force, the Council shall decide the question of grant of approval as sought for in the application:

Provided that the Council may, for reasons to be communicated to the applicant, allow the approval with such restrictions or modifications as it

may deem necessary.

Sub-clause (10) of Regulation 8 states that the decision of the Council shall be communicated to the State Government concerned or UGC, as the case may be, the university concerned or the State Board, the Regional Office and the applicant before 30th April in case the application was made before the preceding 31st December.

8. The AU Act, which has been amended by Act 26 of 2001 defines ""affiliated college"" thus:

affiliated college"" means any college or institution, situate within the University area and affiliated to the University and providing courses of study

in engineering, technology and allied sciences for admission to the examinations for degrees, diplomas and other academic distinctions of the

University and includes a college deemed to be affiliated to the University under this Act and includes an autonomous college;

and ""university area"" thus:

University area"" means the whole of the State of Tamil Nadu excluding the Annamalai Nagar as defined in clause (a) of Section 2 of the

Annamalai University Act, 1928 (Tamil Nadu Act 1 of 1929).

Section 5(a) reads as follows:

No College within the University area shall be affiliated to any University other than the AU"".

The importance of affiliation is that without affiliation the certificates issued by any Educational Institution are worthless to a student. A student

seeks admission in a technical institution expecting to get a degree from the Governments/ University which will be given to him/her only if the

institution is affiliated to the university.

The ""conditional"" approval by AICTE, and the refusal by AU to grant affiliation are under attack.

9. Arguments were advanced by the learned Senior counsel and the other counsel, who appeared for the petitioners. According to them, in view of

the decisions in *Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government*, H.E. Deptt. AIR 2000 SC 1614, *Adhiyamaan*

*Educational & Research Institutions & others Vs. M.D.U.(Pb.& Hry.)*2001(4) SLR 713 and *J.P. Unni Krishnan V. State of Andhra Pradesh* AIR

1993 SCW 863, *Sukwinder Kaur Vs. Punjab Agricultural University and Ors.* 2000 (6) SLR 438 the rejection of affiliation is arbitrary.

(a) The time schedule for this year is as follows:

Last date for closing down the SWS - 05-08-2002; Last date for admission for the remaining seats - 14-08-2002 and Last date for forwarding the list - 16-08-2002.

(b) None of these petitioners have gone through the process of Central counselling. According to the petitioners, each of them has been granted

approval by AICTE, but belatedly, in some cases the approval by AICTE was before 05-08-2002. They were not allotted students as against the

SWSQ. According to them, they are entitled to treat the seats in SWSQ as "lapsed seats", following the decision in Unnikrishnan's case. They are

entitled to admit students up to the AICTE approved in-take. Without prejudice to the above contention, it was also submitted that even if it should

be accepted that they cannot fill up the SWSQ, since they have not gone through the SWS, they are entitled to admit students as against the MiQ

or MQ as the case may be.

(c) According to the petitioners, the scheme framed by the Supreme Court in the Unni Krishnan's case was tailored to the ground-situation that

prevailed then. The Supreme Court then found that technical institutions had cropped up without any control and solely with a commercial motive

and since the State could not meet the demand for education, the need for private colleges, became an unavoidable reality. The Supreme Court felt

that the sprouting of "teaching shops" must be curbed, so guidelines were issued. The AICTE brought under its umbrella all the technical institutions

and ensured that no technical institution could admit students without the stamp of approval of AICTE. Therefore, now a low-quality school has

become a thing of the past. The standards set by AICTE for granting approval were so high that a fly-by-night operator could not start a technical

institution and it is a matter of record that the State of Tamil Nadu has the largest number of technical institutions. The supply far exceeds the

demand. The ground situation has undergone a vast sea change from what it was at the time of Unni Krishnan's Case and therefore, the scheme

framed which is more in the nature of guidelines should be adopted and adapted to suit the present situation.

(d) According to the petitioners if AU is allowed to arbitrarily deny affiliation one whole academic year would pass by without any students and the

technical institutions would have to maintain the infrastructure as also the staff without receiving any fees from the students and it would be

unreasonable and not justifiable from any point of view. It was submitted that it is not as if the petitioners had not forwarded the list before 16-08-

2002. They had fulfilled their side of the obligations, they had applied for approval of AICTE, well in time. The AICTE granted approval only on

08-08-2002. This was after the last date for SWS namely 05-08-2002. The petitioners had earlier applied for affiliation and therefore, if affiliation

had been granted, the petitioners could have been allotted students under the SWS. None of the petitioners refused to admit any students, who

had gone through the SWS and they are willing to do so even today. It was urged that affiliation could have been granted easily. It only required

some application of mind and verification whether the University has the courses that are demanded by the petitioners. Therefore, if the University

had wanted, they could have granted affiliation. The refusal of affiliation based on ""the policy decision"" of the State is in direct defiance of the law

declared by the Supreme Court.

(e) The University could not in any event have sought for "approval" of the State Government (Jaya Gokul Educational Trust case). Ofcourse, an

extreme stand was taken by one of the learned counsel who submitted that the affiliation is automatic and that the University has nothing to do but

to sign on the application for affiliation. It was also submitted on behalf of the petitioners that till date, AU has not framed any conditions for

affiliation and in those circumstances, they could not have rejected the petitioners-institution on any legal basis.

(f) The Bharathidasan University Act was produced as an example to show that Statutes have been framed for affiliation. Till date, the AU has not

done so, though it ought to have. The statutes framed at present do not deal with affiliation, though Section 49(xvi-a) of the University Act deals

with conditions of affiliation of colleges to the University. Therefore, the rejection of affiliation is arbitrary and not based on any reason.

(g) It was submitted that there were three sources from which the students could be drawn. One was SWS, two was the MQ and three was the

MiQ. The fact that no student came through the first source cannot cut off the supply through the two other sources.

(h) It was also pointed out that in fact the petitioners had applied for affiliation much in advance and the inspection committee had also fixed dates

for inspection and had also inspected the colleges in some cases. Therefore, the report of inspection was available with AU and AU had to do is to

appraise the application for affiliation and arrive at a decision, the moment AICTE intimated the factum of approval.

(i) It was also submitted that originally educational institutions had to obtain a no objection certificate from the State and this provision was quashed

on the ground that no provision of any State Act, which infringes upon the matters covered by the Central Act can be enforced. It was held that the

word ""Coordination"" in Schedule VII List I, Entry 66 Constitution of India,

power to do all things which are necessary to prevent those factors which would make coordination difficult or impossible"".

(j) Now what could not be achieved directly is sought to be achieved indirectly.

(k) The petitioners themselves fall into three categories, some are new colleges who have only got approval and are yet to be affiliated, some are

colleges which had obtained affiliation but have sought for approval for additional courses and in some the college is an existing affiliated college

and the course is existing and affiliated and the approval was only for the increased in-take. In some cases, approval was granted on 02-08-2002

itself. Therefore, it was submitted that non-consideration of their cases for affiliation thereby depriving them of entering the SWS is unjust.

(l) It was submitted that once the institution itself was "affiliated", there should be no further hurdles in the way of affiliation for each new course

and less still for increased intake in "affiliated courses".

(m) It was submitted that there were three factors in favour of the petitioners. One is that having got the approval of the AICTE they legitimately

expected that they will be granted affiliation. Next, the University having sent their Inspection Committee to the institutions(in some cases) and not

having informed the petitioners that they lacked certain mandatory requirements, equity required that they should have approved the list after

granting the affiliation. Finally, the delay if any, is on the part of the respondents and therefore, the students and the institutions should not suffer.

(n) The petitioners also referred to a counter filed in an earlier writ petition, W.P. No. 16426 of 2000, where the AU had admitted that they had

conducted supplementary counselling to fill up the additionally created seats and to effectively implement the conduct of SWS. Therefore,

according to the learned counsel the situation is not beyond repair and if there is a pragmatic realistic approach, bearing in mind the interest of the students, the impasse can be resolved.

(o) Reference was made to the order in W.P. No. 13973 of 2002, where all the institutions before the learned Judge had applied to AICTE for

starting MBA and MCA courses. Those petitioners' case was that their applications were rejected only because the State Government had not

granted No Objection Certificate. The learned Judge after considering the provisions of the Central Act as well as the law laid down by the

Supreme Court held that the AICTE is not justified in insisting the production of the No Objection Certificate of the State Government if they

satisfy and fulfill the other conditions.

10. In reply, the learned counsel for AICTE submitted that the prayer in the writ petition cannot be granted. Until and unless the college admits

students by allotment through SWS there can be no "lapsed" seats. The delay is not on the part of AICTE, but the petitioners. The AICTE had

originally rejected the applications for approval. Thereafter re-inspections were done, certain defects were pointed out and after compliance, the

approval had been granted. By then, the time for entering the SWS had passed. The AICTE cannot be expected to short circuit for grant of

approval.

(a) A letter from the State Government was produced to show that the State was not in favour of increase in in-take and it is as follows:

With reference to your letter cited, I am directed to state that counselling for admission of students into Engineering Colleges in Tamil Nadu has

already commenced. As rightly opined by All India Council for Technical Education itself if the requests for increase in intake/additional courses

etc. are approved at this stage, it will certainly disturb the ongoing schedule of admission process and upset the entire scheme of admission for

2002-2003. I am therefore to state that the State Government are not in favour of considering any further requests for increase in intake, additional

courses etc. for the year 2002 - 2003

Therefore, letters were issued for all the petitioners on 19-07-2002 in which it

was clearly stated that the respondent's decision will be subject to the fulfilment of the university requirements for affiliation and the State Government's policy for admitting the students in 2002-2003.

(b) The institutions were informed that if, in spite of this they are interested in the AICTE re-visiting them, they would be required to pay the

inspection fee. Institutions complied with this letter and therefore, it is implicit that they have agreed to the condition that the approval is subject to

the affiliation and the State Government's policy for admitting the students in 2002-2003. Since these two conditions were not satisfied, the

approval automatically lapses and gets revalidated the next year.

(c) According to the learned counsel, the scheme of Unni Krishnan's case would show that the centralised system was mandatory. The petitioners

knew that only after affiliation they are entitled to admit any student and so, if they had gone ahead with admission in spite of that, they cannot now

insist on approval and affiliation. It was further submitted that the AICTE had clearly indicated even in their letter dated 08-08-2002 that their

approval is only subject to the two conditions. Therefore, there is neither equity in favour of the petitioners nor can there be any legitimate

expectation and there was no delay on the part of the respondents.

11. The learned counsel for the AU in addition to the above made the following submissions:

(a) It is not correct to state that the decision and the scheme framed in Unni Krishnan's case has outlived its purpose. In that case, the question

was how to encourage private educational institutions without allowing them to commercialise the education. Merely because there is a shift in the

market forces, cannot mean that the vice of commercialisation can go unchecked. It is only because the educational institutions are subject to

approval by the AICTE and affiliation to the University before admission can take place, that the standards of educational excellencies are able to

be maintained. If the petitioners were permitted to by-pass the two requirements, it would violate the scheme framed.

(b) It was also submitted that it is true that the statutes have not yet been framed, but Vice Chancellor had invoked his Emergency Powers and

appointed an inspection committee to satisfy itself regarding the fulfilment of the conditions for affiliation by each of the institutions.

(c) It was submitted that the fact that the inspection committee had gone to some of the Colleges in July itself, is not really relevant to the issue,

since, that was before the AICTE's inspection and approval. It was submitted, it was indeed surprising that the argument should be advanced that

affiliation is automatic.

(d) According to the learned counsel, no course can be affiliated automatically unless the University has provision for such a course. Therefore, the

AU has to ascertain and satisfy itself whether the facilities are available for providing qualitative education for those new courses and whether the

institution could support the increased intake.

(e) It is not correct to say that all the seats under SWS would become ""lapsed seats"". According to the learned counsel, in the Unni Krishnan's

case, the Supreme Court has laid down the guidelines, which show how to fill up SWSQ and MiQ. The SWSQ which is determined after the

college is allotted students through SWS, does not come into existence at all, unless the college was ready to receive students selected through the

SWS. No college will be so ready unless it is affiliated. Therefore, these petitioners, who were granted approval after the closure of SWS are not

entitled to treat any seats as unfilled SWSQ seats. As far as the petitioners are concerned, those seats do not exist.

(f) As regards the students, who can be admitted under MiQ or MQ, they ought to have been admitted only after affiliation and not before

affiliation. Having admitted the students without obtaining affiliation they cannot insist upon the affiliation.

11. The learned Special Government Pleader for Education, also prayed for dismissal of writ petitions. Supporting the stand of AICTE and AU it

was submitted as follows:

(a) It has been held that there can be no right to affiliation and therefore, the petitioners cannot claim it as a matter of course.

(b) After the SWS closed, the State cannot allot students towards SWSQ and therefore, the petitioners, who have not yet been affiliated can have

no grievance against the State.

(c) Only if the State had not allotted students towards SWSQ, can the unfilled seats be treated as lapsed. In these cases, the State had no

opportunity to allot any student under SWSQ to any of the petitioners since the

SWS had closed down.

For all these reasons, the AICTE, AU and the State prayed for dismissal of these writ petitions.

12. The powers of the authorities established under AICTE Act, the obligation of educational institutions to satisfy the criteria of AICTE, the

reason for bringing all the technical institutions under the fold of the Central Council, subsequent amplification of the guidelines have all been dealt

with in various cases e.g., like Unni Krishnan's Case, Adhiyaman's Case and the Jaya Gokul Educational Trust case etc. What is beyond the pale

of controversy is that there are three stages to be passed before a student gets the right to obtain a degree. They are Approval by AICTE

Affiliation by the AU and Admission into the petitioner colleges. Without the first two steps, the student's admission into any institution brings him

no benefit since he will not get a degree from the University. The petitioners also are aware of the fact that without obtaining approval and

affiliation, their admission is of no avail. Much was said about the legitimate expectation of the petitioners and their right to admit students. But they

are all aware that they had no right to admit any student when the question of their affiliation was still in the air.

13. In Adhiyaman's case, the Supreme Court compared the Central Act and the University Act of Tamil Nadu and found that there is a conflict

between and overlapping of, the functions of the Council and the university and held that, as far as the matters enumerated u/s 10 of the Central

Act, it is not the University Act and the University but it is the Central Act and the Council created under it, that will have the jurisdiction and to

that extent the provisions of the University Act were deemed to have become unenforceable in case of "technical institutions". The following

paragraphs in that case are important.

29. The Senate and the Syndicate can make respectively statutes and ordinances to enforce the provisions of the Act. The Act and the statutes

and the ordinances made there under show that the University is given powers to prescribe terms and conditions for affiliation also of the technical

colleges such as the engineering colleges and also the power to disaffiliate such colleges for non-fulfilment of the said conditions. It further gives

power to the University to prescribe the qualifications of the teachers and also

their service conditions. The University is also given the power to inspect and to conduct local inquiries of the affiliated colleges and to issue directions to the colleges on the basis of the reports of such inspection and inquiries. It can prescribe the curricula for the different courses conducted by the colleges and conduct examinations to confer degrees and diplomas. It can recommend to the appropriate authorities empowered to sanction, withhold or refuse the teaching and other grants, to decline to forward to the UGC any application made by the management for sanction of any grant, to suspend the provisional affiliation or approval granted to the college in course or courses of study, to decline to entertain any new application for affiliation or approval of applications for increase in strength in any course of studies conducted by the college, to recommend to the Government to take over the management of the college temporarily or permanently. Statute 44-A enables the University to grant affiliation provisionally, for fixed period and to grant extensions for such provisional affiliation.

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.

14. It was reiterated that as far as the technical institutions are concerned the norms and standards of requirements for their recommendation and affiliation respectively laid down by the Central Government and University cannot be higher than or in conflict and inconsistent with those laid down by the council and the Central Act since it must be accepted that the whole object of the Central Act is to determine and coordinate uniform standards of technical education throughout the country.

15. In the same case, the Supreme Court encapsulated the principles that emerged and inter alia two of the principles are

(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.

(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.

16. In *Jaya Gokul Educational Trust* case, the appellant before the Supreme Court was aggrieved by the Government refusing to give permission to the college for starting the college though the AICTE had granted conditional approval. The Supreme Court held that, Thus the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act of Statutes which are not in consistent with the AICTE. Act or its Regulations"" It was indeed surprising that inspite of this principle being affirmed, the State again talks of a policy not to admit students.

17. In that case, the Supreme Court construed the relevant clause in the Kerala University Act, to mean that it merely required the University to obtain the "views" of the State Government. Therefore, the University could not in any event have sought for the approval of the State Government.

18. The Supreme Court held, in that case that the so-called "policy" of the State cannot be a ground for refusing the approval in view of

Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, . This case dealt with Medical Education

and the effect of the Central Law upon the State law. But the rationale is the same. So it was held that the State could not have any ""policy"" outside

the AICTE Act and indeed if it had a policy, it should have placed it before the

AICTE and too before the latter granted permission. In fact, the Supreme Court also provided for further course of action in the event of any fresh facts coming to light after the approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with. Then the State Government could always write to the AICTE, to enable the latter to take appropriate action. And on facts in *Jaya Gokul Educational Trust*, the Supreme Court held that the decision was wrong on merits and that the University ought to have considered the final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of permission granted by AICTE and the other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

19. In the counter of the AICTE at paragraph No. 9 it was stated that, letters were issued to all the petitioners on 19-07-2002 in which it was clearly stated that the AICTE's decision will be subject to the fulfilment of University requirements for affiliation and admission and the State Government's policy for admitting the students in 2002-03. The Institutions were also informed that if they feel that they are interested in reconsideration of the earlier decision of the AICTE, they would be required to pay the inspection fee for the inspection. The Institutions complied with this letter and therefore they are deemed to have agreed to the condition that the approval will be subject to:-

- (a) Fulfilment of University's requirements for affiliation/admission.
- (b) State Government's policy for admitting the students in 2002-2003.

So the petitioners were fully aware that they could admit the students only after they get affiliation and their approval was subject to the institution being allotted seats through the Central Counselling. So equitable considerations do not weigh in favour of the petitioners. If at all the considerations of equity exist it is only in favour of the students whom the petitioners have admitted knowing fully well that their colleges have not been affiliated yet. There was no reply or re-joinder or denial to the counter of the AICTE. So, it can be taken without any dispute that the petitioners had paid the inspection fees after the AICTE was directed by this Court to re-visit the respective institutions fully knowing that even if

they get approval it was subject to affiliation.

20. The stand taken by some of the petitioners that affiliation is only automatic deserves to be rejected outright, since,

Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be

exercised with great care, keeping in view the interest of the general public and the nation". (Unni Krishnan's Case).

21. In Unnikrishnan's case, the Supreme Court held as follows:

... But one thing is clear: commercialisation of education cannot and should not be permitted. The Parliament as well as State Legislature have

expressed this intention in unmistakable terms. Both in the light of our tradition and from the stand-point of interest of general public,

commercialisation is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that

imparting education cannot be trade, business or profession. The question is how to encourage private educational institutions without allowing

them to commercialise the education? This is the troublesome question facing the society, the government and the courts today. But before we

proceed to evolve a scheme to meet this problem, it is necessary to answer a few other questions raised before us.

We must, however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with

it the right to recognition or the right to affiliation.... No private educational institution can survive or subsist without recognition and/or affiliation.

The bodies which grant recognition and/or affiliation are the authorities of the State. In such a situation, it is obligator - in the interest of general

public - upon the authority granting recognition or affiliation to insist upon such conditions as are appropriate to ensure not only education or

requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognising/affiliating authority is the "State,

it is under an obligation to impose such conditions as part of its duty enjoined upon it by Article 14 of the Constitution. It cannot allow itself or its

power and privilege to be used unfairly. The incidents attaching to the main activity attach to supplemental activity as well. Affiliation/recognition is

not there for anybody to get it gratis or unconditionally. In our opinion, no

Government, authority or University is justified or is entitled to grant recognition/affiliation without imposing such conditions.

It is made clear that it shall be open to the appropriate authority and the competent authority to issue such further instructions or directions, as

they may think appropriate not inconsistent with this scheme, by way of elaboration and elucidation.

22. What are the conditions imposed by Anna University. None. At least no material has been produced before the Court to show that conditions

have been fulfilled. A proforma of application for Fresh/Continuation of Affiliation has been produced. There is nothing there to show the existence

of conditions apart from or different to what is imposed by the AICTE Regulations. In fact they are almost identical as far as the crucial conditions

are concerned. In any event, the Supreme Court laid down in para 41(v) of *Adhiyamaan's* case,

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 Center 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.

That is not the situation here. We can take judicial notice of the fact that seats for technical education in T.N. are going a-begging.

23. In *Jaya Gokul Educational Trust* case, the Supreme Court said that,

the standards for granting affiliation or for de-affiliation could not be higher than the standards laid down by the Central Government or in conflict

with the standards of the Central Act",

which means that the University can have standards of its own for grant of affiliation subject to the above limitations.

24. The very fact that Entry No. 66 of List I uses the word "coordinate" is itself enough to show that the council has to take into account the

different levels of progress and development or lack thereof in the different regions of our country. Therefore, while the Central Act provides for

uniformity and an integrated, coordinated development, the university's power to have their own standards for affiliation which does not run contra

to the conditions laid down in Central Act have not been taken away.

25. In fact, in Adhiyamaan's case the Supreme Court referred to R. Chitralekha and Another Vs. State of Mysore and Others, where it was held that,

It is not possible to hold that if a State Legislature made a law prescribing a higher percentage of marks for extra curricular activities it would be directly encroaching on Entry 66 of List 1 of the Seventh Schedule to the Constitution.

Therefore, the Act of affiliation is evidently not one of mere concurrence or to blindly follow the AICTE's grant of approval. It is an independent decision and it should be backed by reasons. In fact even the one writ petition in which the petitioner had challenged the validity of the Statute was

not with reference to the power granted to the University for affiliation, but only with clause 5(a)(c) which deal with the State Government's policy.

In these cases, the petitioners had been granted approval by the AICTE either for new colleges or for new courses in already affiliated college or

for additional intake of students in an existing affiliated course in an existing affiliated institution.

26. The provisions of AICTE also make it clear that before it begins the process of approval it gets the recommendations of the State as well as

that of the University. It is also evident that in many of the cases the AU had also inspected the respective colleges. But the AU has not

communicated its conclusion upon the inspection to the petitioners. If they had reservations they could have communicated the same to the AICTE

which also apparently was not done, instead after receiving the approval from the AICTE they had chosen to send the impugned letter expressing

their happiness at the enthusiasm of the petitioner but denying them what they want.

27. The authorities, who are the respondents in this case namely, the AICTE, the AU and the State of Tamil Nadu have not covered themselves

with glory. It is expected that the actions of these respondents should be reasonable and at least in the case of AICTE and AU their actions should

justify their existence.

28. The AICTE has been vested with immense power to achieve a uniform development in the field of technical education both qualitatively and

quantitatively. It has been repeatedly held by the Supreme Court which is within

the knowledge of AICTE that the field that they occupy cannot be diminished either by the Government or the University. The time-table for the SWS had been announced much in advance and it is not the case of AICTE that they do not know about it. Therefore, when they granted the approval AICTE knew it was after the last date of the counselling under the SWS. So the condition imposed that this is subject to the Central Counselling conveys no meaning unless it is the stand of AICTE that if the State Government holds supplementary counselling it is open to the State Government to do so. According to the counsel for AICTE the approval was granted belatedly, because the re-inspection was done after this Court issued directions. Then the AICTE ought to have either brought to the notice of this Court the difficulty in bringing those colleges into the single window scheme or it could have granted approval for the next academic year stating that since the last date of SWS is already passed it is not possible to grant approval for this year in which case it would have avoided the present dilemma. Instead the AICTE has chosen to take an extremely indeterminate stand by granting approval which ex-facie is of no use to the institution and which has driven them to litigation.

29. The AU on its part has been equally culpable. The AU Act clearly shows that for the "university area" the AU will be the only university as far as colleges are concerned. Therefore, without AU these technical institutions cannot exist and therefore, the responsibility on the AU to discharge its duty is that more heavy and it should be discharged fairly, reasonably and without arbitrariness. It is submitted on behalf of the AU that it is of utmost important that affiliation should be done not only for the college but also for each additional course in an existing affiliating college and intake of students in an already affiliated course in an existing affiliated college because the AU will have to satisfy itself whether the conditions are satisfied. Now admittedly the statute regarding affiliation have not been framed. As seen above there are no condition for affiliation.

Therefore, though the power to grant affiliation is there, the petitioners do not know within what parameters the power is exercised since the conditions have not been laid down. It is true that only by the Amending Act 25 of 2002 the Colleges from the other universities have been transferred to the AU. Apparently only one meeting has been held till date and

the inspection has allegedly being done by the Vice-Chancellor invoking his emergent powers. The Supreme Court has clearly stated that while a University can refuse to affiliate or de-affiliate an institution or course, the standards applied cannot be different from the standards applied under the Central Act.

30. Now the impugned letters in each of the writ petition do not refer to any such standards which the petitioners failed to meet. All that the letter states is that the petitioner had got his approval after the last date for SWS and since the State could not allot any students through the SWS the university cannot grant affiliation. It was open to the AU to give reasons for not affiliating or to have even granted affiliation if it was satisfied stating that since the seats through the SWS were not available the petitioners could only fill up the MiQ seats as a minority institution or towards the MQ seats if it is non-minority institution. That would have been a positive attitude befitting a University.

31. The word "Affiliate" is etymologically derived from the latin word which means "son". The University virtually "adopts" the college by affiliation". An attitude like that would have befitted the university, which is in the position of a "parent" to these institutions. The university cannot behave in a peevish manner when all the institutions were depending upon it for affiliation. If one has to accept and one must accept that affiliation is a reason-based decision, then the impugned letter is bereft of reasons and the university is not acting as an autonomous authority but more as one speaking His master's voice namely the State's.

32. The following extracts from the judgments cited by the learned counsel for the petitioners must be borne in mind by the AU.

There is a merit in the contention raised by the learned counsel for the petitioner. Ours is a country where everybody does not get the opportunity to get a higher education. Keeping in view our limited resources the seats are created in the University in different courses. It is a matter of pity that inspite of the limited seats available in each trade and speciality, some seats remain un-filled for one reason or the other. It will always be considered in larger public interest if the authority ensures that these seats are filled on merit and the eligible persons should be given the chance to get higher education. There is no use or fun to keep the seats vacant when the

number of the seats in every trade or speciality is less and when there is a stiff competition in every speciality.

(- 2000 (6) SLR 438(supra))

I have considered the rival contentions of learned counsel for the parties. I am afraid, I am not impressed at all by the arguments of learned

counsel for the respondent. Upon perusal of the Second Inspection Committee report dated July 15, 2000, it is fair to observe that the case of the

petitioners has been recommended by the Committee for granting provisional affiliation, by considering all aspects in accordance with guidelines

provided by the M.D. University. The pleas of the University are too flimsy and that the perusal of the impugned order dated February 16, 2001

shows that a very casual and cursory approach has been adopted. In fact, it seems no application of mind has been made. Comparison of the

recommendations made by the second Inspection Committee under various heads with the observation made by the Executive Council, shows that

except by mentioning the report of Second Committee and the report of the First Committee, in fact the reports have not been perused at all.

However, even if accomplishable deficiencies are elicited, the same can be made the condition precedent for granting provisional affiliation. But this

would not mean that such conditions should be imposed to be accomplished in a time frame which may not be possible. The approach should have

been and should be constructive and positive. No institution can survive with a negative approach by the University. It must be remembered that

the educational Institutions are meant for the Society at large but when the attitude adopted by the University is far far away from the public

interest, no Institution can survive and be helpful to the Society. If provisional affiliations are granted, this would not give a licence to the Institution

to violate the norms and the conditions imposed and make it a shop only. The University has all the rights to de-affiliate such kind of Institutions.

However, right in the beginning such type of approach should neither be permissible nor it should be adopted. A perusal of the impugned order

does not reflect reasonable cause for rejecting the request of the petitioners for grant of affiliation to the Law College to be set up at

Ballabgarh(Faridabad).

(- 2001 (4) SLR 713(supra))

33. The State Government also has tried to achieve indirectly what it could not achieve directly by introducing the no objection certificate clause.

The State Government has not stated how the application for affiliation cannot be considered apart from stating that they are not entitled to admit

any students through the SWS. Willingly all the petitioners submitted that if supplementary counselling is held and the State allots students through

the supplementary counselling they will be happy to admit those students.

34. Some of the petitioners have prayed for treating the entire approved intake as lapsed seats. The provisions of AICTE Act are very clear and

the seats which will have to be allotted through SWS do not come into existence unless a college is allotted students through the SWS. A seat

would become a "lapsed" seat only if the seat is available for allotment through SWS but was not so filled up. In all these cases, those seats were

never available for allotment through the SWS since the approval was granted after the last date of the opening of the SWS. Therefore, the

petitioners' claim as a matter of right that they are entitled to fill up all the seats cannot be accepted.

35. In W.A.Nos.181 and 464 of 1998 which dealt with medical students, the Division Bench of this Court, after considering all the decisions on

this issue, issued a direction regarding affiliation and admission in respect of all the seats and how to treat the "free" seats and "payment" seats for

the next academic year. This was placed for supporting the petitioners' case. But the said directions were prefaced by these words, "though

normally this Court may not issue such a direction or declaration...". So it applied to the extreme scenario of that case.

36. In para 9 of the scheme framed in Unnikrishnan's case, it is said-

after making the allotments, the competent authority shall also prepare and publish a waiting list ...

The said list shall be followed for filling up any casual vacancies These vacancies shall be filled until such date Any vacancies still remaining

such date can be filled by the Management. The petitioners cannot pull out the last sentence alone out of context and say "All these seats are still

vacant after the date, so we will fill them up.

The scheme applies to all institutions and so all these seats will be treated as "vacant" only if they have passed through the other stages mentioned

in Clause 9. So the petitioners cannot treat the seats which have not gone through the Single Window System("SWS" in short) as lapsed. It is not possible to throw over board the Unni Krishnan Scheme merely because, according to the petitioners" the play of the market forces has changed the education scene altogether. Until the scheme is altered or modified by the Supreme Court, I am bound to test each case against the guidelines.

37. The question arises whether the university could grant affiliation and permit the petitioners to admit to the extent of MiQ or MQ as the case

may be as if the entire percentage of seat available for SWS have been filled up and none became lapsed. In some cases, the petitioners had sent a

list restricting themselves itself only to that extent. The Section relating to minority institutions in the AICTE Act reads thus:

(1) In the academic year 1994-95, fifty percent of the total intake in a minority educational technical institution shall be filled up by candidates

selected by the competent authority on the basis of the common merit list. The candidates selected shall be distributed equally in free seats as well

as in payment seats in the order of merit. The remaining fifty percent shall be filled up by the management of such minority technical institution from

the candidates belonging to the minority community on the basis of merit.

(2) Fifty per cent of seats permitted to be filled by the minority and technical institutions under sub-regulation (1) shall be equally distributed

between free and payment seats.

(3) After completion of admissions, each minority technical institutions shall submit to the competent authority the statements containing full

particulars of students admitted under this regulation. The competent authority shall verify the correctness of the statements and if any irregularity is

noticed it shall call upon such institution to rectify the same.

38. In Noorul Islam Education Trust, Nagercoil Vs. Government of Tamil Nadu and others, , which deal with the grant of approval for private

technical institution and whether it could be temporary or preliminary and in which the considerations for grant of affiliation to the University was

stated, it was held:

The guidelines laid down by the Council for fulfilment by the private technical institutions for approval are vague. Clause 5 of the guidelines is to

the effect that the infrastructure and other facilities should be provided as per

the norms laid down by the Council. What exactly are the norms laid down by the Council is not made clear anywhere. No record has been produced containing the norms prescribed by the Council. It is high time that the Council brings out in clear terms the norms which should be fulfilled by any applicant for approval. It is open to the University to grant or refuse to grant affiliation on grounds which will not impinge upon coordination and determination of standards. Hence, it is necessary for the All India Council to lay down the norms which will fall within the scope of coordination and determination of standards. That will enable the Universities to prescribe such other conditions as may be required for grant of affiliation. It cannot be disputed that the grant of approval or permission by the All India Council is not sufficient to enable any person to start a technical institution. If such person wants the students of the institution to be examined by any University, the Institution has to get affiliation from the University. Such affiliation can be granted only if the conditions laid down by the University are fulfilled. No doubt the conditions which may be laid down by the University have to be such other than those imposed by the All India Council.

39. In view of the fact that the petitioner had been approved by the AICTE and since the AU had also inspected the colleges and since the

Government's inability to fill up the seats could only be as regards the seats to which they are entitled to allot through the SWS, the petitioners"

prayer that their application for affiliation should be considered on merits is quite reasonable. The impugned letter is totally silent regarding this. The

AU has taken the easy way out by merely mentioning the factum of closing down the SWS and declaring that affiliation is not possible.

40. As held above, the AU has not been able to produce any condition which it has laid down, though satisfied before the grant of affiliation. After

Jaya Gokul Educational Trust case, the University or the Government cannot impose any condition which is in contradiction or in violation of the

conditions for approval by AICTE. In the absence of any other conditions and when it is also not in dispute that the University had inspected the

premises, the University is bound to grant affiliation and not reject it on the ground that the State is not ready to allot seats through SWS. In any

event, the last date for SWS has passed, the University could have stated that

affiliation is granted, but the in-take must be only upto the extent to which the particular institution could fill up either under MiQ or MQ and that the SWS seats not having come into existence cannot be filled.

Therefore, the WPs in which the petitioners have sent in their applications for affiliation and in which the rejection has been only on the ground that

the State has not sent students to be filled up in the CCQ, the University shall grant its affiliation to the institution as per the approval granted by the

AICTE and approval of the list to the extent that the said institution could fill up seats on its own either under MiQ or MQ, as the case may be.

41. The University shall make it clear that the approval of the list of students will be strictly restricted to the percentage to which the petitioner

being either a minority or a non-minority is entitled to fill de hors the State's SWS entitlement.

42. The prayer for declaration that the Section 5(a)(c) is illegal and invalid is not dealt with in these writ petitions and is left open. It was not on the

basis of Section 5(a)(c) that affiliation has not been granted, atleast ostensibly the reason for rejecting is that the petitioners cannot be allotted seats

through SWS.

43. In the circumstances of this case, where the poor students are buffeted between the three authorities, and the Colleges themselves, the

following guidelines may be necessary:

(i) The AICTE shall adhere to the time-table fixed for conduct of the Central Counselling in respect of each State and shall give its approval and

well in advance bearing in mind Clause (iv) below so that the University will be able to give its affiliation before the last date for the central

counselling or SWS.

(ii) If the AICTE is constrained to re-visit the institution and gives its approval beyond the last date for the counselling through SWS in the

particular State in which the institution is situate. In the letter of approval the council shall clearly indicate that if it comes to its knowledge that the

institution has admitted students before obtaining affiliation either for the institution or for the particular additional course or for additional intake it

will be open to the Council to withdraw the grant of approval. This should provide as a check on ad hoc admission which had taken place in some

of the institutions in this case. If the AICTE for some reason is obliged to

withdraw the grant of approval and place the institution under a no admission category such orders shall be passed before the commencement of an academic year so that the students who have been admitted after affiliation will not suffer by a midstream withdrawal of the approval.

(iii) The University shall, within a time frame, preferably three months from now, frame the statutes laying down the conditions for affiliation.

(iv) The University, which inspects the institution prior to giving its recommendation as visualised in Regulation 8(3) of AICTE shall maintain those records so as to enable it to grant its affiliation within two weeks from the date of grant of approval by AICTE and definitely before the last date of SWS.

(v) At any rate, the University shall make all endeavour to pass orders on the application for affiliation, before the last date for counselling under SWS so that the particular institution get the benefit of the SWS scheme and also the right to treat the unfilled seats as lapsed seats.

(vi) Where students are admitted against MiQ or MQ and not in the SWS quota, the Institution shall indicate the date of approval and date of affiliation. This shall be done prominently and to the knowledge of the students. This shall put an end to the deplorable practice of "irregular" admissions without affiliation.

44. To sum up, the University shall grant affiliation to the petitioners herein on or before 20th October 2002. This direction is given not because affiliation is automatic but because the University has neither framed any condition nor has it cited the violation of any condition for rejection of the affiliation. In cases, where the writ petitioners have applied for affiliation and sent in a list of admitted students, the University after granting affiliation shall approve the list of students to the extent of the MiQ in the case of minority institutions and to the extent of MQ to the non-minority institutions bearing in mind the approved intake indicated in the order dated 08-08-2002 or 02-08-2002.

45. The respondent authorities and the petitioners should remember that what they are dealing with is the future of young persons. Their parents are paying their hard-earned money. It is not as if the petitioners are goaded by pure and unalloyed altruism. They make profit, but they cannot do so risking the interest of the students and the parents. The men who walk along

the corridors of power, wherever they may be, must have a social awareness and responsibility.

46. In cases, where the writ petitioners have not sent in a list of students, they shall do so within ten days from the date of affiliation to the extent of

MiQ or MQ as indicated above. In cases where the writ petitioners have sent in a list of students in excess of what they are entitled to, it is open to

them to re-submit a fresh list. However, since it has been held herein before that they are not entitled to treat the SWSQ seats as "lapsed" seats

since they have not gone through this SWS, they are not entitled to fill in the entire number of seats as though the SWSQ seats had become lapsed.

The list of students shall at any rate be submitted to the University on or before 31-10-2002. The list of students that are forwarded to the

University as per the above directions shall be approved by the University.

47. These writ petitions are disposed of accordingly. The connected miscellaneous petitions in all the writ petitions are closed.

48. In these days when the Courts have gone ahead directing the State to pay compensation for tortious liability, the only deterrent that may work

to instill some responsibility in the persons, who run the petitioner-institutions and head the AICTE, the University and officers of the State, may be

to award costs when students suffer by their actions.

49. This order shall not come in the way of the respondents taking decision regarding supplementary counseling or with regard to the admission of

students.