

(1978) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3355 of 1977

M.V. Subba Rao

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 25-08-1978

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 10

Hyderabad District Boards Act, 1956 — Section 135

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 13(1), 15, 15(1), 15(3)

Citation : AIR 1978 AP 453 : (1987) 2 ALT 328

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Advocate : G. Vedantha Rao, for the Appellant; D.V. Sastry, Govt. Pleader, for C.T. on behalf of Respondents, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, AIR 1986 SC 1323(1) : (1986) 1 SCALE 1133 : (1986) 1 SCC 20 Supp : (1986) SCC 20 Supp : (1986) 1 SCR 479 : (1986) 2 UJ 301

Syed Saadatulla Hussaini, J.—These three writ appeals arise against the common judgment of the learned single Judge, dated 4-12-1997 allowing the writ petition Nos.27598/1997, 27612/1997 and 27617/ 1997, holding that Section 20 of the A.P. Education Act, 1982 (hereinafter referred to as "State Act") in so far it relates to establishment of Technical Institutions viz., Engineering Colleges and other connected matters, as it overlaps and repugnant to Section 10 of the All India Council for Technical Education Act, 1987 (hereinafter referred to as "Central Act") and the Regulations framed thereunder; as such void and unenforceable, and directing the Convenor (EAMCET-1997-Engineering Admissions) to allot the candidates to the respondents-writ petitioners Institutions forthwith in accordance with the Rules for the Academic Year

1997-98 subject to grant of affiliation by the concerned University.

2. The factual matrix of the case in the above appeals is that respondents-writ petitioners have applied, after fulfilling the terms and conditions laid down under the provisions of the Central Act for establishing Engineering Colleges and imparting Education in different disciplines or courses and also the State Act. Though approval was granted for the Academic Year 1997-98 by the All India Council for Technical Examination (hereinafter referred to as "Council") as per the norms and standards on 29-5-1997, 22-9-1997 and 26-9-1997 to the respondents-writ petitioners in the above appeals respectively; but the State Government exercising its powers under State Act did not grant permission.

3. The learned Advocate General appearing for State submits that both the Acts viz., the Central Act and the State Act travel , in different directions and they cover different areas and there is no repugnancy with the provisions of these two Acts. The Council is entitled to grant approval in accordance with the Central Act; but it does not mean that the State Government is bereft of its powers either to permit or reject the application for establishment of private Engineering Colleges u/s 20 of the State Act. Therefore, he submits that inspite of the approval having been granted by the Council for establishment of Private Engineering Colleges to the respondents-writ petitioners, it is still open for the State Government to refuse the permission on the basis of the policy decision taken by it that no permission should be granted to establish private Engineering College in the covered area of Revenue Division in the interests of integrated and uniforming development of the State. The provisions of the Central Act and the Regulations and Rules framed thereunder, do not prevail over the provisions of Section 20 of the State Act. The question of repugnancy is applicable to the provisions of enactment or statute and not for the delegated legislation

4. He has drawn our attention to the Statement of objects and reasons of the Central Act and submitted that its main purpose is for coordinated development of the Technical Education system throughout the country and that does not imply that the provisions of the Central Act prevail over the State Act, for their fields of operation are different. The State Act deals with the laws relating to the Educational system in the State for reforming, organizing and developing the said Educational system and to provide for matters connected therewith or incidental thereto. u/s 20 of the State Act, the competent authorities from time to time have to conduct a survey, as to identify the educational needs of the areas under its jurisdiction and before the permission is granted, they have to satisfy the authority that there is a need for private educational facilities to the people in the area, that there is adequate financial provision for continued and efficient maintenance of the Institution as prescribed by the competent authority and for other requirements as per Section 20(1)(3) of the State Act and that there should be uniform distribution of colleges throughout the State for ensuring a balanced development. It is also submitted that the policy of the State Government is to sanction colleges only in uncovered Revenue" Divisions. This

was also brought to the notice of the Council that only those cases which fall under uncovered Revenue Divisions, should be considered based on new policy. As the respondents-writ petitioner were seeking permission to establish Engineering Colleges in covered Revenue Divisions, their cases were not considered by the Cabinet Sub-Committee. The Policy of the State Government for sanctioning Engineering Colleges in uncovered Revenue Divisions, is based on certain logic. The policy envisages that the intervention of the State Government in regard to location of such Institutions would have a positive impact on the location of these Institutions all over the State in an uniform and evenly distribution. It is further submitted that the Engineering Colleges not only contribute to the growth and development of the area where they are situated; but they also provide an opportunity to the students of that area to study in their own area, thereby reducing the hardships in staying at far away places and with this in view, the State Government decided not to permit the establishment of Engineering colleges in the covered Revenue Divisions. The Government has also accepted in certain cases and granted permission in respect of certain Institutions in contravention of policy by making an exception by consulting all the political parties, but that exception cannot be continued.

5. He submits that the Central Act is relatable to Entry 66 of List I (Union List) to VII schedule of the Constitution and Entry 25 of List II (Concurrent List) to VII schedule of the Constitution, whereas the State Act is relatable to Entry 25 of List III to Schedule VII of the Constitution.

6. Thus the List III (Concurrent List) did leave legislative competency on the State Legislature as well to legislate in respect of Technical Education. The only restriction is that such legislation will be subject to Entry-66 of List I which deals with coordination and determination of standards in Institutions, for higher education or research and scientific and Technical Institutions. Thus, the Central Act is enacted for coordination and determination of standards of Technical Education and with regard to the other matters i.e. subject to this Entry, the State has got the power to legislate under Entry 25 of List III. Any other interpretation would make Entry 25 of List III to VII schedule voidous or redundant.

7. He also submits that with regard to repugnancy, Article 254(1) of the Constitution deals with the inconsistency between laws made by Parliament and the laws made by the Legislature of the States in respect of a matter which is enumerated in the concurrent List i.e.. List III. So the question would be whether Section 20 of the State Act and Section 10 of the Central Act are mutually inconsistent or do they occupy the same field. While the Central Act deals with the coordinated and integrated development of Technical and Management Education and maintenance of standards, the State Act especially Section 20 deals with the right of the State Government to grant permission for an Institution imparting technical education. Both occupy different fields. One is not inconsistent with the other. Both are not mutually exclusive. Both can be obeyed.

There is no inconsistency between these provisions.

8. It is well settled that if Rules or Regulations are made under any enactments, they will be valid - for the statutory rules or regulations made in exercise of the delegated authority are valid and binding only if made within the limits of the authority conferred. As such, any regulation or rule framed by the Council cannot be said to be having the effect of any repugnancy with the law made by the State Legislature.

9. For any Educational Institutions imparting technical education, permission from the State Government, approval from the Council and affiliation from the concerned University are sine qua non. One cannot be dispensed with the other. These three requirements operate in three different fields. One is not inconsistent with the other. All three can co-exist. Any other interpretation would make the provisions contained in the State Act and the provisions contained in the University Act for permission and affiliation redundant. Such an interpretation is not permissible.

10. He relied on a decision reported in *M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others*, wherein at para 58, it has been categorically held thus :

"The Government is also not automatically bound to recognise such Institutions having approval of the Council, but such refusal of affiliation by the University or recognition by the Government shall not be on the matters or the grounds which are already considered and covered by the Central Act and for determination of the Council while according approval."

11. He also relies on a Judgment of the Supreme Court reported in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, wherein, it is clarified at para 30 as under :

"The Central Act has been enacted by the Parliament under Entry 66 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 Engineering Colleges and 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 continuation of affiliation will have to be in conformity with norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act."

12. The learned Advocate General submits that the provisions of Section 20 of the State Act are not repugnant as they operate in different fields and do not encroach upon the occupied field u/s 10 and the Regulations framed thereunder of the Central Act in respect of the Technical Education. The State Government is competent u/s 20 of the State Act to accord or refuse permission. As the respondents-writ petitioners want to establish the Engineering Colleges in the

area of covered Revenue Divisions their cases were not considered by the State Government for establishing the Engineering Colleges.

13. The learned Counsel appearing for respondents-writ petitioners refuting the contentions of the learned Advocate-General, submits that the writ petitioners have acquired large extent of land for the purpose of establishing Engineering Colleges. They have constructed buildings at enormous cost and various instruments for establishing Engineering Colleges, were purchased and installed in the Colleges. They have deposited a sum of Rs.50 lakhs each in Fixed Deposit for 10 years and they have also recruited various staff for various posts. As such, it is not open for the State Government to refuse permission. The State Government has also adopted discriminatory attitude towards the respondents-writ petitioners and on approval by the Council, the State Government had granted permission for establishment of Sri Kalahastceswara Institute of Technology, SriKalahasti, Chittoor District. Discretion cannot be exercised against the respondents-writ petitioners on the ground that the particular institution is sponsored by Charitable Trust or such institution was permitted in contravention of the policy alter consulting the political parties. As such, the action of the State Government towards the petitioners, is illegal.

14. He also submits that with regard to the policy of the Government to grant permission for establishing Engineering Colleges in the uncovered areas of Revenue Division, it is irrational and has no nexus to the object sought to be achieved. The establishment of Engineering College has nothing to do with the development of the area and moreover, the students of that particular area cannot have any admissions in the colleges established in that area - for the admissions arc controlled by a Central Agency and the admissions are based on merit ranking, as a result of which, a student who hails from a particular area where the institution is now permitted, cannot have a right of admission in the same institution and it is subject to the merit ranking and availability of the seats. As such, the submission of the learned Advocate-General has no merit.

15. He also submits that the Central Act confers exclusive jurisdiction on the Council for proper planning and coordinated development of the Technical Education system through out the country, which is evident from the statement of objects and reasons read with Section 10 of the Central Act in exercise of these powers conferred u/s 23 of the Central Act. Detailed Regulations have been framed for implementation of the provisions of the Central Act and also with regard to the exercise of powers and functions of the Council.

16. He submits that it is pertinent to note that during the exercise of such powers, the Council will have to have consultations with the concerned State Government and also affiliating Universities, which is also evident from the proceedings of the Council dated 22-9-1997 which is extracted in the judgment of the learned single Judge at internal pages 27 and 28.

17. The State Act conferred powers on the competent authority u/s 20 of the Act

to grant permission for establishing Educational Institutions. It is a general power conferred on the competent authority to exercise that power. It may not be out of place to mention Section 2(12) of the State Act which is as under :

"Competent Authority"" means any person, officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act for such area or for such purposes as may be specified in the notification."

18. But, no such authority has been notified as contemplated thereunder. The power conferred u/s 20 of the State Act is general nature in relation to all Educational Institutions in the State. The later enactment of Parliament, the Central Act is special in nature exclusively relating to technical education. That being so the general provision u/s 20 of the State Act must yield to the special powers conferred u/s 10 of the Central Act. In other words, insofar as the matter relating to grant of permissions for establishing technical institutions, the field is occupied exclusively u/s 10 of the Central Act. Section 20 of the State Act cannot have overriding effect in such matters. It can safely be concluded that as there was approval granted by the Council for starting Engineering college, after the Institutions satisfied all the norms and conditions laid down by the Council particularly after consultations with the State Government and the concerned University as required under statutory regulations which are made in exercise of delegated legislative powers. The regulators are as efficacious as main statute itself. In view of this factual position, the State has no jurisdiction in exercise of its powers to refuse withhold granting permission in view of the alleged policy decision, is not sustainable.

19. The learned Standing Counsel for the Council Mr. Suresh submits that Section 10 of the Central Act lays down functions to be performed by the Council clause (a)(i)(k) merits consideration while construing the scope of Section 20 of the State Act after the enactment of the Central Act. Clause (a) of Section 10 empowers the Council to undertake survey in various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education. Clause I requires the Council to lay down the norms and standards for courses, curricula, physical and infrastructural, staff pattern etc. Clause (k) provides for grant of approval by the Council for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Regulations of 1984 framed u/s 23 of the Central Act as amended in the year 1987 provide for the procedure for processing of the applications for grant of approval to the technical institutions. Regulation 6 dealing with conditions for grant of approval provides for the financial position of the applicant is sound for development of the land and for providing related infrastructural facilities as per the norms laid down by the Council and further states that the staff shall be recruited as per the norms and standards specified by the Council from time to time. Sub-Regulation (iv) of Regulation 8 provides for the application to be made by the registered society/

trust proposing to start the technical institution, simultaneously to the concerned State Government. Sub-regulation (v) of Regulation 8 which deals with scrutiny of applications states, that Bureau of Regional Committees of the Councils shall invite comments/recommendations on the applications, from the State Government concerned. Sub-regulation (vi) of Regulation 8 refers to consideration of the recommendations of the State Government by State level Committee. Sub-regulation (viii) of Regulation 8 states that if there is any disagreement in the recommendations made by the State Government, the Central Task Force shall invite representatives of the respective agencies for further consultation before making final recommendations. Sub-regulation (ix) of Regulation 8 states that on the recommendations of the Central Task Force, the Council shall decide the grant of approval as sought in the application. Regulation 9 provides for the constitution of an Expert Committee by the Council in consultation with the Chairman of the Regional Committee comprising of representative of the concerned State Government for processing the applications. The Regulations as amended in the year 1997 deals with the issuance of letter of viability prior to the inspection of the Institution by the Expert Committee. The said amended Regulations are applicable to the Institutions starting professional courses, viz. Engineering. On every application, the State Government is to forward its recommendations and the recommendations are to be considered by the Council before the issuance of letter of viability. Sub-regulation (viii) of Regulation 8 of the amended Regulations requires the applicant to satisfy the Council with regard to the ownership/title of the applicant regarding the land, land use certificate of the authority concerned and joint fixed deposit while issuing the letter of viability.

20. He submits that thus a reading of Section 10 of the Central Act with Regulations framed thereunder provide for a complete and exhaustive procedure for granting approval to the technical institution for starting courses. The location, the financial soundness of the applicant, and the title aspect are all taken into consideration before granting the approval. Section 20 of the State Act once again provides for permission of the Government for establishment of Educational Institutions. A reading of Section 20 requires production of title deeds, financial capacity of the applicant and other details for granting permission. It also requires that the applicant is to satisfy the need for providing educational facilities to the people in the locality. A conjoint reading of the Central Act along with UK Regulations on the one hand and Section 20 of the State Act on the other shows that Section 20 has become redundant after passing of the Central Act. The object of Parliament in enacting the Central Act is to channelise the Technical education in the country through All India Council. For starting new technical institutions, the concerned agencies of the State Government are consulted, their recommendations are taken into consideration and ultimately, approval is granted. There is no further scope for grant of permission by the State Government u/s 20 of the State Act, in so far technical institutions are concerned, once approval is granted by the Council. Section 20

has thus become inoperative and the same has been rightly struck down by the learned single Judge in so far as the technical institutions are concerned. Once all the formalities as required by the Council are fulfilled by the Technical institutions and they are ready for take off, the contention that permission of the State Government is required and the applicant has to satisfy as to whether there is a local need, is not sustainable. Whether there is a local need or not is a matter for consideration by the Council. It is a fact to be taken into consideration at the threshold when the application is made and not after it is processed thoroughly and the Council approves it.

21. Lastly, he submits that the Judgment of the Supreme Court reported in State of Tamilnadu and another v. Adhiyaman Educational and Research Institute and others (supra) has considered the scope of provisions of the Central Act and the Regulations framed thereunder and in the light of the Judgment of the Supreme Court, Section 20 of the State Act became redundant in so far as technical institutions are concerned.

22. Upon the submissions urged before us by the learned Counsels on both sides, the short question which falls for our consideration and determination is within a narrow compass, viz.,

(1) Whether the provisions u/s 20, (2)(3)(a)(i) and (4) of the State Act enacted under Entry 25 of List III (Concurrent List) to VII schedule to Constitution, are repugnant to Section 10(1)(a) of the Central Act enacted under Entry 66 of List I (Union List) to VII schedule of the Constitution and the Regulations framed under the Act?

(2) Whether the State Government has legislative competence to refuse/ withhold permission for establishing private Engineering colleges in covered Revenue Divisions as per State Government's policy after the Council grants approval ?

(3) Whether the permission of the State Government is necessary for establishment of private Engineering Colleges under the provisions of the State Act ?

23. Realising the imperative need to have a National policy, the Central Act has been enacted by the Parliament and vested with the statutory authority for planning, formulation and maintenance of norms and standards, accreditation, funding of priority, areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring and coordinated and integrated development of technical and management Education. Professional Education should be of the highest order and should compete to the International standards - for there has been globalisation of Industry and further, uniformity through out the country should be maintained to avoid dangerous growth of sub-standard technical institutions.

24. The Constitution Bench of the Supreme Court in Unni Krishnan J.P. and

others v. State of Andhra Pradesh and Others, AIR 1993 SC 2240 has considered the provisions of the Central Act in paragraph 156 as under :

"This Act has been made by the Parliament for the establishment of the "All India Council for Technical Education" with a view to the proper planning and co-ordinated development of the technical education system throughout the country, promotion of qualitative improvement of such education and other allied matters. Section 3 of the Act provides for the establishment of the Council while Section 10 specifies the functions of the Council. Apart from directing generally that the Council shall take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards, the Act specifically empowers the Council, inter alia, to "(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, and (n) take all necessary steps to prevent commercialisation of technical education." It is true, there is no express provision in the Act which says that no engineering college or any other college or institution imparting technical education shall be established except with the permission of the Council. But this may be for the reason that such a power was intended to be exercised by the Council itself if it thinks necessary to do so. We are of the opinion that the vast powers conferred upon the Council by Section 10, including those specified above, do extend to and entitle it to issue an order to the above effect. It can also say that even in the existing institutions, no new course faculty or class shall be opened except with its approval. It can also pass appropriate directions to existing institutions as well for achieving the purposes of the Act. Such an order may indeed be necessary for proper discharge of the wide ranging functions conferred upon the Council."

25. In Tamilnadu's case (supra) their Lordships have considered the effect of provisions of the Central Act in paragraph 22 as under :

"The Act including its preamble make it abundantly clear that the Council has been established under 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 through out 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 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 inquest 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 II 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 Act repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254(1) of the Constitution."

26. The State Legislature has enacted the A.P. State Education Act for imparting in general the Education throughout the State of Andhra Pradesh, and, as per its preamble, for reforming, organising and developing the Educational system and to provide for matters connected therewith or incidental thereto. Its aim is for establishing and strengthening, consistent with the National policy, a Socialist Secular and Democratic Society and also for promoting National Integration; firmly to link it at all levels with science and technology; to inculcate moral, social and human values and promote respect for manual labour and a sense of patriotism and discipline in the children and to achieve an integrated development of the pupil's personality.

27. The Constitution Bench of the Supreme Court in Unni Krishnan's case (supra) has considered the provisions of the State Act in paragraphs : 114 and 115 as under :

Paragraph : 114 : The Andhra Pradesh Education Act, 1982 was enacted by the State Legislature with a view to consolidate and amend the laws relating to the educational system in the State of A.P., for reforming, organizing and developing the said educational system and to provide for matters connected therewith or incidental therewith. By virtue of sub-sections(3) of (i), it applies to all educational institutions and tutorial institutions in the State except those governed by the University Acts or the A.P. Intermediate Education Act, 1971. Section 2 defines certain expressions occurring in the Act. Clause (11) defines the expression "college" to include a medical college established or maintained and administered by or affiliated to or associated with or recognised by any University in the State. Clause (18) defines "educational institution" to mean recognised schools and colleges including medical colleges. Chapter VI (Sections 18 - 33) deals with establishment of educational institutions, their administration and control Section 18 says that Government may, for the purpose of implementing the provisions of the Act, provide adequate facilities for imparting education either by establishing and maintaining educational institutions by itself or by permitting any local authority or private body of persons to establish and maintain educational institutions. Section 19 classifies the educational institutions into (a) State institutions, (b) local authority institutions and (c) private institutions. Section 20 deals with grant of permission for establishment of educational institutions. It says that the competent authority (as defined in clause (12) of Section 2) shall from time to time conduct a survey to identify the educational needs of the locality under its jurisdiction and notify in the prescribed manner in the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. In pursuance of such

notification, applications may be filed either by existing institutions or new institutions as also by local authorities for establishment new institutions or for expansion of existing one. Sub-section (3) prescribes the requirements which have to be satisfied by the applicant, the matters with respect to which the competent authority has to be satisfied before grant of permission and the steps that have to be taken by the person (to whom the permission is granted) within the specified period. According to the sub-section, an application has to be accompanied by (1) title deeds relating to the site for building, play-grounds and garden proposed to be provided. (2) plans approved by the local authority concerned which shall confirm to the rules prescribed therefore and (3) documents evidencing availability of the financing needed for constructing the proposed buildings. The Authority must be satisfied before granting the permission that there is a need for providing educational facilities to the people in the locality, that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority and evidence that the institution is proposed to be located in sanitary and healthy surroundings. The local authority or body of the persons to whom the permission is granted has to appoint the teaching staff qualified according to the rules made by the Government in this behalf and satisfy other requirements made down by the Act, rules and the orders made thereunder, within the period specified by the authorities. In default of such compliance, it shall be competent to the authority to cancel the permission. Sub-section (4) makes it punishable for any one to establish an educational institution otherwise than in accordance with the provisions of the Act. Any one running an institution after cancellation of the permission is also punishable.

Paragraph : 115 : Section 20-A declares that on and from the commencement of the A.P. Education (Amendment) Act, 1987, no individual shall establish a private institution. The institutions already established by the individuals however are not affected by the said provision. Section 21 deals with grant and withdrawal of recognition of institution. It provides that the competent authority may by order in writing grant recognition to an educational institution permitted to be established u/s 20 subject to such conditions as may be prescribed in regard to the accommodation, equipment, appointment of teaching staff and so on. It further provides that if any local authority or other private education institution fails to fulfil all or any of the conditions of recognition or commits any of the other irregularities mentioned in sub-section (2), its recognition may be withdrawn. It is not necessary to notice the other provisions in the Act."

28. Their Lordships of the Supreme Court have laid down the law with regard to the principle of repugnancy in Tamilnadu "s case (supra) while examining the provisions of Constitution delineating the respective spheres of Central and State Legislatures as under :

Paragraph : 9 : We may begin by examining the provisions of the Constitution delineating respective spheres of the Central and the State Legislature Entry 66

of List I i.e. the Union List of Seventh 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 remained unchanged since the inception of the Constitution. Before the Constitution (Forty-second Amendment) Act, 1976 which came into force w.e.f. 3-1-1977. Entry 11 in List II i.e. 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."

Paragraph : 11 : Entry 25 of List III, i.e. the Concurrent List prior to the said Constitution Amendment read as follows :

"25. Vocational and technical training of Labour." After the Amendment it reads as follows :

"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."

The Constitutional provisions dealing with the scope of the powers of the Union and State Legislatures on the subject in question may be summarised as follows.

Paragraph : 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 of 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.

Paragraph : 13 : We may now refer to the provisions of Articles 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 matters 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 legislation on a subject in List in, 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 of 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 cases, the law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy to the law made by Parliament.

29. We shall now examine the provisions of the Constitution delineating the respective spheres of Central and State Legislatures in so far with regard to Section 10(1)(a) of the Central Act and Section 20, (2), (3)(a)(i) and (4) of the State Act.

30. It is relevant to extract the above provisions as under :

Central Act :

Section 10(1) : It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education.

State Act :

Section 20 : Permission for Establishment of Educational Institutions : (1) The competent authority shall, from time to time, conduct a survey as to identify the

educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local news papers calling for applications from the educational agencies desirous of establishing educational institutions.

(2)(a) : In pursuance of the notification under sub-section (1) any educational agency including local authority or registered body or persons intending to-

(a) establish an institution imparting education;

(b) to (d)xxxxxxxxxx

(3) Any educational agency applying for permission under sub-section (2) shall-

(a) before the permission is granted, satisfy the authority concerned, -

(i) that there is need for providing educational facilities to the people in the locality;

(ii) & (iii)(b) and (c)xxxxxxxxxx

(4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 on educational institution shall be established except in accordance with the provisions of the Act.

31. We may now examine the provisions of the Central Act : Section 10(1)(a) of the Central Act implies that the Council will undertake survey in the various fields of technical education which includes the survey of location in its consideration and collect data on all related matters and make forecast of the needed growth and development in technical education.

32. The word "related matters" used in this sub-section has significance. In common parlance, the word "related matters" means connected matters which are connected or related and have relevance to the matter in issue.

33. The literal meaning of the word "related" as per the following Dictionaries is as follows :

(i) The Concise Oxford (English) Dictionary gives the meaning of the word "related" as "connected".

(ii) Chambers Dictionary (Delux edition) gives the meaning of the word "related" as "narrated, referred".

(iii) Black's Law Dictionary (English) gives the meaning of the word "related" as "standing in relation, connected, allied, akin."

34. According to this word "related matters" means the matters connected with all technical education. The word "related matters" has wider amplitude and it takes in its sweep all related considerations with regard to technical education, which necessarily includes the location of private Engineering Colleges.

35. Regulation of 1984 framed u/s 23 of the Central Act have been amended in

the year 1987.

Regulations;

Regulation 8(4) dealing with scrutiny of applications states that Bureau of Regional Committees of the Councils shall invite comments/recommendations on the applications from the State Government concerned.

Regulation 8(6) deals with the consideration of the recommendations of the State Government by State Level Committee.

Regulation 8(8) states that if there is disagreement in the recommendations made by the State Government, the Central Task Force shall invite representatives of the respective agencies for further consultation before making final recommendations.

Regulation 8(9) states that on the recommendations of the Central Task Force, the Council shall decide the grant of approval as sought in the application.

Regulation 9(2) deals with an Expert Committee which shall be constituted by the Council in consultation with the Chairman of the Regional Committee, shall consist of a representative of the concerned State Government, the Regional Officer or his nominee, a nominee of the University or Board concerned and Expert members.

Regulation 9(4) reads thus :

A State Level Committee shall consist of the Chairman of the concerned Regional Committee, Secretary of the State Government concerned dealing with technical education and Director of Technical Education of the State Government concerned, two Vice-Chancellors, one Director of an Indian Institute of Technology, one member from the Executive Committee, nominee of the University Grants Commission and expert members from academic institutions and industry nominated by the Chairman of the Council, Adviser (BOS), Adviser (MPCD), Adviser (RA) and Adviser (RC) Regional Officer, Chief NIMIS Project, representative of MHRD Technical Bureau and any other member nominated by the Chairman of the Council. The State Level Committee shall be chaired by an eminent educationist/industrialist nominated by the Chairman of the Council, and Adviser of the Council shall be nominated as Member-Secretary of the State Level Committee by the Council.

Regulation 9(5) deals with Central Task Force wherein the Central Task Force shall consist of two members of the Executive Committee of the Council, an Educational Planner/Administrator, two expert members, one member from judiciary. The Central Task Force shall be chaired by the member of the Executive Committee nominated by the Chairman of the Council and Adviser of the Council shall be nominated as Member-Secretary of the Central Task Force by the Council. The Expert members shall be nominated provided they are not members of the State Level Committee.

36. From the above regulations, it is clear that the State Government or its nominees dealing with the Technical Education, have effective participation in the entire process of decision making by the Council as their objections/recommendations are considered as State Level Committee at the stage of scrutiny of the applications. Upon the recommendations considered by the State Level Committee, final approval is granted by the Council for establishing the Private Engineering Colleges.

37. Point No. 1 : We may now examine the provisions of State Act : Section 20 "Permission for establishment of educational institutions".

Under Section 20(2), any Educational agency including local authority or registered body of persons intending to establish an Institution imparting education has to file an application with such period in such manner and to such authority as may be notified for the grant of permission.

Section 20(3) states that any educational agency applying for permission under sub-section (2) shall before the permission is granted, satisfy the authority concerned.

Section 3(a)(i) states that there is need for providing educational facilities to the people in the locality.

38. Among these provisions, Section 3(a)(i) is of importance, to understand the correct intent or meaning of the word "locality".

39. What exactly the meaning of the word "locality" has to be examined.

40. In common parlance, "locality" means a small area or place where people are inhabited.

41. According to the literal meaning, the Concise Oxford English Dictionary (9th Edition) gives the meaning of the word "locality" as "District, neighbourhood to the site or scene of something specially in relation to its surroundings, the position of a thing, the place where it is. Chamber English Dictionary (Delux Edition) gives the meaning of the word "locality" as "place, position or District." Black's Law English Dictionary (6th Edition) gives the meaning of the word "locality" as "definite region in any part of space, geographical position, place, vicinity, neighbourhood, community."

42. In view of the meaning of the word "locality" with grammatical variations, we will assume it to be "District", according to which, the State Government has power to grant/refuse permission for establishing private Engineering Colleges in covered Revenue Divisions.

43. The learned Advocate General has submitted before us that repugnancy does not extend to delegated legislation. Article 254 of the Constitution relates to inconsistencies that may exist between the laws enacted by the Parliament and the laws enacted by the State Legislature. This provision does not apply to the conflict between an order passed by the Central Authority and the order passed

by a State Authority, both of whom are acting under the powers delegated under respective enactments.

44. At the outset, we must say that the above submission of the learned Advocate General is misconceived and not sustainable -for the Supreme Court in Tamilnadu "s case (supra) held at paragraph 41(ii) as under :

"To the extent that the State Legislature 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 Enuy 66 of the Union List, it would be void and inoperative."

45. The learned Advocate General submitted before us that the only ground for not granting permission to the respondents-writ petitioners for establishing private Engineering Colleges is that they arc locating them in the covered Revenue Divisions. Further, the State Government had communicated its policy decision to me Council yet the Council has accorded approval, for establishing the Engineering Colleges, to the writ petitioners-respondents.

46. The Supreme Court in paragraph 12 of its Judgment in Tamilnadu"s case (supra) has observed that 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." The said paragraph has already been extracted at paragraph 28 of this Judgment.

47. In view of our comparative analysis of Section 10(1)(a) of the Central Act and the Regulations framed by the Council and Section 20(3)(a)(i) of the State Act and the views expressed by the Supreme Court (supra) in paragraph 12 which has already been extracted at paragraph 28 of this Judgment that the legislation with regard to the coordination and determination of standards in the institutions for higher education or research and scientific and technical institutions, has always been the preserve of the Parliament and that the criteria laid down on the principle of repugnancy, we hold that Section 20(3)(a)(i) of the State Act trenches and encroaches, in so far with regard to location of private Engineering Colleges, upon the field occupied by Section 10(1)(a) of the Central Act; as such, we have no hesitation to hold that Section 20(3)(a)(i) is repugnant to the provisions of Section 10(1)(a) of the Central Act and the Regulations framed thereunder, as such void and inoperative.

48. Point No. 2 : As on Point No.1 we have held that Section 20(3)(a)(i) of the State Act is repugnant to Section 10(1)(a) of the Central Act and the Regulations framed thereunder, we hold that the State Government has no legislative competence to refuse/ withhold permission for establishing private I Engineering Colleges in covered Revenue Divisions as per the State Government"s policy i after the Council grants approval.

49. Point No. 3 : We may examine the relevant provisions under the State Act

viz. 20(2)(a) and (4) :

Section 20 "Permissions for establishment of educational institutions" states that State Government permission is necessary Section 20(2) states that any educational agency including local authority or registered body of persons intending

(a) to establish institutions imparting education, may make an application within such period, as in such manner and to such authority as may be notified for grant of permission thereof.

(4) states that on and from the commencement of the Andhra Pradesh Education (Amendment) Act, no educational institution shall be established except in accordance with the provisions of this Act.

50. Entry 25 of List III (Concurrent List) to VII schedule of the Constitution is as under :

"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."

51. By virtue of Entry 22 List III (Concurrent List) to VII schedule, the State Legislature is competent to legislate on education, including technical education though that is subject to the provisions of Entry 66 of List I (Union List) to VII Schedule and by virtue of this legislative power, the State Government has enacted A.P. State Education Act, 1982 and upon reading of Section 20(2)(a) and (4), the State Government has to grant permission for establishing private Engineering Colleges.

52. We may state here that a Constitution Bench of the Supreme Court in the decision reported in Unni Krishnan 's case (supra) held at paragraph 169 thus :

"We must however, make it clear, and which is of crucial importance herein, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation. In The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, it has been held uniformly by all the nine learned Judges that there is no fundamental right to affiliation. Ray, C.J., stated that this has been "the consistent view of this Court". They also recognised that recognition or affiliation is essential for a meaningful exercise of the right to establish and administer educational institutions. Recognition may be granted either by the Government or any other authority or body empowered to accord recognition. Similarly, affiliation may be granted either by the University or any other academic or other body empowered to grant affiliation to other educational institutions. In other words, it is open to a person to establish an educational institution, admit students, impart education, conduct examination and award certificates to them. But he or the educational institution has no right to insist that the certificates or degrees (if they can be called as such) awarded by such institution should be recognised by the State-much less have they the

right to say that the students trained by the institution should be admitted to examinations conducted by the University or by the Government of any other authority, as the case may be. The institution has to seek such recognition or affiliation from the appropriate agency. Grant of recognition and/or affiliation is not a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care, keeping in view the interest of the general public and the nation. It is a matter of substantial significance the very life-blood of a private educational institution. Ordinarily speaking, no educational institution can run or survive unless it is recognised by the Government or the appropriate authority and/or it affiliated to one or the other Universities in the country. Unless it is recognised and/or affiliated as stated above, its certificates will be of no use."

53. The Constitution Bench of the Supreme Court in Unni Krishnan 's case (supra) held in paragraph 158 read with paragraphs 114 and 115 as under :

"We had referred to the A.P. Education Act, 1982 as well which provides that no educational institution shall be established in the State except with the permission of the competent authority."

54. A Full Bench of this Court has followed the above judgment in M. Sambasivarao v. Osmania University (supra) in paragraph 58 which has already been extracted at paragraph 10 of this Judgment.

55. In the above view of the contextual facts and following the law laid down in Unni Krishnan's case (supra) in paragraph 158 read with paragraphs 114 and 115, we hold that permission of the State Government is necessary for establishment of private Engineering Colleges.

56. In the view which we have expressed above on three points, in our opinion, the learned single Judge has misread the provisions of Section 20 of the State Act as interpreted in Unni Krishnan's case (supra) in paragraph 158 which is already extracted in paragraph 53 of this Judgment; though he referred the said decision at internal pages 17 and 18 of his Judgment, yet contrary to Article 141 of the Constitution which states that the law declared by the Supreme Court shall be binding on all Courts within the Territory of India, directed the EAMCET-1997 Convenor (Engineering Admissions) to allot the candidates to the respondents-writ petitioners-Institutions forthwith in accordance with the rules for the academic year 1997-98; as such, the question of establishment of private Engineering colleges by the respondents-writ petitioners without the permission of the State Government, does not and cannot arise, and, therefore, it is set aside in so far it relates to grant of permission for establishment of technical institutions viz. Engineering Colleges; but, we confirm the finding of the learned single Judge to the extent that the Section 20(3Xa)(i) of the State Act is repugnant to Section 10 of the Central Act.

57. As we have already held above on points 1 and 2 that Section 20(3)(a)(i) of the State Act is repugnant to Section 10(1)(a) of the Central Act as void and

inoperative and that the State Government has no legislative competence to refuse or withhold permission for establishing any private Engineering College in the covered Revenue Divisions as per the State Government's policy after the Council grants approval. We direct the State Government to consider the same and grant permission to the respondents-writ petitioners who are seeking permission for locating the Engineering Colleges in the covered Revenue Divisions.

58. It is further submitted by the learned Counsel appearing for the respondents-writ petitioners that the Council has granted approval for establishment of private Engineering Colleges to them for the academic year 1997-98 which is now at the fag end; as such, the Council be directed to renew the approval for the academic year 1998-99. We see justification in their submission. As such, we direct the Council to renew its approval to the respondents-writ petitioners for the academic year for 1998-99, and, therefore, the State Government shall consider the same and grant the permission, after the Council renews its approval.

59. While concluding the arguments, the learned Advocate General has submitted across the Bar that the State Government has decided to grant permission to two respondents-writ petitioners, the same is recorded.

60. Accordingly, the writ appeals are partly-allowed and the Judgment of the learned single Judge in W.P.Nos.27598/1997,27612/ 1997 and 27617/1997, dated 4-12-1997 stands modified as indicated above. No order as to costs.