
(2000) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6915 of 2000

R.N. Gupta Technical Education Society, Gurgaon	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision : 04-08-2000

Acts Referred:

All India Council for Technical Education Regulations — Regulation 4, 4(4), 5
Constitution of India, 1950 — Article 226, 227, 245, 246, 254
Council for Technical Education Act, 1987 — Section 10, 23(1)
Maharshi Dayanand University Act, 1975 — Section 14, 15

Citation : (2000) 08 P&H CK 0023

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. Ashok Aggarwal and Mr. Rajesh Bindal, for the Appellant; Mr. Jaswant Singh, D.A.G., Mr. S.K. Sharma and Mr. Sanjeev Kaushik, for the Respondent

Judgement

G.S. Singhvi, J.—This is a petition for quashing of the letter Annexure P.5 vide which the petitioner was conveyed the decision of the Vice-Chancellor, Maharishi Dayanand University, Rohtak declining its prayer for affiliation of Anupam Institute of Management, Gurgaon (for short, the Institute) on the ground of non-production of No Objection Certificate (for short, "NOC") from the State Government. The petitioner has also prayed for issuance of mandamus to respondents No. 3 and 4 directing them to grant affiliation/permission for conducting two years full-time M.B.A. course.

2. The petitioner-society was formed with the main object of providing technical education by establishing technical colleges. It is running Aditya Institute of Technology, Delhi; Anupam College of Engineering, Agra; Anjali College of Pharmacy, Agra and Anupam College of Engineering, Gurgaon. The Institute was started by the petitioner-society in July, 1996 after obtaining permission from the Director, Technical Education, Haryana, (respondent No. 4). After about two years, the petitioner made a representation to the State Government and All

India Council for Technical Education (for short, the Council) for grant of permission to convert Post Graduate Diploma in Management course into M.B.A. course Vide letter F.No. 435/NW/EXT(ENT)/99 dated 14.7.1999, the Council informed the Commissioner and Secretary to Technical Education, Haryana that approval has been accorded to the Institute for conducting MBA full-time course with an annual intake of 60 students. After receiving a copy of the aforementioned letter, the petitioner made a representation to the Vice-Chancellor of respondent No. 3 for grant of affiliation to the Institute for M.B.A. course and, as mentioned above, the same has been declined on the ground of its failure to obtain NOC from the State Government. Thereafter, the petitioner approached respondent No. 4 for grant of NOC but failed to evoke any response.

The petitioner has averred that in view of the provisions contained in All India Council for Technical Education Act, 1987 (for short the 1987 Act) and All India Council for Technical Education Regulations, 1994 (for short, the 1994 Regulations), the Council has the exclusive jurisdiction to regulate admissions to the professional courses and the University cannot decline affiliation on the ground of non-issuance of NOC by the State Government.

3. In the written statement filed on behalf of respondent No. 1 and 4, it has been averred that NOC was not granted to the petitioner due to pendency of the investigation in the matter of tampering of record of the Committee constituted by the Government to verify the availability of infrastructural facilities in the Institute. In paragraphs 1 and 2 of preliminary submissions, respondents No. 1 and 4 have averred as under;

"That the petitioner Institute had requested the answering respondent for grant of NOC to convert existing PGDBM course into M.B.A. course from the session 1999-2000 vide his letter dated 24.11.1998 (Annexure R-1)- The answering respondent, vide memo No. dated 15.6.1999 (Annexure R-11) constituted a committee to verify the availability of infrastructural facilities for M.B.A. course available in the petitioner-Institute, The Committee submitted its inspection report on 13th July, 1999 (Annexure R-III). In the inspection report there was an overwriting in the figure of intake recommended by the committee from 30 to 60. When it came to the notice of the answering respondent, then it was confirmed from the Chairman of the Expert Committee about the actual No. of the seats recommended by the Committee. It was intimated vide their letter dated 6.8.1999 (Annexure R-IV) that they recommended just 30 seats for the M.B.A. programme. It is further submitted that it has been decided to investigate the matter of tampering of record from the Vigilance Department. Accordingly, the case was referred to Vigilance Department vide U.O. No. 38/19/96-4 TE dated 25.4.2000 (Annexure R.V.) and action will be taken on receipt of the report from Vigilance Department.

2. That as no legal/fundamental right of (he petitioner has been infringed by the answering respondent, hence the petitioner has no right to invoke extraordinary writ jurisdiction of this Hon"ble Court under Sections 226, 227 of the Constitution

of India."

4. In the written statement filed on behalf of respondent No. 3, it has been averred that vide resolution No. 7 dated 16.12.1998 passed by the Academic Council and resolution No. 43 dated 9.7.1999 passed by the Executive Council, the production of NOC from respondent No. 4 has been made mandatory for grant of affiliation for starting a new college/institute and as the petitioner could not produce the required NOC, the Vice-Chancellor of respondent No. 3 declined its request for affiliation.

5. We have heard learned Counsel for the parties. The 1987 Act was enacted by the Parliament to provide for establishment of the Council with a view to achieve the object of planned and coordinated development of technical education system throughout the country, promotion of qualitative improvement of such education in relation to planned qualitative growth, regulation and proper maintenance of norms and Chapter III of the 1987 Act enumerates the powers and functions of the Council. Section 10 of the said chapter enjoins upon 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. For the purpose of performing its functions under the 1987 Act, the Council can take any of the following steps:

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

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

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

(i) technical institutions, and

(ii) Universities imparting technical education in coordinate with the Commission;

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

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

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

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

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

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

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

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

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

(l) advice the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its fields including conduct of examination and awarding of membership certificates;

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

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

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

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

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fall to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

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

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

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

(v) perform such other functions as may be prescribed;"

6. The 1994 Regulations framed by the Council u/s 23(1) of the 1987 Act provide for grant of approval for establishment of new technical institutions and

introduction of any course or programme in the technical education, admission of the students etc. Regulations 4 and 5 of the 1994 Regulations, which have bearing on the decision of this case are as under :-

"4. Conditions for establishment of a professional college. - (I) No individual firm, company or other body of individuals with whatever name called, shall, on and from the commencement of these regulations, be permitted to establish a professional college.

(2) The Council shall grant approval for establishment or administration of a professional college only by a society registered under the Societies Registration Act, 1860 (21 of 1860), the Trust Act, 1882 (2 of 1882), the Wakf Act, 1954 (29 of 1954) or under a corresponding law, if any, in force in a State.

(3) The Council shall cancel the registration or as the case may be, withdraw the approval granted to a professional college established before the commencement of these regulations if that- college does not conform to the conditions stipulated under this regulation on or before the 31st day of March, 1995.

(4) No professional college shall be established or a new technical education course or programme started without the approval of the Council.

5. Admission:- (1) The number of seats for admission available in a professional college shall be fixed by the Council and no professional college shall be permitted to change the intake capacity except by the approval granted by the Council.

(2) The competent authority shall not make admissions, from the academic year, 1994 to a course of a professional college which has been started or established in violation of the Act and these regulations.

(3) Admission to a course or programme shall be limited to the number of seats which are either fixed by the Council or the number of seats that existed before the enactment of the Act and no admission shall be made for the seats which have been enhanced, without the approval of the Council.

(4) No admission shall be made by the competent authorities in unapproved or unrecognised professional colleges from the academic year, 1994."

7. A survey of the provisions quoted above shows that the Council has been vested with the power to grant approval for establishment of new technical institutions and introduction of any such course or programme in such institutions, to lay down norms and standards of courses, curricula, staff pattern, staff qualifications etc. and also the number of seats for admissions available in a professional college .with a rider that no professional college shall be permitted to change the intake capacity without the prior approval of the Council.

8. Respondent N. 3 was established and incorporated under the Maharashtra Dayanand University Act, 1975 (for short "the 1975 Act"). Sections 14 and 15 of the 1975 Act empowered respondent No. 3 to frame Stat- . utes on the matters

enumerated in clauses (a) to (j) of Section 14. Clause (h) of Section 14 speaks of the conditions under which colleges and institutions may be admitted to the privileges of respondent No. 3 and the withdrawal of such privileges. The conditions of grant of affiliation have been prescribed under Statute 38. Clause (4) of Statute 38 lays down that the application for affiliation shall be accompanied by the various statements. The note appearing below that clause contains the requirement of obtaining NOC from respondent No. 4 with a rider that an application for affiliation shall not be entertained without such certificate.

9. In the light of the above, we have to decide whether the condition of obtaining NOC, which has been enshrined in the resolutions passed by the Academic Council and the Executive Council of respondent No. 3 can be enforced in the matter of grant of affiliation and whether respondent No. 4 can decline to issue NOC for admission of 60 students in the Institute despite the fact that the Council has granted permission for conversion of the post Graduate Diploma Course into M.B.A. Course with an intake of 60 students.

10. Shri Ashok Aggarwal argued that in view of Article 246 and Entry 66 of List 1 of the Seventh Schedule, the provisions contained in the 1987 Act would override those contained in the 1975 Act in so far as the intake capacity of the Institute is concerned and, therefore, the State Government cannot withhold grant of NOC on the pretext of making an enquiry into the matter and respondent No. 3 could not have declined affiliation on account of non-production of such NOC. He submitted that the decision taken by the Vice-Chancellor to reject the petitioner's application for affiliation on the ground of non-production of such certificate should be declared illegal and a mandamus be issued to respondent No. 3 to grant affiliation to the Institute with an intake of 60 students. Shri Jaswant Singh and Shri Sanjeev Kaushik argued that the conditions stipulated in the note appended below Statute 38(4) is not inconsistent with the provisions contained in the 1987 Act and the 1994 Regulations framed thereunder and, therefore, the decision taken by respondent No. 3 to decline the petitioner's prayer for affiliation cannot be termed as illegal. Shri Jaswant Singh pointed out that there are interpolations in the report of the committee constituted by the Technical Education Department and till the matter is finally investigated by the Vigilance, the Institute cannot be permitted to admit the students.

11. We have thoughtfully considered the respective submissions. For resolving the apparent conflict between the provisions of the Central Act and the State Act, we may refer to the relevant provisions of the Constitution and the decisions of the Supreme Court. Articles 245, 246 and 254, Entry 66 of List 1 - Union List and Entry 25 of List III - Concurrent List of the Seventh Schedule which have bearing on the decision of this case read as under :-

"Article 245

245. Extent of Laws made by the Parliament and by the Legislatures of States. -

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246

246. Subject-matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

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Article 254

254. Inconsistency between laws made by Parliament and laws made by the Legislature of States. - (1) If any provision of a law made by the Legislature of a State is repugnant to any provisions of law made by Parliament which Parliament is competent to act, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provision of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature, of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State :

Provided that nothing in this clause shall 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.

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Entry 66 of List 1

66. Co-ordination and determination of standards in institutions, for higher education or research and scientific and technical institutions.

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Entry 235 of List III

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."

12. The ambit and scope of the above-mentioned Entries has been considered by the Supreme Court in a number of cases. In *Gujarat University, Ahmedabad v. Krishna Ranganath*, 1963 (1) SCR 112, their Lordships of the Supreme Court considered the question as to whether the State Legislature had the jurisdiction to prescribe Gujarati or Hindi as the exclusive medium of instruction in higher education. By a majority judgment, the Constitution Bench of the Supreme Court ruled against the State. Speaking for the majority, Shah, J. observed :

"Items 63 to 66 of List 1 are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. Use of the expression "subject to" in Item 11 of List 11 of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, this Court in considering the import of the expression "subject to" used in an entry in list II in relation to an entry in List I observed that to the extent in List II the power is taken away from the State Legislature. Power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of education including Universities power to legislate on that subject must lie with the Parliament."

13. In *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, , a three-Judges Bench of the Supreme Court examined the validity of the Andhra Pradesh Commissionerate of Higher Education "Act, 1986 which was enacted on the recommendations of a high powered committee constituted by the State Government to study the higher education system in Andhra Pradesh with special reference to its curricula, courses of study, finance and management. The Supreme Court interpreted the extent of the power of the Parliament to legislate in the matters relating to higher education and observed

as under :-

"Entry 25, List III relating to education, medical education and Universities has been made subject to the power of Parliament to legislate under entries 63 to 66 of List I. Entry 66, List I and Entry 25, List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to education has been distributed between List I and List II of the Seventh Schedule.

The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.....

It will be seen that the Commissionerate has practically taken over the academic programmes and activities of the Universities. The Universities have been rendered irrelevant if not non-entities.

It is apparent from this discussion that the Commissionerate Act has been drawn by and large in the same terms as that of the U.G.C. Act. The Commissionerate Act, as we have earlier seen, also contains some more provisions. Both the enactments, however, deal with the same subject-matter. Both deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the words and sentences used in the Commissionerate Act may be different from those used in the U.G.C. Act, but nevertheless, they convey the same meaning. The intention of the legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the purpose of construction of statutes. The High Court appears to have gone on a tangent. The High Court would not have fallen into an error if it had perused the U.G.C. Act as a whole and compared it with the Commissionerate Act or vice versa.

In *Prem Chand Jain and Another Vs. R.K. Chhabra*, this Court has held that the U.G.C. Act falls under Entry 66 of List I. It is then unthinkable as to how the State could pass a parallel enactment under Entry 25 of List III, unless it encroaches Entry 66 of List I. Such an encroachment is patent and obvious. The Commissionerate Act is beyond the legislative competence of the State Legislature and is hereby declared void and inoperative."

14. In *State of Tamil Nadu v. Adhiyaman Educational and Research Institute and*

others, 1995(40 SCC 104, a two Judges Bench of the Supreme Court examined the question as to whether the State Legislature can enact law laying down the norms and standards and requirements for recognition and affiliation of institutions imparting technical education higher than or in conflict and inconsistent with those laid down by the Council. After examining the ambit and scope of Articles 246, 248 and 254 of the Constitution, Entry 66 of List I and Entry 25 of List III of the Seventh Schedule of the Constitution, their Lordships held that the State cannot legislate on the field occupied by law enacted by the Parliament and then proceeded to lay down the following propositions:

"(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 concerned action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make coordination either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

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

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

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

15. In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, their Lordships of the Supreme Court considered the issue relating to apparent conflict between the provisions of the 1987 Act and the Act Kerala University First Statute in the context of the claim of the petitioner-appellant for grant of approval. While holding that the provisions of the 1987 Act would prevail over the State legislation, the Supreme Court held as under :-

"As held by the Supreme Court in *State of T.N. v. Ad-hiyaman Educational and Research Institute*, the All India Council for Technical Education Act, 1987, a Central Act and in particular, Section 10(k) occupied the field relating to the

"grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the "views" of the State Government, That could not be characterised as requiring the "approval" of the State Government. If the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in T.N. case there were enough provisions in the Dental Act for consultation by the Council of AICTE with various agencies, including the State Governments and the Universities concerned. These were sufficient safeguards for ascertaining the view of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any continuous (condition ?) which could be imposed by the University, would not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

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The so-called "policy" of the State was not a ground for refusing approval. The State could not have any "policy" outside the AICTE Act and if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulations 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State, However, if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action.

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 or statutes, which are not inconsistent with the AICTE Act or its Regulations.

The approval of AICTE was sufficient. Thus, it was not necessary for the learned Single Judge to direct the State Government to reconsider its decision. The learned Single Judge's order quashing the letter of the State Government dated 16.8.1996 is upheld. The direction to Mahatma Gandhi University to consider the application of the appellant for final affiliation or continuance of affiliation is confirmed and this is to be done on (he basis of the approval granted by AICTE dated 30.4.1995, or any other relevant factors in the University Act or its

statutes, which are not inconsistent with the AICTE Act or its Regulations."

16. In the light of the above, we have to examine whether the State is competent to legislate on the issue of the number of students to be admitted in the technical education institutions. A reading of the provisions of the 1987 Act and the 1994 Regulations shows that the Council has the power not only to grant approval for starting of new technical institution and for introduction of new courses and programmes, but it is also empowered to regulate the number of seats for admission in the professional colleges and the same cannot be changed without its approval. Thus, the field relating to the number of students to be admitted in the technical education institutions must be treated as occupied by the central legislation. As a logical corollary to this, it must be held that the State is not competent to legislate on the subject and in the event of conflict between the two legislations, the one enacted by the Parliament would prevail.

17. The petitioner's claim is that in view of the approval granted by the Council for conversion of Post Graduate Diploma in Management Course into M.B.A. Course with an annual intake of 60 students, respondent No. 3 cannot decline affiliation on the ground of non-issuance of NOC by respondent No. 4. Respondent No. 3 has contested this plea on the premise that as per the resolutions passed by the Academic Council and the Executive Council, the production of NOC is mandatory for grant of affiliation and respondent NO: 4 has declined to issue the NOC on the ground that a vigilance enquiry is pending into the alleged interpolation in the figures of intake capacity of the Institute.

18. In our opinion, as the 1987 Act and the 1994 Regulations do not contemplate production of NOC from the State Government as a condition precedent to the determination of the number of students who can be admitted in the technical education institutions, respondents No. 3 and 4 cannot impose that condition for grant of permission for admission of the students in the Institute and respondent No. 3 cannot make it as a prerequisite for grant of affiliation to the Institute. We are further of the view that the provision contained in the note appearing below Statute 38(4) will have to give way to the Parliamentary legislation and the same cannot be enforced by respondent No. 3 for declining affiliation to the petitioner.

19. We are further of the view that the so-called enquiry initiated by respondent No. 4 into the alleged interpolation in the figure of the students to be admitted to the course is wholly irrelevant for the purpose of grant of NOC/affiliation because the Council has already approved the conversion of the course with an annual intake of 60 students. The respondents have not controverted the fact that the Institute was conducting Post Graduate Diploma Course in Management with an intake capacity of 60 students and the same had already been approved by the State Government. This being the fact situation, the so-called enquiry conducted by the Technical Education Department into the alleged interpolations made in the report of the Committee cannot be made a ground for declaring the petitioner's request for NOC. The fact that the so-called interpolations in the report were detected in August, 1999 and reference was made to the Vigilance

Department in April 2000 is indicative of the fact that the decision of respondent No. 4 not to issue NOC is based on extraneous reasons and on that account, it is liable to be declared illegal.

20. For the reasons mentioned above, the writ petition is allowed. The decision of the Vice-Chancellor of respondent No. 3 to decline affiliation to the petitioner is declared illegal and it is directed that within 15 days of the submissions of certified copy of this order, respondent No. 4 shall issue NOC to the petitioner for conversion of Post Graduate Diploma course into regular M.B.A. Course of two years duration with an intake capacity of 60 students and within next one month, the competent authority of respondent No. 3 shall grant affiliation to the Institute. We also direct the Kurukshetra University, Kurukshetra, which has been assigned the task of conducting the counselling w.e.f 17.8.2000 to consider the students for allocation for admission to the Institute in the degree course of M.B.A. for the session 2000-2003.

21. Petition allowed.