

**(2012) 12 BOM CK 0004**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 10575 of 2012**

Sou. Devibai Narayandas Chhabda Rural Education Society and Another APPELLANT

Vs

Shivaji University RESPONDENT

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**Date of Decision :** 06-12-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Maharashtra Universities Act, 1994 — Section 2(24), 81, 81(1)(f), 82, 83

**Citation :** (2013) 2 ALLMR 210 : (2013) 2 MhLj 473

**Hon'ble Judges :** D.Y. Chandrachud, J; A.A. Sayed, J

**Bench :** Division Bench

**Advocate :** A.V. Anturkar instructed by Mr. Sugandh B. Deshmukh, for the Appellant; Amit B. Borkar for Respondent No. 1, Mr. Mihir Desai with Ms. Ushajee Peri for All India Council for Technical Education, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dr. D.Y. Chandrachud, J.—The First Petitioner was conducting a college of engineering in the district of Satara. The First Petitioner submitted an application to the All India Council for Technical Education (AICTE) for permission to conduct two courses leading up to the award of a degree of Masters in Engineering in the subjects of Computer Science and Heat Power Engineering. The AICTE granted approval to the Petitioner on 10 May 2012 with an intake of 18 students for each of the two courses. The Government of Maharashtra in the Higher and Technical Education Department granted its permission on 30 June 2012 for academic year 2012-13 and consequential approval was granted by the Directorate of Technical Education on 22 August 2012. The Government Resolution had inter alia prescribed compliance with the terms and conditions as may be specified by the Directorate of Technical Education. The approval granted by the Directorate specifically required affiliation to the Shivaji University in Clause 11 of the letter of approval. On 9 August 2012 the University constituted a local inspection committee for inspecting the college. The committee inspected the college and

submitted its report. On 24 August 2012 the Deputy Vice Chancellor of the University informed the Principal that unless affiliation was granted by the University, admissions should not be granted and in the event that the college proceeded to do so, such admissions would be regarded as contrary to the rules for which the college will be held responsible. Despite the directive of the University, the college proceeded to admit students for academic year 2012-13 in respect of both the postgraduate courses. On 5 November 2012 a communication was addressed to the college intimating that affiliation was being denied by the University on the ground that (i) The College did not have a full time Principal and a duly qualified librarian; (ii) One of the teachers appointed for the Computer Science course was not qualified as a postgraduate teacher and that the college had merely identified two teachers; (iii) The equipment necessary for the commencement of two postgraduate courses was not available with the college. A fourth reason viz. the absence of canteen facilities was also set out. But during the course of the hearing, both on behalf of the Petitioners as well the Respondent University, emphasis has been placed on the first three reasons on the basis of which affiliation has been refused. These proceedings came to be instituted in order to seek a direction by a writ of mandamus to the University to grant affiliation to the Petitioners "in the light of the recognition given by the All India Council for Technical Education for the two postgraduate courses". The Petition has been amended so as to impugn the communication of the University dated 5 November 2012 declining affiliation and for setting aside the resolution of the Academic Council on the basis of which affiliation has been refused. Counsel appearing on behalf of the Petitioners submitted that :

(i) Once the AICTE has granted approval for the commencement of the two postgraduate degree courses, it was not open to the University to deny affiliation, since it has been held in the judgment of the Supreme Court in the State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, that the provisions of Sections 82 and 83 of the Maharashtra Universities Act 1984 do not apply in respect of an institution which has been permitted to be established by a body exercising jurisdiction under central legislation;

(ii) The letter of the University dated 24 August 2012 is based upon the provisions of Section 83(6) of the Maharashtra Universities Act 1994 and since in Sant Dnyaneshwar (supra) Section 83 has been held not to be applicable to an institution which has been permitted to commence under central legislation, the letter of the University is contrary to the law laid down by the Supreme Court;

(iii) The college granted admission to the students at a time when the judgment in Sant Dnyaneshwar (supra) continued to hold the field and the judgment still governs the field;

(iv) The subsequent decision of the Supreme Court in Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, does not modify the principle of law enunciated by the earlier Bench in Sant Dnyaneshwar. The

judgment in Adarsh empowers the University acting under the Universities Act 1984 to frame its own rules by way of statutes which must be rigorously observed. Shivaji University has not framed ordinances or statutes governing the grant of an affiliation to an institution which has been permitted to be established under central legislation. Hence in the absence of its own regulations, the University cannot deny affiliation;

(v) While it cannot be asserted that the University has no role to play in the grant of affiliation, at the same time before the University can perform its functions it must frame its own rules and statutes. u/s 81(1)(f) of the Maharashtra Universities Act 1994 the University is empowered to "prescribe" conditions which, having regard to Section 2(24), must be prescribed by the ordinances and statutes. There is no provision in the Maharashtra Universities Act 1994 or in the AICTE Act 1987 by which the University can work as an agent of the AICTE to determine whether the institution has complied with the requirements of the AICTE.

2. On the other hand, it has been submitted on behalf of the Respondent that :

(i) There is a suppression of fact in the Petition of the directive that was issued by the University on 24 August 2012 restraining the college from admitting students without the grant of affiliation. In the present case, in spite of a specific directive of the University, the college unlawfully proceeded to admit students without the grant of affiliation;

(ii) In April 2012 the University had withdrawn affiliation for the undergraduate degree course in engineering conducted by the college on the ground that out of a sanctioned strength of 117 teachers, the institution had filled in only 12 teachers through the University selection committee. Since the college had challenged the decision of the University to withdraw affiliation for the undergraduate degree programme, it was aware of the insistence of the University, based on the judgment of the Supreme Court in Adarsh Shiksha Mahavidyalaya (supra) for the grant of affiliation. Despite this, the college has proceeded to grant admissions unlawfully without any affiliation of the University;

(iii) In several judgments of the Supreme Court which have been cited with approval in the recent judgment in Adarsh Shiksha Mahavidyalaya (supra) the Supreme Court has expressly disapproved the practice of granting admissions without the affiliation of the affiliating university as well as the passing of any interim orders by the High Court permitting students admitted by an institution without affiliation to appear for University examinations;

(iv) The University u/s 81 of the Maharashtra Universities Act 1994 is entitled to consider the grant of affiliation. The University cannot prescribe conditions which are contrary to the regulations framed by the AICTE or at variance with those conditions since the AICTE Act 1987 is a piece of central legislation. As an affiliating body the University is acting within its jurisdiction in ensuring that a college which seeks affiliation complies with all the prescribed norms as laid

down by the apex body. In the present case, the academic council of the University has applied its mind to all relevant circumstances and the decision not to grant affiliation cannot be faulted;

(v) The earlier judgment of the Supreme Court in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) has been considered in the subsequent judgment of the Supreme Court in Adarsh Shiksha Mahavidyalaya (supra) and the role of the University as an affiliating body cannot be diluted.

3. This Petition has been listed together with a batch of petitions in which the AICTE has been impleaded as a party. Counsel appearing on behalf of the AICTE has urged before the Court that :

(i) Since the judgment of the Supreme Court in the State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, it has been recognised that while the AICTE under the AICTE Act 1987 is entrusted with statutory powers and functions, provisions of the state Universities Acts regarding affiliation of technical colleges such as engineering colleges shall remain operative but the conditions that are prescribed by a University for the grant and continuation of affiliation have to be in conformity with the guidelines prescribed by AICTE. The conditions for affiliation which the State University prescribes cannot be at variance with the norms and guidelines of AICTE. However, as an affiliating body the State University is entitled to ensure that all the conditions for the grant of affiliation, consistent with the norms and guidelines of the AICTE are duly fulfilled;

(ii) The subsequent decision of the Supreme Court in Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) does not dilute the statutory power of the State Universities as affiliating bodies;

(iii) The aspect of affiliation has been reiterated in the recent judgment in Adarsh Shiksha Mahavidyalaya (supra);

(iv) The practice of colleges granting admission to students without affiliation must be disapproved and orders on grounds of equity should not be passed. AICTE would not allow colleges granting admission without the affiliation of the affiliating university.

The rival submissions now fall for consideration.

4. AICTE exercises statutory powers under the All India Council for Technical Education Act 1987, which is referable to Entry 66 of List I of the Seventh Schedule to the Constitution. Entry 66 of List I deals with the co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The position of the State Universities constituted under State legislation referable to Entry 25 of List III of the Seventh Schedule in relation to technical institutions governed by the AICTE Act 1987 came up for consideration before the Supreme Court in Adhiyaman Educational & Research Institute (supra). Noting that there was a conflict between and

overlapping of the functions of AICTE with those of the University constituted under the Madras Universities Act 1923, the Supreme Court held that u/s 10 of the Central Act the council is entrusted with the power inter alia to lay down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations. Similarly, the council is entrusted with the power to grant approval for starting a new technical institution or to introduce new courses or programmes as well as to provide guidelines for the admission of students. The judgment of the Supreme Court held that so far as those matters specified in Section 10 of the AICTE Act 1987 are concerned, in the case of institutes imparting technical education, it is not the State University Act but the Central Act and the Council which will have jurisdiction. At the same time, the Supreme Court clarified that the provisions contained in State legislation for the grant of affiliation by State Universities would continue to govern. However, the conditions for the grant of affiliation must be in conformity with the norms and guidelines prescribed by AICTE and cannot be at variance with them. The Supreme Court observed as follows :

The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act.

5. The judgment in *Adhiyaman Educational & Research Institute* (supra) specifically dealt with the interrelationship between the AICTE Act 1987 with State legislation constituting a university, in that case the Madras University Act 1923. In the subsequent decision in *Sant Dnyaneshwar* (supra) the Supreme Court considered the provisions of the National Council for Teacher Education Act 1993. In that case, the NCTE had granted recognition for a B. Ed. college. The Government of Maharashtra declined to grant its "no objection certificate (NOC) for any institution for starting a new B. Ed. college in pursuance of a policy decision. u/s 82 of the Maharashtra Universities Act 1994 a B. Ed. college could be opened only with the permission of the State Government. In a petition filed before this Court challenging the decision of the State Government (and on a cross petition by the State Government challenging the permission granted by the NCTE) this Court had held that the only authority which could take a decision in regard to the opening of a new B. Ed. college or increasing the intake capacity of an existing course was the NCTE and the State Government had no power to take a policy decision not to grant permission for a new college once the NCTE had granted its permission. This Court had also held that it was incumbent on the State Government to implement the decision of the NCTE and the University could not ignore that decision relying on the policy decision of the State Government. The judgment of this Court had also held that Sections 82 and 83 of the Maharashtra Universities Act 1994 to the extent to which they require the University to grant affiliation only after permission was granted by the State

Government u/s 83 were null and void. In appeal, the Supreme Court held that the field was fully and completely occupied by an Act of Parliament enacted with reference to Entry 66 of List I of the Seventh Schedule and it was not open to the State legislature to encroach upon the field. Consequently, it was not open to the State Government to refuse permission relying on a State Act or on a policy consideration. The Supreme Court held as follows :

With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is fully and completely occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament alone could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on "policy consideration".

Even otherwise, in our opinion, the High Court was fully justified in negating the argument of the State Government that permission could be refused by the State Government on "policy consideration".

The absence of an NOC of the State Government was therefore held to be irrelevant insofar as NCTE is concerned. As noted above, the Division Bench of this Court had held that the provisions of Sections 82 and 83 were inconsistent with the NCTE Act and were null and void. Explaining those observations the Supreme Court held that what this Court had really meant was that Sections 82 and 83 would not apply to an institution governed by the 1993 Act and once recognition had been granted by the NCTE u/s 14(6) of the Central Act, every University was obliged to grant affiliation to such an institution and Sections 82 and 83 would not apply to such cases. u/s 82 of the Maharashtra Universities Act 1994 the permission of the State Government was necessary for setting up a new institution. The State Government had taken a policy decision not to grant permissions. The Supreme Court held that by and under the provisions of the Central Act the power to grant recognition to an institution providing for teachers' education was conferred upon the NCTE. As a matter of fact, Section 14(6) of the Central Act stipulated that every examining body shall upon an order under sub section (4) granting recognition to an institution grant affiliation to the institution to whom recognition has been granted. Consequently, it was held that since the Central Act referable to Entry 66 of List I covered the entire field, the grant or withholding of permission by the State Government u/s 82 of the Maharashtra Universities Act 1994 was irrelevant.

6. In the subsequent decision of the Supreme Court in *Adarsh Shiksha Mahavidyalaya (supra)*, the earlier judgment in *Sant Dnyaneshwar (supra)* has been construed and interpreted. One of the issues which fell for determination before the Supreme Court was :

Whether the students who had taken admission in unrecognised institutions or

the institutions which had not been granted affiliation by the examining body have the right to appear in the examination and whether the Court can issue a mandamus for declaration of the result of such students simply because they were allowed to provisionally appear in the examination in compliance with the interim orders passed by the High Court and/or this Court.

7. The Supreme Court cited with approval the earlier decisions in *A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another*, *N.M. Nageshwaramma and Others Vs. State of Andhra Pradesh and Another*, and *State of Maharashtra Vs. Vikas Sahebrao Roundale and others*, observing that it would not be within the jurisdiction of the Court by a fiat to direct the University to disobey the statute to which it owes its existence. While formulating its directions in paragraph 87 of the judgment, the Supreme Court has inter alia issued the following direction in regard to the grant of affiliation :

While granting affiliation, the examining body shall be free to demand rigorous compliance with the conditions contained in the statute like the University Act or the State Education Board Act under which it was established or the guidelines/norms which may have been laid down by the examining body concerned.

The directions of the Supreme Court are also to the effect that in future the High Court shall not entertain a prayer for interim relief by unrecognised institutions and institutions which have not been granted affiliation by the examining body or permit students admitted by such institution to appear in the examinations.

8. But the submission which has been urged on behalf of the Petitioners is that direction (ii) contained in paragraph 87 of the judgment of the Supreme Court, extracted above, empowers the examining body to demand rigorous compliance with the conditions contained in a statute such as the Universities Act or the guidelines or norms which are laid down by the examining body concerned. In the present case, it was sought to be urged that no guidelines or norms have been laid down independently by the Shivaji University and hence affiliation cannot be denied for want of compliance with the norms of AICTE. Section 81 of the Maharashtra Universities Act 1994 deals with the conditions for affiliation and recognition and provides as follows :

81. Conditions for affiliation and recognition :- (1) The management applying for affiliation or recognition, and management whose college or institution has been granted affiliation or recognition, shall give and comply with the following undertaking,-

(a) that the provisions of the Act and Statutes, Ordinances and Regulations thereunder and the standing orders and directions of the university shall be observed;

(b) that there shall be a separate local managing committee provided for an affiliated college as provided by section 85;

(c) that the number of students admitted for courses of study shall not exceed

the limits prescribed by the university and the State Government from time to time;

(d) that there shall be suitable and adequate physical facilities such as buildings, laboratories, libraries, books, equipment required for teaching and research, hostels, gymnasium, as may be prescribed;

(e) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working;

(f) that the strength and qualifications of teaching and non-teaching staff of the affiliated colleges and recognised institutions and the emoluments and the terms and conditions of service of the staff of affiliated colleges shall be such as prescribed by the university and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;

(g) that the services of all teaching and non-teaching employees and the facilities of the college to be affiliated shall be made available for conducting examinations and evaluation and for promoting other activities of the university;

(h) that the directions, and orders issued by the Chancellor, Vice-Chancellor and other officers of the university in exercise of the powers conferred on them under the provisions of the Act, Statutes, Ordinances and Regulations shall be complied with;

(i) that there shall be no change or transfer of the management without previous permission of the university;

(j) that the college or institution shall not be closed without previous permission of the university;

(k) that in the event of disaffiliation or derecognition or closure of the college or institution u/s 92 all the assets of the college or institution including building and equipment which have been constructed or created out of the amount paid as a grant-in-aid by the state Government or the University Grants Commission shall vest in the State Government.

(2) No college which is part of another university shall be considered for affiliation unless a "no objection certificate" is given by the parent university.

9. Sub section (1) of Section 81 makes it abundantly clear that a management which applies for affiliation or recognition as well as a management whose institution has been granted affiliation or recognition must furnish and comply with the undertakings specified in clauses (a) to (k). Clause (a) requires compliance with the Act, statutes, ordinances and regulations as well as of the standing orders and directions of the University. Clause (d) requires that there should be suitable and adequate facilities including buildings, laboratories, libraries and equipment as may be prescribed, while clause (f) refers to the strength and qualifications of the teaching and non-teaching staff, as well as their conditions of service which have to be such as may be prescribed by the



University. The submission is that Section 2(24) defines the expression "prescribed" to mean prescribed by the statutes, ordinances or regulations, as the case may be, made by or under the Act and since the University has not prescribed through its statutes or ordinances any higher requirement over and above what is spelt out by the AICTE, it is not open to the University to assess compliance while granting affiliation. We do not find that the submission is worthy of acceptance. For one thing, it is now evident following the judgment of the Supreme Court in *Adhiyaman Educational & Research Institute* (supra) that the statutes, ordinances and regulations of the University as an affiliating body cannot be inconsistent with what has been prescribed by the AICTE Act 1987 in relation to technical institutions when the affiliation of a technical institution comes up. The judgment in *Adhiyaman Educational & Research Institute* (supra) lays down that the University cannot prescribe a condition at variance with what is prescribed by the AICTE and even a more stringent or higher requirement would be contrary to what is prescribed by AICTE. Once that position is clear, as it is in view of the judgment of the Supreme Court, it necessarily follows that the University as an affiliating body, acts within its jurisdiction in ensuring due compliance with the provisions that are enacted in the central legislation. The central legislation is referable to the overriding power of parliament referable to Entry 66 of the Seventh Schedule. Every State University is obligated to ensure, when it processes an application for affiliation, that there is due compliance with the norms and guidelines which have been prescribed by the AICTE in the matter of a technical institution. If the submission of the Petitioners was to be accepted, it would lead to an anomalous situation where the University as an affiliating body would be obligated to grant affiliation notwithstanding the fact that the institution has not appointed qualified teaching staff or has failed to establish the infrastructure which it is required to maintain under the norms prescribed by AICTE. The failure to maintain norms prescribed by the AICTE may undoubtedly furnish an independent ground for AICTE to withdraw approval. But the University as an affiliating body governed by State legislation is an important constituent in the entire process. An institution requires affiliation of the University because the degrees which it awards are the degrees of the affiliating university. The conditions of affiliation have to be fulfilled and the University would be justified in ensuring compliance of the norms prescribed by AICTE under the Central Act. The University cannot grant affiliation even though the institution has not complied with AICTE norms. If the University were to do so, it would plainly act in disregard of AICTE's mandate. That is not permissible. The role of the University as an affiliating body is not insignificant, though as observed earlier, the University cannot adopt norms at variance with those of AICTE. AICTE has stated before the Court that it is not possible for it to micro-manage every educational institution and the Universities as affiliating bodies are bound to ensure, as part of the affiliation process, that the norms and guidelines of AICTE are duly followed by technical institutions.

10. The judgment of a Division Bench of this Court in *Shree Warana Vibhag*

Shikshan Mandal v. All India Council for Technical Education rendered on 16 December 2011 (Writ Petition 9961 of 2011) was based on a statement made by counsel appearing for the University that while the University would grant provisional affiliation in view of the approval granted by the AICTE, it would be open to the University to bring to the notice of the AICTE the deficiencies in infrastructure which were noticed during the course of inspection. Similarly, in an earlier judgment of a Division Bench in Meghrajaji Ojha Smruti Shikshan Sanstha v. State of Maharashtra Writ Petition (Lodging) 1848 of 2008 decided on 5 August 2008 it has been observed that the conditions regarding the grant of affiliation by the University do not constitute a mandatory requirement in view of the decision of this Court which was approved by the Supreme Court in Sant Dnyaneshwar (supra). The judgment of the Supreme Court in Adhiyaman Educational & Research Institute (supra) was evidently not cited before the Division Bench. In Adhiyaman Educational & Research Institute (supra) the Supreme Court has expressly held that the provisions of the University Act regarding affiliation of technical colleges like engineering colleges shall remain operative but the conditions which are prescribed by the University for the grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the AICTE Act. The same position has been reiterated in the operative directions issued by the Supreme Court in the more recent judgment in Adarsh Shiksha Mahavidyalaya (supra).

11. In the present case, the Petitioners sought the affiliation of Shivaji University. The grant of affiliation is essential because the Petitioners seek the award of a degree of the University as an affiliating body. In the absence of affiliation the Petitioners could not have proceeded to admit students unilaterally. The University had specifically placed the Petitioners on notice by its communication dated 24 August 2012 cautioning them that no admissions should be granted unless affiliation was received from the University. Despite the directive of the University, the Petitioners proceeded unilaterally to grant admission. The submission that the University could have issued such a directive only u/s 83(6) and, that since Section 83 has been held to be inapplicable in Sant Dnyaneshwar (supra) such a direction could not have been lawfully issued, is lacking in substance. Sant Dnyaneshwar (supra), it must be emphasized, is a case which related to the power of the State Government to grant permission for establishing a new institution, the situation in that case being that the State Government had as a matter of policy declined to grant permission to establish a B. Ed. college despite the permission which was granted by the NCTE. The Supreme Court held that once the NCTE acting under central legislation has granted recognition, it would not be open to the State Government to withdraw its NOC and as a matter of fact such a provision for the grant of permission by the State Government would not be operational in relation to an institution governed by the Central Act. The grant of affiliation stands on a completely different footing as distinguished from the grant of permission to establish an institution. The affiliation of the State University is a requirement which is held to

be operational even in the case of a technical institution governed by the AICTE Act 1987 in the judgment in Adhiyaman Educational & Research Institute (supra). The affiliation of the State University is necessary and it is only upon the grant of affiliation that an educational institution can proceed to admit students. The Petitioners proceeded to do so unilaterally and in brazen defiance of law. The High Court particularly in the exercise of its writ jurisdiction under Article 226 would wholly be unjustified in condoning such brazen acts of defiance. Doing so would result in a wrong message being sent to educational institutions that the legitimate exercise of jurisdiction by the State Universities can be ignored by educational institutions admitting students despite the absence of affiliation. The Petitioners have now submitted that since the decision of the University to reject affiliation, they have taken steps to rectify the deficiencies. Whether this is factually true is something which the University would have to ascertain when it determines as to whether affiliation should be granted. It would not be either proper or appropriate for this Court to preempt such a decision being taken by the University, by the Court taking over that function of making an expert assessment. Such expert assessments in academic matters have to be left to the competent statutory authorities constituted under legislation. In the judgment in Adarsh Shiksha Mahavidyalaya (supra), as we have noted earlier, one of the issues which was framed for decision by the Supreme Court was whether students who have been granted admission in institutions which have not been granted affiliation by examining body have a right to appear in the examination and whether a Court can issue a writ of mandamus. In view of the judgment of the Supreme Court a categorical determination of this question must result in the negative. In the circumstances, while we have carefully evaluated the submissions, we do not find any merit in the Petition.

The Petition shall accordingly stand dismissed.

In the circumstances, there shall be no order as to costs.