

(2001) 10 KL CK 0024

In the High Court Of Kerala

Case No : W.A. No's. 3233 of 2001 and O.P. No's. 25820 and 26820 of 2001

State of Kerala

APPELLANT

Vs

Ranjith, V. and Others

RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11, 10(1), 2, 22
All India Council for Technical Education Regulations — Regulation 12, 2, 3, 4, 4(4)
Constitution of India, 1950 — Article 14, 254(1)

Citation : (2001) 10 KL CK 0024

Hon'ble Judges : B.N. Srikrishna, C.J;M. Ramachandran, J

Bench : Division Bench

Advocate : V.K. Beeran, A.A.G. in W.A. 3233/2001, K.P. Dandapani, in O.P. 25820/2001 and M.P. Krishnan Nair, in O.P. 26826/2001, for the Appellant; M.K. Damodaran, for Respondent 4 and Anil Kumar, M.R. Rajendran Nair, K. Ramakumar, M.P. Krishnan Nair, Alexander Thomas, Bechu Kurian Thomas, Vipin Das T.K., T.A. Ramadasan and R.T. Pradeep for Respondents 6 to 27, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Srikrishna, C.J.—In all these three cases, the core issue involved is, whether the University of Calicut is entitled to admit students for the Engineering Course (B. Tech.) directly on the basis of application made to it, or it is bound to admit them in accordance with the centralised admission procedure and joint counselling done by the Commissioner for Entrance Examination.

2. For the sake of easier understanding of the factual matrix, we shall be referring in detail to the facts in W.A. No. 3233 of 2001. The University of Calicut, 4th Respondent, took a decision to establish an Engineering College in the name and style of "Institute of Engineering and Technology, University of Calicut, Calicut University Campus" and applied to the State Government for permission. The State Government granted such permission. Thereafter, the University of Calicut addressed a letter to the All India Council for Technical Education (for

short, "AICTE") seeking approval for establishment of the new degree institution in the name and style of "Institute of Engineering and Technology, University of Calicut, Calicut University Campus". Even while this application was being considered by the AICTE, the Syndicate of the 4th Respondent decided on 15th March, 2001 to call for applications from prospective students, to join this new Technical course. The AICTE by its letter, dated 27th June, 2001 informed the 4th Respondent that based on consultation with the State Government, the concerned affiliating body, and on recommendations of the Regional Committee, the Expert Committee constituted by the Council, as per the provisions of AICTE Act and Regulations, approval was granted to the fourth Respondent for establishment of a new degree institution in the name and style as suggested for the academic year 2001-2002, for Mechanical Engineering, Printing Technology, Information Technology and Electronics and Communication Engineering, each being of the duration of four years with an intake of 60, 30, 60 and 60 respectively. This approval was said to be valid only for the academic year 2001-2002 subject to further approval of the expert committee which would assess the norms and standards fixed by the AICTE to see whether they are fulfilled. The letter finally states as under:

The admission will be made in accordance with Regulations notified by the AICTE vide GSR 476(E), dated 20th May 1994 based on the Hon'ble Supreme Court Judgment, dated 4th February 1993 with regard to W.P. (C) No. 607 of 1992 in the, case, of Unnikrishnan J.P. and Ors. Etc. v. State Government of Andhra Pradesh and Ors. etc. and later Judgments. No Management/Institute/Trust or Society shall announce admissions directly under any circumstances. Any action by the institute contrary to any provisions laid down by the Council and concerned State Government shall make it liable For actions.

In the event of infringement/contravention or non-compliance of the provisions of AICTE Regulations, Guidelines or the norms and standards as prescribed by the AICTE, the Council shall take further action to withdraw approval, and the liability arising out of such withdrawal of approval will be solely that of Management/Trust/ Society and/or Institution.

Copies of this letter were endorsed to the Registrar of the 4th Respondent University and the Principal of the proposed institute.

3. The State Government issued an information brochure for admission to professional degree courses for the academic year 2001. In paragraph 33, at page 33 of this brochure, while dealing with the Institute of Engineering and Technology, Malappuram, established by the 4th Respondent, after describing the Departments and Programmes and the intake capacity in the four faculties, the brochure specifically states, "separate information brochure have been published by the College". The 5th Respondent issued a separate information brochure giving information about its activities and the details about the courses, in which it is stated that the distribution of seats for the various categories of students would be according to the reservation rules and there would be three types of

seats, namely, free, payment and N.R.I, seats, and the details of the three types of seats were indicated. This brochure provides that, rate of tuition fee, admission fee, refundable deposit and development fee would be as under:--For free seats, the fees would be as prescribed by the Government of Kerala. For payment seats, there would be interest free refundable deposit of Rs. 1,00,000 for four years and the tuition fee of Rs. 40,000 per year. For N.R.I seats, non-refundable development fee as prescribed by the Government of Kerala and annual tuition fee as prescribed by Government of Kerala. The special and miscellaneous fees would be as prescribed by the Government from time to time. In the paragraph ""HOW TO APPLY", there is specific information that all candidates seeking admission to the free and payment seats should apply to the Commissioner for Entrance Examination in the prescribed form for enrolling for the entrance examinations, appear for the entrance examinations and obtain the rank certificate. They should also apply to the Special Officer, Institute of Engineering and Technology in the prescribed form and pay the amount of fees prescribed therein. This paragraph makes it clear that the candidates applying to the Institute of the 4th Respondent for admission to any type of seat had to apply to the fifth Respondent in the prescribed form.

4. Pursuant to the decision of the Syndicate of the University to call for applications, an advertisement to that effect appeared in the issue of the Mathrubhoomi Daily, dated 1st July 2001 which attracted the attention of the State Government. The State Government, therefore, made a request to the 4th Respondent on 25th July, 2001 not to conduct separate admission procedure as indicated in the advertisement, but abide by the centralised counselling and centralised admission procedure following the decision of the Supreme Court in Unnikrishnan's case. The State Government also addressed a letter, dated 22nd August, 2001 to the Vice-Chancellor of the 4th Respondent University and advised that the allotment process is a transparent and carefully executed act, that if the University is to conduct a separate allocation exercise for a different set of candidates, it would create immense difficulties, utter confusion and chaos. The 4th and 5th Respondents, however, did not respond to this suggestion of the State Government, and continued to take applications from prospective candidates based on their ranking in the common entrance examination.

5. Three students who had appeared for: the entrance examination and had also applied to the 5th Respondent Institute were dissatisfied with the fact that 5th Respondent was not immediately admitting students for admission to the new course. They brought O.P. No. 23519 of 2001 in this Court seeking a direction to the 4th and 5th Respondents to make admissions to the B. Tech. course in the 5th Respondent-Institute, based on their ranking in the common entrance examination. To this Original Petition, the 4th Respondent--University, 5th Respondent-Institute, and the State of Kerala were made party Respondents. When this Original Petition came up for hearing, counsel for the 4th Respondent-University made a statement that 4th Respondent would admit students who had applied to the 5th Respondent directly, on the basis of ranking in the common

entrance examination. Based on this statement of the counsel, the learned Single Judge disposed of the Original Petition by an Order made on 14th August, 2001 holding that, with this statement no further grievance of the Petitioners survived. Recording the above submission made on behalf of the 4th Respondent, the Original Petition was disposed of. A perusal of the record shows that the Original Petition came up for admission, for the first time, before a learned Single Judge (one of us, Ramachandran, J.) on 9th August 2001 and was adjourned to 13th August 2001 as the Counsel for the 4th Respondent-University wanted to obtain instructions. On 13th August 2001, the Original Petition came up for admission before another learned Single Judge (Koshy, J.) who posted it for admission on 14th August 2001. On 14th August 2001, after hearing the Counsel who were present, which included the Counsel for the fourth Respondent and the learned Government Pleader for the third Respondent, the learned Single Judge disposed of the Original Petition in the manner indicated above. The present appeal has been brought by the State Government impugning the Order of the learned Single Judge on several grounds, none of which appears to have been urged before the learned Single Judge in opposition to the O.P., when the writ petition was heard for admission.

6. In O.P. No. 25820 of 2001, a civil miscellaneous petition was taken out wherein it was pointed out to the learned Single Judge that the present Writ Appeal had been filed. In view thereof, the learned Single Judge directed that the filling up of seats by the 4th Respondent-Institute shall be provisional and subject to further orders and also directed that O.P. No. 25820 be heard along with this Writ Appeal.

7. Normally, this Court does not entertain contentions in appeal not raised before the learned Single Judge. However, considering the far reaching implications of some of the contentions urged before us, in this appeal, we have permitted the State Government to urge the contentions, and we have heard the Counsel for the 4th Respondent-University. Considering the wide ramifications that any order in the Writ Appeal would have and its effect on the students who had appeared for the common entrance examination, this Court by its order dated 25th August, 2001, directed the Appellant to take out a notice by public advertisement in terms of Rule 148 of the High Court Rules so that all persons interested should also have an opportunity of being heard. Several C.M.Ps. were filed by many students who sought permission to be impleaded as party Respondents. We have allowed them, and we have heard the counsel on behalf of the additional Respondents also.

8. The first contention urged by the learned Additional Advocate General is that the 4th and 5th Respondents are obliged to implement fully, faithfully, and without fail, the terms imposed upon them by the letter of approval dated 27th June 2001 addressed by the AICTE. It is contended that, in this letter, the AICTE had specifically directed that all admissions made to the approved seats would be subject to the Central Counselling of the State Government and there was also a

prohibition that the 4th Respondent shall not commence admission directly under any circumstance. The learned Advocate General contends that this specific positive and negative injunctions have been blatantly flouted by the 4th and 5th Respondents and their actions are liable to be interfered with. He further urged that admission to any educational institution shall be based on merit (apart reservations where applicable) and such merit cannot be reckoned from amongst a selected circle of students who had applied to a particular institution, but has to be judged on the basis of a common platform, like the Common Entrance Examination conducted by the Commissioner for Entrance Examination. Any deviation therefrom would be arbitrary, unreasonable, irrational and hit by the guarantee against arbitrariness in Article 14 of the Constitution, in the submission of the learned Additional Advocate General. Learned Additional Advocate General also relied on the provisions of the AICTE Act and the Regulations made by the AICTE thereunder, and several Supreme Court Judgments to support his contentions.

9. As far as the 4th Respondent is concerned, its stand is simple. It contends that the Judgment of the Supreme Court in *Unnikrishnan v. State of A.P.* (1993) 1 S.C.C. 643 was intended to take care of exploitation of hapless students by the private institutions through system of capitation fees. It was intended to ensure that private institutions did not turn education into a profit making commercial activity; it was intended to ensure that education did not become the monopoly of monied people. Learned Counsel for the 4th Respondent, urged that, while setting down the scheme in the form of guidelines in *Unnikrishnan's* case (supra) to be followed by appropriate Governments and the recognising and the affiliating authorities of the Government, the Supreme Court in paragraphs 206 to 214 of the Judgment specifically excludes Universities or University run institutions from the purview of the scheme. The scheme itself does not apply to 4th Respondent-University or any institution run by the 4th Respondent. Consequently, the 4th Respondent had no obligation to comply with any conditions stipulated by the AICTE with regard to admissions. The fact that the seats allotted to the 5th Respondent-Institute were not declared in the information brochure issued by the Commissioner for Entrance Examination, and the fact that a special brochure issued by the 5th Respondent had categorically stated that all admissions would be subject to application being made to the 5th Respondent, clearly indicated that the 5th Respondent was entitled to admit students only from among those students who had applied to it. Inasmuch as this was the first academic year, the 5th Respondent had not been able to make arrangements for the entrance examination, which it would do in the coming academic years. Therefore, the 5th Respondent adopted the ranking in the Common Entrance Examination for the purpose of evaluating merit in admissions. This fact in no way militates against the basic contention of the 4th Respondent-University that the scheme evolved by the Supreme Court in *Unnikrishnan's* case (supra) is not, per se, applicable to it. In paragraph 206 of the Judgment, the Supreme Court, after evolving the scheme, indicated that it

will apply only to "professional colleges". The expression "professional colleges" in the scheme evolved in the Judgment includes:

(i) * * * *

(ii) Colleges of Engineering and colleges and institutions imparting technical education including Electronics, Computer Sciences, established and/or run by private educational institutions, and

(iii) such other colleges to which this scheme is made applicable by the Government recognising and/or affiliating authority.

In paragraph 209, the Supreme Court explained the expression "competent authority" as the Government/University or other authority as may be designated by the Government/University or by law, as is competent to allot students for admission to various professional colleges in the given State. Paragraph 210 specifically drives home the point by saying: "this scheme is not applicable to colleges run by Government or to, University colleges. In short, the scheme hereinafter mentioned shall be made a condition of permission, recognition or affiliation, as the case may be. For each of them, viz. grant of permission, grant of recognition, grant of affiliation, these conditions shall necessarily be imposed, in addition to such other conditions as the appropriate authority may think appropriate". Thereafter, the Supreme Court evolved the scheme of free seats, paid seats and gave the details. In paragraph 211, the Supreme Court observed that it shall be open to the appropriate authority and the competent authority to issue such further instructions or directions, as they may think appropriate, not inconsistent with the scheme, by way of elaboration or elucidation.

10. Even a bare reading of the Judgment in Unnikrishnan's case (supra) makes it clear that it was intended to lay down a well known scheme of admission process and fee structure in respect of private technical institutions, and was not intended to lay down any guidelines with regard to Government run professional colleges or University run professional colleges. If there was any lingering doubt, the doubt gets resolved when we look at what the AICTE has done in exercise of its powers under AICTE Act, 1987. Section 23 of this Act empowers the AICTE to make regulations not inconsistent with the provisions of this Act. In exercise of this power, the AICTE has issued G.S.R. 476(E), dated 20th May, 1994 fixing the norms and guidelines for charging tuition fee and other fees, and providing guidelines for admission of students to professional colleges. Regulation 2 deals with the application of these regulation and says thus:

Application. - These regulations shall apply to a professional college imparting diploma, degree or equivalent courses in engineering, technology, architecture, town planning, management, pharmacy, electronics, computer science, applied arts and crafts and such other programmes or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare; but shall not apply to Universities, University Departments or colleges, Government colleges, aided colleges of the Central Government or State

Government, Indian Institutes of Technology, Indian Institutes of Management, Regional Engineering Colleges, and such technical institutes, which are fully funded by the Central Government, a State Government, the Council, or as the case may be, the University Grants Commission and any full or part-time postgraduate courses of programmes in any discipline other than management.

In Regulation 3(g), the expression "professional college" is defined as any-private unaided college imparting technical education and includes a private unaided technical institution. Regulation 4(4) provides that no professional college shall be established or a new technical education course or programme started without the approval of the Council. Apart from these regulations, even Section 2(A) of the AICTE Act defines a "technical institution" as an institution, not being a University, which offers courses or programmes of technical education, and includes such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions. A conjoint reading of the scheme in Unnikrishnan (supra) with the AICTE Act and the Regulations made in 1994 by the aforesaid Government Order, makes it clear that they are not intended to apply to Universities or Colleges run by Universities.

11. Our view in this regard is fortified by the Judgment of the Supreme Court in Institute of Human Resources Development v. T.R. Rameshkumar (1996) 4 S.C.C. 211. In this Judgment, the Supreme Court articulated the *raison de'tre* for the scheme in Unnikrishnan (supra) and said: "the essence of Unnikrishnan can be summed up in one sentence: There should be no commercialisation or profit-taking by private educational institutions". This Judgment also highlights the basic difference between the institutions governed by the scheme in Unnikrishnan and the institutions which formed subject matter of the case before the Supreme Court, namely, self-financing Engineering Colleges, one started by I.H.R.D. and the other by Lal Bahadur Shastri Engineering Research and Consultancy Centre. The Supreme Court in this Judgment pointed out that the difference between the institutions governed by the scheme in Unnikrishnan (supra) and the institutions before it was that, the latter were controlled by the State and, therefore, their working and utilisation of funds were under the control of the State. The scheme in Unnikrishnan (supra) shows that it applies only to purely private educational institutions which are self-financing. It was designed to ensure that they do not make undue profits or exploit students. The fact that the two institutions before it were controlled by the State was considered as a plus point, in the light of the consideration in Unnikrishnan, because that per se would be a safeguard against commercialisation and exploitation. In view of this situation, the Supreme Court made a deviation from the scheme in Unnikrishnan and permitted two institutions which were run by the State as self-financing institutions, to adopt a fee structure, which was different from the fee structure postulated in Unnikrishnan's case, after being satisfied that it was not unreasonable.

12. In *Manipal Academy of Higher Education Vs. State of Karnataka*, , the Supreme Court was considering the case of a deemed University, where also the rigidity of the application of the scheme in *Unnikrishnan (supra)* was relaxed. In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, , the Supreme Court was of the view that, there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act, inasmuch as the University Statute merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. This was also the case of a University, in which the Supreme Court took the view that the power of the State Government to bind down the University to approval of its actions effectively interfered with the autonomy of the University.

13. The decision in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, , finds echos in the view expressed by the Supreme Court, highlighting the autonomy of the University and the Vice-Chancellor as the conscience keeper of the University and the principal executive and academic officer of the *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , was a case dealing with Regional Engineering Colleges. Considering that the Regional Engineering Colleges are run and funded jointly by the Central Government and the State Government, they were left free to make the admission process in a manner consistent with their regulations, and reasonably. It is not in dispute that in the State of Kerala, the admission to Regional Engineering Colleges are not governed by the Centralised process of admission and counselling, but on the basis of separate applications made to them, on the basis of the inter se merit and ranking obtained in the common entrance test.

14. In the very recent Judgment in *Bharathidasan University and Anr. v. All India Council for Technical Education and Ors.* Civil Appeal No. 2059/99 (Judgment, dated 24th September, 2001), the Supreme Court was confronted with the question as to the respective roles of the AICTE and the University established under the University Act. The Supreme Court pointed out that the AICTE Act specifically excludes Universities and its Departments from its purview, and, therefore, the AIGTE had no overriding, supervisory or monitoring role in deciding whether the University should establish a professional college, nor did it empower the AIGTE to make any regulation in regard thereto. In fact, the Supreme Court held that any regulation made by the AIGTE which entrenches upon the autonomy of the University to apply to the AIGTE by seeking its prior approval for commencing a course, would be in excess of AIGTE's powers, and consequently null and void, and cannot be enforced against the University to the extent it obligates even the Universities to seek and secure such prior approval from the AICTE. After considering the earlier Judgments in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, and *Jaya*

Gokul Educational Trust (supra) the Supreme Court was of the view that when the legislative intent is expressly found in the specific words used in the provisions of the Act (AICTE Act), it cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act contains no evidence to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. The Supreme Court drew sustenance from the expression "technical institution" in Section 2(h) of the AICTE Act and the collocation of words in Section 10(1)(c), (g), (o) as contrasted to the words in Section 10(1)(k), (m), (p), (q), (s) and (u) of the AICTE Act, and observed that, all these vitally important aspects go to show that the AICTE created under the AICTE Act is not intended to be an Authority either superior to or to supervise and control the Universities and thereby superimpose itself upon such Universities merely for the reason that the University is imparting teaching in technical education or programmes in any of its Departments or Units. The Supreme Court also noticed that in Unnikrishnan (supra), the scheme formulated to prevent evils of capitation fee specifically excludes colleges run by the Government and the Universities. Analysing the provisions of Sections 10, 11 and 22 of the AICTE Act, the Supreme Court held that the role of interaction conferred upon AICTE vis-a-vis Universities is limited for the maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such Universities or scope for any direct action, except bringing it to the notice of the UGC or other authorities only, of any lapses in carrying out any directions of the AICTE in this regard, for appropriate action. The Supreme Court, of course, sounded a note of caution that, autonomy does not mean permission for authoritarian functioning, and observed that the UGC and University have always accepted and well-merited role of primacy to play in shaping as well as stepping up a co-ordinated development and improvement in the standards of education and research in the sphere of education. Commenting upon the powers of the AICTE, the Supreme Court observed that the regulations insofar as they compel the Universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4), and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act, and consequently void and unenforceable. In the view of the Supreme Court, the regulations in question, which the AICTE could not have made so as to bind Universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a University in the matter of necessity to seek prior approval to commence a new department or course and programme in technical education in any University or any of its department and constituent institutions. Finally, the Supreme Court repelled the argument that the fact the Appellant University had passed a resolution to seek for approval or that other similar institutes were adopting such a course for

obtaining the approval are reasons which could be countenanced in law to non-suit the Appellant. Nor can such reasons be relevant or justifying factors to draw any adverse finding against and deny relief, by rejecting the claims of the Appellant-University. However, the Supreme Court noted the submission of the learned Counsel for the Appellant--University, which, according to it, was the correct position in law, that though there was no obligation on the University to seek and obtain prior approval of the AICTE to start a department or commence a new course or programme in technical education, it did not mean that the University had no obligation or duty to conform to the standards and norms laid down by the AICTE for the purpose of ensuring co-ordinated and integrated development of technical educational and maintenance of standards.

15. It is also contended that there is some conflict between the observation made in *Adhiyaman* (supra) and the observation made in *Bharathidasan* (supra). It is urged that in *Adhiyaman* (supra), the Supreme Court has taken the view that AICTE Act is enacted either in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution or, at any rate, the source of power is referable to the residuary power of the Constitution conferred by Parliament by Entry 77 of List I. The Supreme Court also took the view that there was some inconsistency between the State legislation being, Tamil Nadu Private Colleges (Regulation) Rules and the Madras University Act and the provisions of the AICTE Act and Regulations made thereunder, and by virtue of Article 254(1), it was held that provisions of AICTE Act would override the provisions of the State legislation brought thereunder. In *Bharathidasan* (supra) however, there are observations to the contrary holding that regulation made by the AICTE could not be applied to Universities established under a local University Act and AICTE cannot act as a supervisory or monitoring authority of technical education rendered by University run Colleges. It is true that, on a superficial reading, there appear to be some irreconcilable observations in the two Judgments. At the same time, we cannot lose sight of the fact that in *Bharathidasan* (supra) the decision in *Adhiyaman* (supra) was cited and considered while rendering the Judgment. After considering the observations in *Adhiyaman* (Supra), the Supreme Court pointed out that the Parliament while enacting the AICTE Act was fully alive to the existence, in full force and effect, the provisions of the UGC Act, 1956 which specifically dealt with the co-ordination and determination of standards at University level institutions as well as institutions for higher studies of the category or class other than deemed Universities and yet roped into the definition of "technical institution", only institutions not being a University as defined in Section 2(i). After a careful examination of the provisions of the AICTE Act, the Supreme Court was of the view that there were no overriding powers vested in AICTE to oversee, supervise or monitor the technical education rendered in University run Colleges. On the other hand, the view taken was that, Universities and UGC have always had an accepted, and well-merited role of primacy to play in shaping as well as stepping up a co-ordinated development and improvement in the standards of education and research in the sphere of

education. Since the observations in *Adhiyaman* (supra) were considered and distinguished by the Supreme Court while rendering the Judgment in *Bharathidasan* (supra), whatever be our view in the matter, we are bound to follow the law laid down in *Bharathidasan* (supra).

16. We have referred in extenso to the observations of the Supreme Court in *Bharathidasan* (supra) because that is a clinching Judgment in our view. After this Judgment, the lingering doubts, if any, have been cleared and the respective roles assigned to the ATCTE and the Universities have been delineated. We are, hence, of the view that, the 4th Respondent--University at no time was under an obligation to seek the approval of the AICTE to establish an institution run by it as a Department. The fact that it applied* and the AICTE purported to grant approval on certain conditions, are wholly immaterial and cannot bind the 4th Respondent in law. The contention of the 4th Respondent--University, that in the matter of admission it is free to admit students only from among those applied to it, appears to be justified, and needs to be upheld; that the University is bound to conform to the norms and standards of education prescribed by AICTE is beyond cavil and the 4th Respondent--University also does not dispute this fact. It is only in the matter of admission procedure and the application of the joint consultation procedure that the 4th Respondent seriously contests the conditions imposed upon it by the letter of AICTE, dated 26th July 2001.

17. A faint argument was made by the learned Additional Advocate General that the 5th Respondent Institute is not really a department of the 4th Respondent--University and it is merely an affiliated college. This argument cannot be accepted for more than one reason. In the first place, the pleadings leave us in no manner of doubt that the appeal of the State Government proceeds on the footing that 5th Respondent is an Institute run by the University. That under the Calicut University Act and the Statutes framed thereunder, it is open to the 4th Respondent to start any new line of imparting academic education as a Department, is clear. Since this contention was raised at the far end of the arguments, we called upon the learned Counsel for the University, the 4th Respondent, to satisfy us on this issue. He produced before us the minutes of the Syndicate meeting held on 1st March 2001. Item No. 2000/91 deals with establishment of the Institute. The decision taken is that steps will be taken to make necessary amendments to the statutes and promulgate the necessary ordinances. Appendix to item No. 2000/91 indicates the draft proposal for amendment of the Calicut University First Statute, 1977, by adding a separate Chapter for "Study Centres/Institute of Engineering Technology". This clearly indicates the intention of the 4th Respondent to establish the Institute of Engineering and Technology as a part and parcel of the University itself. Further, in the minutes of the ordinary meeting of the Senate held on 28th July, 2001, this draft amendment to the Calicut University First Statute, 1977 was approved by the House, and follow up action was taken thereafter. We have permitted these documents to be placed on record. In these circumstances, we are unable to accept the contention that 5th Respondent is not a department of, or run by,

the 4th Respondent--University itself.

18. In the premises, we are of the view that the contention of Respondents 4 and 5 must prevail. The writ appeal consequently fails, and is hereby dismissed.

O.P. No. 25820 of 2001:

19. The Petitioners in O.P. No. 25820 of 2001 are students who have appeared and passed the Common Entrance Examination, and in the joint counselling they were allotted seats for admission in the 5th Respondent--Institute run by the Calicut University. Mr. Santhosh, learned Counsel for the Petitioners contends that, in the view we have taken, if the 4th Respondent and the 5th Respondent--Institute are allowed to have their own admission procedure, this would cause injustice to all students like the Petitioners who had not separately applied to the Institute run by the Calicut University. This contention is misconceived. The information brochure issued by the State Government did not include the seats available for admission in the 5th Respondent--Institute run by the 4th Respondent--University. It specifically contains a note that, a special brochure will be issued by the 5th Respondent--Institute. This was actually done. In the special brochure, there was clear indication that applications from students seeking admission to the 5th Respondent--Institute had to be made separately. This was specifically notified in the issue of Mathrubhoomi daily, dated 1st July 2001. In the face of these facts, it is not possible to accept the contention that, students had no knowledge at all about these developments. Having knowledge of the fact that they were required to apply to the 5th Respondent--Institute separately, if the students failed to do so, then they cannot be heard to complain that their right of admission to the said Institute has been taken away.

20. There is a second grievance made, which seems to be legitimate. The grievance is that, on the basis of the erroneous assumption of the Commissioner for Entrance Examination, these Petitioners were allotted to the 5th Respondent--Institute. For no fault of theirs, these students are now being deprived of admission to seats in other colleges, as by now the seats in other colleges are filled up; these students who are allotted to the 5th Respondent--Institute are not permitted to join there because they had not made applications to the 5th Respondent--Institute. We can easily visualise that, apart from these Petitioners, there may be several students who may be similarly situated. We are informed that their number may run into about 210, which is the maximum number of seats for B. Tech. in the 5th Respondent. In these circumstances, we are of the view that, in order to see that no injustice is done to the present Petitioners and students in like situation, a recounselling has to be done. This situation has been brought about because the State Government, through the Commissioner for Entrance Examination, wrongly assumed that seats available in the 5th Respondent--Institute would be a part of the general pool, and wrongly allotted those seats to students who had not even applied to that Institute. We have been informed by the learned Additional Advocate General that the AICTE had told them to do it. We are not concerned with finding fault or apportioning blame.

We are more concerned with giving succour to the students who are faced with glaring injustice that would result on account of the error committed by the Commissioner for Entrance Examination and the State Government, perhaps with the active assistance of the A I C T E under a wrong impression of law. Hence, we direct that, to the extent necessary to accommodate the students who had been allocated to the 5th Respondent-Institute, the State Government and the Commissioner for Entrance Examination shall once again carry out the process of joint counselling and ensure that the Petitioners and students in like situation are not deprived of the seats in the institutions according to their choice, in accordance with their ranking in the common entrance examination. This is an unfortunate, but necessary, fall out of the Judgment. This may be somewhat inconvenient, and cause problems to the students who have already been admitted. But, we are afraid this needs to be done to full justice and, whatever the difficulties, it has to be done. The process of joint counselling shall be carried out as expeditiously as possible, and not later than the commencement of the classes, so that students do not suffer on account of uncertainty.

21. The O.P. is accordingly dismissed with the above directions.

O.P. No. 26826 of 2001:

22. In view of our Judgment in W.A. No. 3233 of 2001 and the directions in O.P. No. 25820 of 2001, no separate directions are necessary in this Original Petition. Hence, O.P. No. 26826 of 2001 is dismissed.