

(1997) 08 MAD CK 0161

In the Madras High Court

Case No : Writ Petition No's. 8223, 10195 and 10739 of 1997

Tamil Nadu Self Financing Engineering Colleges Association	APPELLANT
Vs	
The State of Tamil Nadu and Others	RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 10(0), 23, 3
All India Council for Technical Education Regulations — Regulation 8(10), 8(5), 8(6), 8(9)
Constitution of India, 1950 — Article 162

Citation : (1997) 08 MAD CK 0161

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : K. Duraisami for Muthumani Doraisami and R. Kottravel, R. Krishnamoorthi for R. Muthukumaraswamy and A. Jinasenan, A.L. Somayaji for Aiyar and Doha, for the Appellant; G. Masilamani, Additional Solicitor "General, assisted by S. Manikumar, A.G.P. (Education) on behalf of Respondents 1 and 2 M.P. Subbiah, for 3rd Respondent in W.P. No. 8223/97 and P. Jyothi Mani, for the 4th Respondent in W.P. No. 8223/97, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—In all these writ petitions, the writ Petitioners have challenged the validity of the Government orders in G.O.Ms. No. 204 Higher Education (JI) Department, dt. 4.4.1997 and G.O.Ms. No. 252 dated 8.5.1997.

2. The writ Petitioner in W.P. No. 8223 of 1997 is the Tamil Nadu Self-Financing Engineering Colleges Association represented by its President. The Association consists of members who have established self-financing Engineering Colleges in various parts of Tamil Nadu. The Petitioners in W.P. Nos. 10195 of 1997 and W.P. No. 10739 of 1997 are self-financing Engineering Colleges established and being administered without any aid or financial assistance from the Government. The contentions raised in all the Writ petitions are common.

3. In the first writ petition filed by the Tamil Nadu Self-Financing Engineering

Colleges Association, it is stated that the members of the Association have spent huge amounts towards the cost of acquisition of sites, construction of buildings, purchase of equipments and also to create endowments to the members of the Association by spending several lakhs for establishing several Engineering Colleges. It is stated that in all these years, the colleges used to evaluate the performance of the students admitted in their colleges in the first year of the Engineering course without allotment of branches and after evaluating and assessing the aptitude and capacity of each student, during the first two semesters, the Principal would allot the branch of the Engineering course in the beginning of the second year course. It is stated that unless the students undergo the training in the first two semesters, it is not possible for anyone to correctly assess the aptitude of the students for any particular branch of Engineering course. It is also stated that the Principal of the respective institutions would be the most competent person to take a decision regarding the allotment of various branches of Engineering course, and in all these years, the Principals alone were allotting the branches, that too after the completion of first two semesters and at the beginning of second year course, which would be the beginning of the third semester. It is stated that G.O.Ms. No. 204 issued by the Government of Tamil Nadu dated 4.4.1997 has directed that allotment of branches would be made by the Principals of the Engineering Colleges, but the same should be approved by the Directorate of Technical Education. The G.O. further provides that only on the basis of the approval given by the Director of Technical Education, the approval list would be forwarded to the University by the Director of Technical Education which would entitle the college to permit therein students in the respective branches and for subsequent appearance for the University examination. It is, therefore, submitted that the Director, Technical Education is not a competent authority to decide the allotment of the branches and by issue of the Government Order, the powers of the Principals have been taken away without any authority of law. It is stated that in so far as education matters are concerned, particularly, in the matter relating to the allotment of branches, it is for the educational institutions to decide the allotment of branches and the Director of Technical Education has no power and therefore, G.O.Ms. No. 304 is unsustainable in law. It is further submitted that if there was any malpractice committed by any of the institutions in the allotment of branches, it is always open to the Department to proceed against the institution which committed the malpractice, but to usurp the power of allotment is not the remedy for any alleged malpractice. It is also stated that in no other State, the allotment of branches has been done by the Government. It is also stated that on the basis of a decision of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, there is no sanction for the steps taken by the Respondents in the allotment of branches at the beginning of the course itself, even before the aptitude of the candidates is assessed.

4. In the affidavit filed in support of the writ petition in W.P. 10195 of 1997, it is stated that after the enactment of All India Council for Technical Education Act

(hereinafter referred to as A.I.C.T.E. Act), in 1987 by the Parliament which came into force in 1988, the State Government has no power to make any law with reference to the subject covered by above said statute. The principal ground that has been raised is that A.I.C.T.E. Act and Rules and Regulations made thereunder would cover the entire subject relating to technical institutions and technical education including the matter relating to the admission and therefore the State Government has no jurisdiction to issue the impugned Government Order which provides guidelines relating to allotment of branches to the students admitted in the Engineering Colleges. It is stated that, that the impugned Government Orders directly interfere with the matters relating to admission which is covered by A.I.C.T.E Act and all guidelines issued therein and therefore, they are liable to be struck down as without jurisdiction. It is also stated that the private college managements are entitled to allot the branch taking into account all factors and the Government Orders seek to interfere with the said right and impose the views of the Director of Technical Education to regulate such allotment and therefore they are issued without jurisdiction. It is also stated that the Government Orders are liable to be struck down as arbitrary and unreasonable as to self-financing colleges are allotting branches to the students at the beginning of the second year taking into account the aptitude of students, academic distinction evaluated during the course of first year and various other factors. It is stated that the Government Orders which direct the branch allotment to be made on the basis of the marks scored in Plus 2 examination is wholly unreasonable. It is further stated that the reason which appeared to have prompted the Government to pass the impugned orders was that some of the managements of self financing Engineering Colleges have collected huge amount for branch allotment. The allegations found in the said Government Orders are without any basis. The control over allotment of branches vested with the Director of Technical Education would constitute excessive restrictions which is totally unwarranted besides leading to adverse results. It is also stated that the Government Orders, if implemented, would result in substantial vacancies to remain in some of the branches of study which in turn would render impossible for the managements to run the colleges and it would not be possible for the Government to guarantee in filling up of all the seats in all branches in private self-financing Colleges. It is also stated that several seats remain unfilled which are taken as lapsed seats beyond the prescribed time limit and filled in by the managements. It is, therefore, stated that in the absence of the Government being able to fill up all the seats in all branches, it would not be possible for the management to run the colleges since the fee structure is so devised in such a manner that they would not be able to run the colleges unless all seats in all branches are filled up. The impugned Government orders would have the effect of rendering number of seats in private self-financing Colleges to remain vacant which would result in the immediate closure of such colleges. It is, therefore, stated that the Government orders are arbitrary and unreasonable and unworkable. It is also stated that impugned Government Orders though styled as guidelines, are in effect imposing a serious restriction on the rights of the

managements to run the colleges on the basis of the norms and standards laid down by A.I.C.T.E. Act and the restrictions and they are liable to be struck down.

5. The grounds raised in W.P. No. 10739 of 1997 are almost similar to that raised in other two writ petitions and therefore, it is not necessary to set out the same elaborately.

6. A counter-affidavit has been filed by the first Respondent wherein there is a reference to the representation said to have been received from various quarters to the effect that some of the managements of self financing Engineering Colleges are collecting huge amount for the allotment of branches. It is stated that some of the self-financing Engineering Colleges resorted to the conduct of aptitude test at the institutional level under the pretext of allotting branches which leads to speculation. It is stated that the parents and students and public from all walks of life made complaints before the High Level Committee constituted to go into certain aspects of self-financing Engineering Colleges about the unethical practice of certain management in collecting huge amount for branch allotment and to contain the management from adopting such malpractice, the High Level Committee suggested to the Government a proposal of allotment of branches to students in self-financing Engineering Colleges by a competent authority of the State Government. It is stated that the students of the Engineering Colleges are allotted branches at the beginning of the second year of study and in the Government-aided Engineering Colleges, merit list is prepared based on the marks obtained by the students in Plus Two Examination and Entrance Examination and also by following the communal reservations, the branches are allotted to the students as per the ranks in the mark list. Therefore, the Government accepted the views of the High Level Committee and issued two Government Orders for the allotment of branches during the second year in respect of students who were admitted in the year 1996-97 by way of merit and payment quota in the self-financing Engineering Colleges. In so far as the second Government Order is concerned, it is stated that there are altogether 74 self-financing Engineering Colleges functioning in the state of Tamil Nadu and creation of infrastructure facilities is the basic requirement for opening of any self-financing college as per the A.I.C.T.E. Act, Taking into account the investment made by the management, the Government has earmarked 50 per cent of the seats as payment seats wherein the managements are permitted to collect 5 times of the fees collected from merit candidates. It is stated that most of the self-finance Engineering Colleges barring a few have not yet equipped themselves with sufficient infrastructure facilities. It is stated that the Petitioners have been often receiving money from the parents of the students for the allotment of branches. It is further submitted that the subjects in first year are general in nature and the aptitude of the students could not be crystal or assessed in the first year itself. The students do not get specific knowledge in advanced Engineering study. Therefore, no useful purpose would be served by allotting the branches on the basis of the first year performance of the students. Further, if the allotment of branches is made during second year, the rule of

reservation and merit would get affected and the equity of social justice would not be safeguarded. Further, it is stated that the aptitude test said to be conducted by the self-financing Engineering Colleges were done without the approval of the Government and further, the result of the first year will not be available during June or July before which time, the branch allotment would be made by the management. It is also stated that the Principals of the self-financial Engineering Colleges are acting on the advice of the managements in the allotment of branches to the student since all the matters relating to the administration, financial transaction are being carried on by the management only.

7. It is further stated that High Level Committee received complaints from all parts of the state of Tamil Nadu stating that the allotment of branches is not made on the basis of results of the examination and merit, but on the extraneous grounds with a view to collect capitation fees. It is further stated that the allotment of branches according to the first Government Order, would be done by the Principals which will be counter-checked by the Director of Technical Education. It is further stated that the procedure for allotment of branches in Government Engineering and Aided Colleges is that it is done during second year on the basis of the performance in the qualifying examination which is in vogue and that practice should be extended to other colleges also. It is also stated that as per first Government Order, the allotment of branches will be made at the beginning of the second year on the basis of marks secured in Plus 2 and in the entrance examination and the first Government Order would be applicable only to the students admitted during 1996-97. The second G.O. would be applicable to the first year students to be admitted in 1997-98 under single window system whereby the branches will be allotted during first year itself. According to the Respondent, the practice of allotment of branches in the first year is still vogue in other premier institutions in the country and there is nothing unusual and extraordinary in introducing the single window system. It is further stated that the aptitude of students in any particular branch cannot be accessed on the basis of the performance in the first year as there is no advanced engineering syllabus for the first year. It is further stated that the object of the Government Orders is to avoid malpractice in the allotment of branches and to safeguard the students from the coercion of managements and from payment of capitation fees for branch allotment. It is also stated that High Level Committee held enquiries all over the State of Tamil Nadu and after hearing the managements, the Committee has recommended that the allotment of branches should be made in the first year and in so far as the students already admitted in the year 1996.97, the allotment of branches should be made by the Principals subject to the approval of the Director of Technical Education. It is stated that the above venture has been welcomed by all sections of society; students, teachers and parents in particular, It is stated that it is in the interest of the student community to avoid any discrepancy or any lacuna found in the system of allotment of branches, the present Government Orders have been issued.

8. An additional counter-affidavit is also filed by the first Respondent wherein a reference is made to the practice of allotment of branches to students in the first year in the Indian Institute of Technology, Regional Engineering College and P.S.G. College, Coimbatore. The additional counter-affidavit also refers to the letter of the Principal Secretary to Government of the State of Maharashtra wherein it is stated that in the State of Maharashtra the students are allotted to particular courses as per their choice and according to their merit in first year itself. It also refers to the letter of Principal Secretary to Government, Education Department of the State of Karnataka wherein it is stated that the course-wise and college-wise, allotment of engineering seats is done in the first year itself in the state of Karnataka. It also refers to the letter of Special Commissioner of the Department of Technical Education of State of Andhra Pradesh wherein it is stated that in the State of Andhra Pradesh admission to Engineering Colleges are made in a centralized way and even at the initial admission stage, every candidate is allotted a particular branch and no change of branch thereafter is made, unless there is vacancy, It is further clear that in so far as the first Government Order is concerned it relates only to the allotment of branches to second year students and the same is confined to only the students admitted during the academic year 1996-97 and there is no conflict in respect of G.O.Ms. No. 204 which was made subsequently and the amendment to the Government Order clarified the position.

9. The Petitioner in W.P. No. 8223 of 1997 has also filed a reply affidavit denying the averments that some of the self-financing institutions are collecting huge capitation fees. It is stated that before passing the Government Orders, the Respondents have not given proper and adequate opportunity to the institutions. It is also stated that the Petitioner colleges are not guilty of having insufficient infrastructure and it is not correct that the Petitioner-institutions are running with insufficient infrastructure. The Petitioner is running the institutions for a long period and this is the first time for the Government to come with a false allegation that there are no sufficient infrastructure facilities in the institutions. It is also stated that till date, no complaint has been received from any quarter regarding the mal-practice in the allotment of branches. It is further stated that in the State of Tamil Nadu, Engineering Colleges have been running without any complaint. It is also stated that it is not out of place to mention that the regulation of A.I.C.T.E. prescribes for rule of reservation in admitting students in Engineering Colleges. It is stated that at no point of time, the Petitioners were heard before issue of the impugned Government Orders.

10. When these matters came up for final hearing on 22.7.1997, Mr. R. Krishnamoorthy, Learned Senior Counsel in his usual thorough and fair manner advanced the leading arguments for the Petitioner, Mr. Muthukumarasami, Learned Counsel for the Petitioner has rendered able assistance to Mr. R. Krishnamoorthy, Learned Senior Counsel. Mr. D. Duraisami, Learned Senior Counsel followed him and in characteristic and persuasive way, submitted his arguments to support the case of the Petitioner. Mr. A.K. Somayaji, Learned

Senior Counsel appearing for the Petitioner in W.P. No. 10739 of 1997 made a forcible plea for quashing the impugned Government Orders. Mr. G. Masilamani, learned Additional Solicitor General for India appearing for the Respondents made a thorough and forcible arguments for the Respondents to uphold the impugned Government Orders. The submissions were fair, candid and thorough and they were well-reasoned arguments. The court places on record its deep appreciation to all Senior Counsel for the excellent presentation of the case. Mr. R. Krishnamoorthy, Senior Coun-sel has submitted that after the enactment of All India Council for Technical Education Act, 1987, the State Government has no power in the matters relating to admission of students in technical education and technical institutions. He referred to the Entry 66 of List I of VII Schedule to the Constitution. He traced the amendment made to Entry 25 of List III of VII Schedule. He also referred to the relevant Entry 25 in the Concurrent List. He submitted that after coming into force of A.I.C.T.E. Act, the State Government has no power to pass the impugned Government Orders. With reference to the above statute, he further submitted that the field is occupied by the Central legislation and since the entire field is occupied by the Central legislation, the State Government has no power to issue the directions found in the Government Orders. He referred to the relevant provisions of A.I.C.T.E. Act, particularly Section 3 of the Act relating to the establishment of the council and Section 10 of A.I.C.T.E. Act, relating to the functions of the council. He referred to Section 10(j) of the A.I.C.T.E. Act, which enables the council to fix the norms and guidelines for charging tuition fees and other fees. He also referred to Section 10(n) which enables the council to take all necessary steps to prevent commercialisation of technical education. He also referred to Section 10(0) which enables the Council to provide guidelines for admission of students to technical institutions and Universities imparting technical education. He, thereafter, submitted that the entire field of technical education is covered by A.I.C.T.E. Act, and the State Government has no power even to make Law on the subject covered by the Central Act. He submitted that when the State Government has no power to make laws the State Government is powerless to issue the administrative instructions. He, therefore, submitted that the State Government cannot issue administrative instructions when the field is occupied by the Central Act. He submitted that even if the Council has not framed any regulation providing any guidelines for admission of students in recognized institutions or Universities, or technical education, the State Government has no power to issue the administrative instructions. The main thrust of his argument is that as the field occupied by the Central legislation, the State Government has no power to issue instructions. He strongly placed reliance on the decision of the Supreme Court in the case State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,) and submitted that on the subject covered by All India enactment, the State Government has no power to make a law under Entry 25 of list III of the VII Schedule to the Constitution. He also relied upon another decision of this Court in the case of Arunachalam v. The State of Tamil Nadu ILR (1996) 3 Mad 1508 wherein this Court has held that the executive power cannot

be exercised in respect of matters which are covered by the law enacted by the legislature. He also placed a decision of the Supreme Court in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, and submitted that the State Government cannot exercise executive power in respect of matters which are already covered by the law enacted by the Central legislature. He also relied upon a decision of this Court in the case of *Chandra v. Govt, of Tamil Nadu I.L.R. (1996) 1 Mad 1007* wherein this Court has reiterated that the executive power under Article 162 of the Constitution cannot be exercised over the field covered by the legislature. He also placed reliance on a decision of the Division Bench of this Court in the case of *Rajesh. G. v. State of Tamil Nadu and Ors. 1995 Writ L.R.389* wherein the Division Bench of this Court held that it is settled position of law that when the field is occupied by statute, executive power cannot be exercised. He also referred to the following decisions of the Supreme Court:

B.N. Nagarajan and Others Vs. State of Mysore and Others, ; *State of M.P. v. Bharat Singh AIR 1967 SC 1170*.

State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., .

He, therefore, submitted that when the State legislature cannot do it, much more so, the executive cannot issue the Government Orders providing for allotment of branch in the first year itself. His further submission was that there were vacancies even in payment categories in the engineering colleges. He submitted that in the year 1994-95, there were vacancies of nearly 3200 seats and in 1995-96, there were vacancies of nearly 3680 seats and in 1996-97, there were nearly 4800 vacancies in the payment seat categories and the impugned Government Orders interfere with the functioning of the management of the self-financing Engineering Colleges. He further submitted that both the Government Orders should be struck down as arbitrary and unreasonable. He has submitted that the students are tested in the schools at different standards and marks obtained in Plus 2 examinations as well as in the entrance examination cannot be taken to be the standard test to fix the aptitude of the students. He submitted that the technical institutions observe the students atleast for a period of one year and by conducting written test during the first year and interviews at the end of first year, the ability of the students is observed and the Principals of the institutions would allot branches. He, therefore, submitted that the marks obtained in Plus 2 examination and in the competitive examination and the observation made by the institutions during the first year would afford valuable guide to test the aptitude of students and all these factors are taken into account for the allotment of branches. He, therefore, submitted that if the opportunity of assessing students in the first year of the course is not made available, it is not possible for the institutions to test the aptitude of the students and by these impugned G. Os., the opportunity to assess the students progress, ability and aptitude is not made available. He further submitted that there are various levels to test mat aptitude of me students and though there is general education in the first year, the Principals of the colleges on the basis of the several tests

conducted by the college during the course of study atleast for a period of one year, would be in better position to assess the ability of the students to allot branches to the students. He further submitted that even when the practice of allotting branches was in vogue, many seats remained vacant in the payment seats and if the allotment of the branches is made in the first year itself, then, it would result in the creation of more vacant seats in the payment category and unless the Government assures that it will fill up all the seats in the payment category, the impugned G. Os. have to be regarded as only arbitrary and unreasonable. Learned Senior Counsel Mr. R. Krnishnamoorthy also referred to a decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and submitted that from the scheme framed in Unnikrishnan "s case, it is made clear that a candidate who is willing to join Engineering College on payment seat should be able to pay not only for himself but also for another meritorious student who is allotted a free seat by the Government. He, therefore, submitted mat precisely for that reason, the Supreme Court held that there is social justification behind 50 per cent rule prescribed in the scheme framed by it. He, therefore, submitted that if the Government, by the impugned Government Orders, is not able to ensure allotment of students to all branches, then the scheme framed by the Supreme Court in Unnikrishnan case would break down and the impugned Government Orders are against the scheme framed by the Supreme Court in Unnikrishnan"s case. He, therefore, submitted that the impugned Government Orders, in so far as they are against the scheme evolved by the Supreme court in Unnikrishnan"s case is concerned, are violative of the Scheme and therefore, they are liable to be struck down. He further submitted that marks secured in Plus 2 examination as well as in the entrance examination would not reflect the aptitude of the students. He submitted that it is not possible to make selection on the basis of option and if it is so, many seats would remain vacant. He submitted that viability of the institutions is determined on me strength of the total number of students and if all the seats cannot be filled up, the management of the self-financing Educational Institutions will not be able to run the institutions economically. In so far as the allegation that there was collection of huge fees, he submitted that me allegation is baseless. He submitted that the Respondents are having powers to take action under the relevant provisions of the statute. He submitted that the allegation that there was a large scale collection as capitation fees for the allotment of branches is only a vague allegation and it cannot constitute a reason for the issue of Government Orders. He, therefore, submitted that the Government has no power to issue Government Orders impugned and they are liable to be struck down.

11. Mr. K. Duraisawmi, Learned Senior Counsel who followed Mr. R. Krishna-moorthi, submitted that there is no difference between the first Government Order and second Government Order and in the absence of any detail which institution has collected capitation fees for allotment of branches, the Government has no power to take punitive action taking away the right of the

management of the allotment of branches. He submitted that if it is alleged that the moneys were collected for branch allotment, there are other methods to tackle the problem. He has further submitted that there was no material for the issue of the Government Orders. He submitted that no notice was given before the issue of Government Orders and in the absence of any guarantee that all payment seats will be filled up, the Government Orders are violative of the decision rendered in Unnikrishnan's case. He also submitted that the scheme of the single window system is against the provisions of Unnikrishnan's case wherein the Supreme Court has held that at least 10 days should be given to the candidates to be admitted against payment seats. He submitted that in the case of single window system, the candidates will not be able to get 10 days time provided for in Unnikrishnan's case. He further submitted that in the first year course of engineering, basic engineering subjects are taught and there is a chance of assessing the potential of the students for the allotment of the branches by the college. He further submitted that the impugned Government Orders smack of arbitrariness and for the change of system, there must be justification and in the absence of any justification, the impugned orders are not sustainable in-law.

12. Mr. Somayaji, Learned Senior Counsel submitted that the Government Orders are vague in particular as the Government Orders have not stated who has collected the capitation fees and who made the complaint, when it was made and which college had collected the capitation fees. He also referred to both the Government Orders and submitted that it is not clear who made the complaint that some of the engineering colleges have collected huge amount for allotment of branches. He, therefore, submitted that the Government Orders were passed without any material. He submitted that in the absence of the fact which colleges have resorted to collection of money at the time of allotment of branches and on the basis of certain vague allegations, Government Orders cannot be issued. He submitted that mere receipt of complaint would not be sufficient and the colleges should be informed of the same. He submitted that in so far as the first Government Order is concerned, in view of the recommendations of the High Level Committee, the first Government Order empowers the Principals to allot the branches under the supervision of the Director of Technical Education and for the issue of second Government Order, there were no fresh materials for the Government to change the pattern of allotment and when there are no materials even for issue of the first Government Order, there are no materials, much more so, for the issue of the second Government Order. He submitted that mismanagement of some of the institutions does not warrant the issue of the Government Orders taking away the right of the management and the matter can be set right within the provisions of the law and in the absence of any material, the Government Orders are arbitrary and unreasonable. He also submitted that reasons for the issue of Government Orders cannot be improved in the counter-affidavit, when there are no reasons shown in the Government Orders, it is not possible for the Respondent to give reasons in the counter-

affidavit filed by mem. He referred to the counter-affidavit filed by the Respondents and submitted that the system of assessing the students during first year cannot be criticised and the system cannot be bad. He submitted that the students should perform well in the first year to get allotment of branches of his liking and it is not possible to allot the branch opted by the students before admission in the first year. He also submitted that the Government has no power to issue the impugned Government Orders and it is not open to the State Government to take such action which is void in law. He submitted that the entire field of technical education right from the beginning of recognition up to the state of derecognition is occupied by the Central law and the State Government has no role in the matter of allotment of seats. He strongly placed reliance on decision of the Division Bench of this Court in *Adhiyaman Educationl and Research Institutions v. The State of Tamil Nadu* 1989 Writ L.R.62 which was confirmed by the Supreme Court. He submitted that the expression, "admission" in Section 10(o) of the A.I.C.T.E Act includes allotment of branches and therefore, the entire field is occupied by the Central enactment, the State Government has no power to issue the Government Orders. He also referred to the guidelines prescribed by A.I.C.T.E Act. He also referred to the decision of the Supreme Court in *Unnikrishnan*'s case and submitted that the introduction of the single window system is inconsistent with *Unnikrishnan*'s case he submitted that All India Council alone has jurisdiction and if there are complaints, it is the duty of the State Government to refer all the matters to All India Councils and the State Government has no jurisdiction to issue the impugned Government Orders. He also submitted that even the State Government has no power to constitute a High Level Committee and the report submitted by the Committee is void and on the basis of the Committee's report the State Government has no power to issue impugned Government Orders.

13. Mr. G. Masilamani, Additional Solicitor General appearing for the Respondents submitted that the arguments on the scope of Entry 66 of the Union List or Entry 25 of the List III to VII Schedule of the Constitution of India do not arise at all on the facts of the case. He submitted that under the scheme framed in the judgment of the Supreme Court in *Unnikrishnan*'s case, the power of selection is with the State Government. He further submitted that All India Council for Technical Education, regulations should be read in consonance with *Unnikrishnan*'s case and not inconsistent with the judgment of the Supreme Court in *Unnikrishnan*'s case. He submitted that a seat in Engineering College is a seat in a college sanctioned by All India Council for Technical Education and when the affiliation is given by the University for the seat, the seat cannot be divested from the branch and the branch and seat are inseparable. He submitted that seat and branch are interconnected and interwoven and under the Scheme framed in *Unnikrishnan*'s case by the Supreme Court, when the Government is empowered to allot the seat, it is also empowered to allot the branch as well. The allotment of seat is included with the allotment of branch and there cannot be a seat sans the branch. He submitted that even from 1993-94, the State

Government should have allotted the branch and since the allotment of branch was at the discretion of the self-financing Engineering Colleges, the education has become commercialised. He therefore, submitted that to remove the anomaly in the system, the present Government Orders have been passed. When the self-financing Engineering Colleges allotted the branches, the merit is discarded. He submitted that equity and equality should be maintained at the time of allotment of seat which includes the allotment of branch. Since the equity and equality have been discarded by the self financing educational institutions and the education has become commercialised, it has become necessary to regulate the allotment of branches to avoid commercialisation. He submitted that the commercialisation can exist at different levels and the commercialisation exist at the time of allotment of branches and when the branches are allotted in the first year level by the competent authority, commercialisation can be avoided. He submitted that collection of money for the allotment of branches is a substitution for the collection of capitation fees. He, therefore, submitted that if discretion is given to the private colleges to collect money at the time of allotment of branches, then the letter and spirit of Unnikrishnan's case would be defeated. He submitted that seat and branch go together and the present Government Orders are not in violation of Unnikrishnan's case. Since there was a large scale abuse by the private educational institutions at the time of allotment of branches, it has become necessary for the Government to step in and prevent the abuse at the time of allotment of branches. He further submitted that there is no inherent power to the private colleges to allot branches and it is not traceable either to A.I.C.T.E Act or regulations and if such a power is given to the private educational institutions, it would nullify Unnikrishnan 's case. He submitted that the regulation formed under A.I.C.T.E Act has not prescribed any procedure for the allotment of branches and Section 23 of the A.I.C.T.E Act enables the council to make regulations. He has submitted that enabling provision to make regulation cannot be regarded as legislative power as normally understood with reference to the provisions of the Constitution of India and since All India Council for Technical Education though has power to make regulations, has not made the regulations and the expression, "seat" in Unnikrishnan's case would include allotment of branch. He submitted that the seats are allotted on the basis of the common merit list and the guidelines issued by the said Council do not prohibit the allotment of the branches by the competent authority. He further submitted that self-financing Engineering Colleges are conducting certain aptitude test or interview and on that basis, the branches are allotted at the beginning of the second year. It is submitted that when the interviews conducted even for the selection of students for the professional colleges by the State Government have been condemned by the courts of this country, the system which was discarded by several Courts of law and the system which was unsatisfactory to assess the merits of the students cannot be reintroduced for the benefit of self-financing Engineering Colleges. He submitted that the proficiency and aptitude of the students towards any particular subject cannot be determined on the basis of the aptitude test conducted by the private educational

institutions and the examination conducted by the self-financing Educational Institutions through their own private examiners and under the control of the management is merely a farce. He submitted that under the normal economic theory is that when there is a demand and when there is short supply price for the same would increase and when the examinations conducted by the self-financing Engineering College are likely to be manipulated and misused in the hands of the colleges, then, that cannot be a source for the allotment of branches for the students and there is likelihood of abuse of procedure in the branch allotment by self-financing Engineering Colleges. He submitted that the parents and students have the opportunity to know the aptitude and ability of the students and on the basis of the working days in the first year of the course, the aptitude of the students cannot be assessed. He submitted that the student is entitled to choose his own subjects and the self-financing Educational Institutions have no such right in the allotment of branches to the students when tests are found to be unreliable or capable of being manipulated. He submitted that the state has right to remove arbitrariness and if the power is vested with the management, it would result in arbitrariness and there are no guidelines in the matter of allotment of branches by the colleges and the students are kept in tender hook for a period of nearly one year. He submitted that when the management allots a branch, it is not on the basis of merit that prevails, but on extraneous consideration.

14. He further submitted that even after Unnikrishnan's case, the management has no right to impose a particular branch on a student. He submitted that in so far as the engineering seats are concerned, the students opt for a branch and no student can be admitted to the seat without a branch. He submitted that no inconvenience will be caused to the colleges by allotment of branches in the first year itself. He submitted that when the payment seats are not filled up, the remedy lies elsewhere and that cannot be a ground for denying the power of allotment of branches in the first year to the Government. He submitted that the Government Orders have been issued in furtherance of Unnikrishnan's case to prevent the collection of amounts at the time of allotment of branches by the self-financing Engineering Colleges. He, mere fore, submitted that both the Government Orders are valid and legal. In so far as Athiyaman's case (cited supra) is concerned, he submitted that in that case the field was occupied by Central Act with reference to the standard prescribed by A.I.C.T.E Act and the Supreme Court held that the regulations prescribed by the state Government should be in conformity with the regulations under A.I.C.T.E Act. Since there is no such regulations for allotment of branches, he submitted that there is no conflict between the present Government orders and A.I.C.T.E. regulations. He submitted that if the expression, "admission" in Section 10(o) of A.I.C.T.E Act includes the branch allotment also and the expression, "allotment of seat" in Unnikrishnan's case would include branch allotment as well. He also submitted that if the expression, "admission" in Section 10(0) of A.I.C.T.E Act does not include branch allotment, the Government has power to issue the Government

Orders for branch allotment invoking Article 162 of the Constitution of India. He submitted that under the Government Orders which prescribe a just system, the choice of the college and the branch is left with student and the competent authority will allot college as well as the branch according to the option of the students and to the extent of availability and it is a reliable system and more just system than the earlier system and it is in consonance with Unnikrishnan's case. In so far as the submission made by the Learned Senior Counsel for the Petitioners that the Petitioners should have given an opportunity is concerned, he submitted that materials were sufficient for the Government to frame the said orders and only if they desire to take any action against any particular college, the question of affording opportunity would arise. He submitted that an uniform policy has been adopted for all institutions. He submitted that steps have been taken by the State Government only to put an end to the activity of collection of fees at the time of branch allotment and the Government's orders are saved by Unnikrishnan's judgment. He submitted that it is not necessary that there should be materials to be placed before the court when there is a large scale of abuse and likelihood of abuse. He submitted that if the Petitioners apprehend that some of the seats in certain branches would not be filled up due to lack of demand in branches and he submitted that it is always open to Petitioners to approach All India Council for Technical Education for appropriate relief. He has submitted that the interest of the students should be safeguarded and branch allotment is consequent to the decision of the Supreme Court and filling up of all seats is not in contemplation of the decision of the Supreme Court and they cannot be relied upon for the purpose of deciding the validity of the Government Orders. He further submitted that prior to the issue of the Government Orders, the option of the students was limited to the college only, but under the present Government Orders, the Students have option both for college and branch and both options are available and open to them, and by this process, the abuse of process will be avoided and the society will be placed in a better seating and he finally submitted that all Government Orders are purported to put the horse before the cart, instead of putting the cart before the horse as was done by the self-financing Engineering Colleges in the allotment of branches.

15. Mr. R. Krishnamoorthy, Learned Senior Counsel in his reply has submitted that the supreme Court has not stated anything about the branch allotment. He submitted that there is nothing in Unnikrishnan's case which can be the basis for the Government Orders and the Government Orders do not refer the Unnikrishnan's case and the Orders are based on report of High Level Committee. He has submitted that the council alone can issue regulations as it has the power of issuing regulations. He further submitted that principals of the colleges are more competent and better persons and the system adopted by the private colleges to test the aptitude of the students is more reliable and scientific and that system without any material cannot be changed.

16. I have carefully considered the submissions made by the Learned Senior Counsel for the Petitioners and the learned Additional Solicitor General for the

Respondents. The question that arises is whether the State Government has power to issue the impugned Government Orders, namely, G.O.Ms. No. 204 Higher Education (JI) Department dated 4.4.1997 and G.O.Ms. No. 252 dated 8.5.1997, and whether they are in conformity with the scheme evolved by the Supreme Court in Unnikrishnan's case. The Supreme Court in Unnikrishnan's case was considering the position of cost of education and how does one determine the cost of education and by what process it can be regulated. The cost of education may vary even from institution to institution. The Supreme Court, therefore, held that the Court cannot certainly do that and it may be done by the Government or University or such other authority as may be designated in that behalf. The further question that was posed by the Supreme Court was whether cost based education only means running charges or can it take in capital outlay? The Supreme Court also considered the question can an individual or body of persons first collect amount (by whatever name called) from the intending students and with these moneys establish an institution-an activity similar to builders of apartments in the cities and how much should the students coming in later years pay? The Supreme Court, further hold that commercialisation of education cannot be and should not be permitted. Therefore, the question arose how to encourage private educational institutions without allowing them to commercialise the education? In this background, the Supreme Court framed the scheme to meet the problem posed by it. In more than one place, the Supreme Court has emphasised that the education was never regarded as commerce in this country and making it one opposed to the other, tradition and sensibilities of this nation and imparting of education has never been treated as a trade or business and it has been treated as a charitable activity and religious duty. The Supreme Court felt that any person has a right to establish an educational institution and this right is not an absolute right, but subject to such law made by the State in the interest of the general public. Therefore, the object of the scheme as observed by the Supreme Court is to eliminate the discretion of the management altogether in the matter of admission and it is the discretion in the matter of admission that is at the root of the several ills complained of. The Supreme Court also realized that it is the discretion that has mainly led to commercialisation of education. In this view of the matter, the Supreme Court held that a situation must be brought about where there is no room or occasion for the management or anyone on its behalf to demand or collect any amount beyond what is permitted (Emphasis supplied). It is, in this view of the matter, the Supreme Court evolved a scheme and in the scheme framed by the Supreme Court in Unnikrishnan's case, at least 50 per cent of the seats in every college shall be filled by the nominees of the Government or University, as the case may be and the remaining 50 per cent seats which is called payment seats should be allotted to those who are prepared to pay the fee prescribed therefor, and who have complied with the instructions regarding deposit and furnishing of cash security/Bank Guarantee for the balance of the amount and the allotment of students against payment seats should also be done on the basis of inter se merit determined on the same basis as in the

case of free seats, and the management of professional college shall not be entitled to impose or prescribe any other and further eligibility criterion or condition for admission either to free seats or to payment seats. It is also made clear that the number of seats available in the professional colleges shall be fixed by the appropriate authorities and no professional college should be permitted to increase its strength, except under the permission or authority granted by the appropriate Government. It is also made clear that no professional college shall call for application for admission separately or individually and for all seats available in such colleges, the applications for admission shall be called for by the competent authority along with applications for admission to Government / University colleges of similar nature, and the application form shall also contain a column or a separate part wherein an applicant can indicate where he wishes to be admitted against a payment seat and the order of preference, upto three professional colleges. The Supreme Court again and again emphasised on the seats in the professional colleges throughout the scheme" framed by the Supreme Court. The Supreme Court also made it clear that it is open to the appropriate authority and competent authority to issue such further instructions or directions, as they may think fit, appropriate and not inconsistent with the scheme by way of elaboration and elucidation. A close study of the scheme framed by the Supreme Court clearly indicates that the discretion of the management in the matter of admission to the seats in engineering colleges is completely and altogether taken away, so that the discretion vested with the management in the matter of admission of the student to the seat cannot be abused to prevent commercialisation of the education. In my view, therefore, the expression, "seat" in the scheme of Unnikrishnan's case in the professional colleges is fairly and widely employed and in the context of the scheme framed by the Supreme Court, it encompasses within itself the allotment of the branch as well to the students by the competent authority. I accept the contention of the learned Additional Solicitor General that there cannot be a seat without a branch and the seat and the branch go together and one could not be divested or differentiated from the other. I also accept the contention of the Additional Solicitor General that when the Supreme Court has referred to the selection of students to the Engineering College seats, the Supreme Court meant that it includes the branch as well and the word, "seat" meant a seat in a branch of study, and the allotment of a seat in Engineering Colleges includes the allotments of the branch as well. In my view, the words, "branch" and "seat" are interconnected, interdependent and interwoven with each other and one cannot exist without another and it cannot be stated that there are two aspects in the allotment of seat-first admission to the college and later allotment of the branch. In my view, the spirit of the scheme framed by the Supreme Court in Unnikrishnan's case is that the discretion vested with the management in the allotment of seats should be altogether eliminated and the impugned Government Orders taking away the right of the management to allot a branch are in perfect consonance, with the spirit of the judgment in Unnikrishnan's case.. Otherwise, it will lead to the perpetuation of the evil that was sought to be

remedied in Unnikrishnan's case. Therefore, I am of the view that the allotment of a seat and the allotment of a branch both go together and one cannot exist without other, particularly in the matter of admission of a student to the engineering colleges. Therefore, when the Supreme Court mentions the allotment against the seat, it should also be taken to mean the allotment of the branch of study as well.

17. I have also carefully gone through the report of the High Level Committee and the report of the said committee was submitted after holding several public hearings in various parts of the State of Tamil Nadu. I am quite satisfied that the impugned Government Orders have been issued in the interest of general public and the complaints regarding commercialisation received by the High Level Committee clearly show that the commercialisation is positively harmful to the society and it is opposed to the public policy. If the private unaided institutions are again given the power of allotment of branches, then it will completely defeat the principles evolved by the Supreme Court in Unnikrishnan's case. I am, therefore of the opinion that on the basis of the scheme evolved by the Supreme Court in Unnikrishnan's case, the Government has the necessary power to allot the branches to the students at the time of admission of the students. Otherwise, the students admitted against the free seats as well as payment seats would be exposed to the evil that was sought to be remedied by the Supreme Court. If the contention of the Learned Counsel for the Petitioners that the allotment of seat is one aspect and the allotment of branch is another aspect in the matter of education is accepted, it will set at naught or go against the scheme framed by the Supreme Court in Unnikrishnan's case.

18. Further, when the seats are sanctioned for a particular Engineering College, the number of seats is fixed by the appropriate authorities with reference to each branch of study. The appropriate authorities allot the number of seats according to different faculties and the allotment of seat is made with reference to a particular branch of study. The approval granted may be with reference to civil engineering or mechanical engineering or electrical engineering or computer engineering course of study. Therefore, when the appropriate authorities sanction the seats, it includes the branch, there cannot be a different meaning for the "seat" in the scheme framed by the Supreme Court to exclude the branch allotment. That apart, it cannot be assumed that the apex court was not aware of the distinction between the admission to a college and the allotment of branch. It is relevant to notice that the Supreme Court noticed the provisions of A.I.C.T.E. Act and when according to the Petitioners, the expression "admission" of students in Section 10(o) of the A.I.C.T.E. Act includes the branch allotment, it must be held that when the Supreme Court held that there shall be allotment of students against the seats it meant allotment of the branch as well. In my view, by placing the natural meaning to the expression, "seat", this Court has not interpreted the decision of the apex court as if it is a statute.

19. The regulations prescribed by A.I.C.T.E. fix the norms and guidelines for

charging tuition fees and guidelines for admission. The regulations also make it clear that allotment of seat includes the allotment of branch for a course of study. Regulation No. 8 provides for procedure for allotment of seats and under that regulation, no professional college shall call for applications for admission separately or individually and application form should also indicate whether the applicant wishes to be admitted against a free seat or a payment seat or both and the order of preference upto three professional colleges. Regulation 8(5) makes it clear that fifty per cent of the seats in professional colleges, course or programme shall be earmarked as free seats and the allotment of students against payment seats shall be done on the basis of inter se merit determined on the same basis as in the case of free seats. Regulation 8(6) also provides that there should be no management quota or any other quota whatsoever either for free seats or payment seats except as otherwise provided in regulations (10). Under regulation 8(9), the competent authority shall prepare a detailed schedule every year relating to inviting of applications, conducting of examination drawing up of merit order, publication of results Allotment of students to various courses and institutions both for free seats and payment seats in accordance with the Regulations and shall act in accordance with such schedule. The above Sub-regulation 9 clearly makes it clear that admission against seat includes the allotment of the students to various courses and the institution. The regulation also makes it clear that the competent authority, i.e., the state Government has the power to allot the branch to students. Therefore, in my view, both under the principles laid down by the Supreme Court in Unnikrishnan's case and on the basis of the regulation framed under A.I.C.T.E. Act, the State Government is empowered to issue impugned Government Orders.

20. As I have already held, the above impugned Government Orders have been issued keeping in view the Public interest. That apart, the Supreme Court has made it clear that it is open to the appropriate authorities or competent authorities to issue any further instructions or directions as they may think appropriate, not inconsistent with the scheme evolved by the Supreme Court by way of elaboration or elucidation. In my view, the Government Orders issued cannot be stated to be in any way inconsistent with the scheme evolved by the Supreme Court in Unnikrishnan's case, but they were issued to give effect to the scheme in Unnikrishnan's case. Therefore, I am of the view, when the Supreme Court has conferred powers on the competent authorities to allot a seat, it also includes the power to allot a branch also. Further any interpreter which would enable self-financing Engineering Colleges to retain the right of allotment of branches would be contrary to the scheme framed by the Supreme Court. The object of the Supreme Court's judgment in Unnikrishnan's case is to put an end to commercialisation of the education in technical institutions and if the private colleges are given the power to allot the branches, it would amount to granting a discretion on the management to allot the branch and the spirit behind the Supreme Court's decision would be given a go-by and defeated. Therefore, I am of the view, the State Government was justified in issuing the Government

Orders which were issued with the laudable object of putting an end to the evil commercialisation of education at the time of allotment of branches by the self financing engineering colleges.

21. It is also relevant to notice that the Government has issued impugned Government Orders in Public interest and in the interest of the student community as whole. In these proceedings, only the self-financing Engineering Colleges are challenging the Government Orders on the ground that their power to allot the branches is taken away. In my view, when the Supreme Court has held that the discretion of the management in the matter of admission should be eliminated, the discretion in the matter of allotment of branches also should be taken away from the management.

22. Mr. R. Krishnamoorthy, and Mr. Duraisamy, Learned Senior Counsel for the Petitioners contended that unless the Government undertake the responsibility of allotting equal number of candidates for both free and payment seats in all colleges, the scheme would not work. In other words, the contention is that if the right of allotment of branches is taken away from the management, then, it will not be possible for the State Government or appropriate authorities to fill up all the seats in the engineering colleges. They referred to the paragraph of the scheme in Unnikrishnan's case and submitted that the scheme is revised in such a manner that a candidate who is prepared to pay money for securing a payment seat is paying not only for himself but also for other meritorious students. They, therefore, submitted that if the State Government retains the power of branch allotment, the scheme framed by the Supreme Court would become unworkable as many of the seats in certain courses of study would remain vacant and it would not be possible for the competent authorities to allot one payment seat against one free seat. They, therefore, submitted that the impugned Government Orders are violative of the Scheme framed in Unnikrishnan's case. I am not able to accept the contentions of the Learned Counsel for the Petitioners. It was submitted that even prior to issuing of Government Orders, there were vacancies varying from 3000 to 4800 during the academic years 1994-95 to 1996-97. If there are vacancies, when the private management were empowered to make branch allotment, it is not possible to speculate that the number of vacant seats will increase after the present Government Orders. Secondly, the question of allotment of branches has nothing to do with the vacancy that may occur in certain branches of study. Thirdly, if the seats are not filled up in the particular branch of study, it is for the concerned college to take proper and appropriate steps with the appropriate authority to reduce the strength in that course which was not in demand by the students or to increase the strength in the course of study where there is a great demand among the students. That apart, when the seats became lapsed seats, it is made clear by the learned Additional Solicitor General that it is open to self-financing Engineering Colleges to fill up the lapsed seats subject to the guidelines framed by A.I.C.T.E. Act. Therefore, the question of filling up of seats, both free and payment seats in all private educational institutions has no connection or relevance or nexus with the allotment of the

branches by the State Government. In this connection, it is relevant to notice the argument of the learned Additional Solicitor General that if the Petitioners desire to create a nexus between the allotment of the branch by the college with the filling up of payment seats, it would clearly show that the self-financing Educational Institutions desired to retain the power of allotment of branches for some ulterior reason and such a nexus will be counter productive of the entire system of Unnikrishnan's case. Therefore, it cannot be stated that the scheme framed by the Supreme Court in Unnikrishnan's case is defeated, when the State Government has taken over the power of allotment of branches. Therefore, the contention that the impugned Government Orders are against the Scheme framed by the Supreme Court is also not acceptable.

23. It is also relevant to notice another contention raised by the Learned Senior Counsel Mr. K. Duraisami and Mr. Somayaji for the Petitioners. They contended that in the scheme framed by the Supreme Court in Unnikrishnan 's case, after the free seats are filled up, at least 10 days time should be given to the students to be admitted against payment seats and the candidates are entitled to indicate the choice of three colleges. They have submitted that the students should comply with conditions regarding deposit of money and production of securities or bank guarantee towards tuition fees within such period of ten days. They have further submitted that the above scheme formulated by the Supreme Court in Unnikrishnan's case is not possible in a single window system proposed by the Government and the candidates are required to indicate their choice immediately and therefore, the period of 10 days time provided in Unnikrishnan's case is taken away by the present Government Orders. The learned Additional Solicitor General on behalf of the Respondents submitted that the scheme in Unnikrishnan's case would be strictly followed in the matter of choice of college and branch allotment. He elaborated the procedure for admission. He submitted that at the counseling centre there will be a big electronic Board displaying the names of the colleges, and groups available. The candidates, according to their merits, will be called to exercise their option and when a candidate finds that in any particular college, free seats are available in the subject opted by him, then he can opt for the college and the subject. If the subject is not available in the free seat quota, if the candidate finds that particular branch is available in another college, but in payment basis, then, the candidate can exercise his option. The option can be both for the college and the branch of study and the candidate will be given 10 days time to make deposit as provided in Unnikrishnan 's case. The explanation submitted by me learned Additional Solicitor General clearly shows that the Respondents are following the principles laid down in Unnikrishnan's case, and they are providing 10 days contemplative time to the students to opt for admission against the payment seats. The students are given option to opt for free seats, if available, on these subject they like and if the subject is not available under free seat quota, they can opt for a branch or the college according to their option under payment seat quota. According to the learned Additional Solicitor General, 10 days time will be given to the candidates

to make the deposit. In view of the submission made by the learned Additional Solicitor General, I hold that the Respondents are also complying with and providing 10 days time limit to the students as provided for under the scheme framed by the Supreme Court in Unnikrishnan's case.

24. Mr. R. Krishnamoorthy, Learned Senior Counsel, as already noticed, submitted that self-financing Educational Institutions are better empowered to test the aptitude of the students during the period of one year. He submitted that the performance of the students joining the colleges who are drawn from various course of study would be closely watched and on the basis of the performance and on the basis of the aptitude and also on the basis of the potential development during the first year, the subject would be allotted in the second year. He further submitted that the academic work is much more important than the observation made by the parents during the period of 18 years and that of the students themselves. He therefore, submitted that the system adopted by the self-financing Engineering Colleges is a better, commendable and acceptable one for the allotment of branches. I have already seen the arguments of the learned Additional Solicitor General countering the arguments of the Learned Senior Counsel for the Petitioner. I have already held that the power of selection and allotment of branches is with the State Government. I have also held that the discretion of the self-financing, Educational Institutions in the matter of allotment of branches should be taken away to give effect to the spirit behind the scheme framed in Unnikrishnan's case. I am also accepting the contentions of the learned Additional Solicitor General that the system adopted by the self financing educational institutions is merely a devise to allot the branches to the students and there is likelihood of abuse in that system. The State, by the Government Orders, has tried to prevent the same and further the course adopted by the self-financing Engineering Colleges for allotment of branches is selective and was not approved by the Respondents. I further hold that in the examination conducted by the college management, there is every possibility of manipulation and there is a possibility of misuse of the system in the matter of branch allotment. Therefore, an unapproved system, which is likely to be abused cannot be a source for branch allotment. I am of the view that such an unapproved system cannot be given judicial approval for the allotment of branches. I find force in the submission of the learned Additional Solicitor General that even when the State conducted such interviews, there were occasions where courts came down heavily on the State Governments when the interviews were not conducted properly and the system which was rejected by the Court cannot be a source for the allotment of branches to the students. The students should have the right of protection from arbitrariness and the system adopted by the self financing educational institutions cannot be said to be a foolproof system. The system adopted by the self-financing Educational Institutions has no uniformity and there are no guidelines prescribed and it is important to notice that under the guise of allotment of branches, the student community as well as the parents are likely to be exposed and they are kept in a

period of uncertainty and in suspense for a period of one year and the fact that branches would be allotted only at the beginning of the second year course of study would lead to a situation that a student has to perforce accept the subject allotted to him or continue the study whether the subject allotted to him was to his liking or not. The student in that situation will not be able to get out of the college as he has already spent one year of study and spent several thousands of money both for securing payment seat or at the time of allotment of free seat. In any event; the choice available to the student would be very limited. I am, therefore, of the opinion that the self-financing Educational Institutions has no right under the law to compel a student to allot a particular branch, if he is otherwise entitled to. The system provided in the present Government Orders gives the option to the students even at the time of admission to choose both the colleges and the branch. Therefore, the earlier system of allotting the branch at the beginning of the second year, in my view, is against the spirit of Unnikrishnan "s case. In my view, the system of allotting the branch in the beginning of the second year by the colleges would be in violation of fair play and the student community is entitled to opt both the college and the subject of study and in that situation, the self financing educational institutions have no role to play for the students. I am therefore, of the opinion that the present Government Orders cannot be regarded as either arbitrary or unreasonable. They have been issued with the public interest in mind and for the interest of student community at large.

25. Further, if the marks secured in qualifying examination as well as in the entrance examination are found to be good for the admission to the college, I do not find any reason why the same yardstick should not be allowed for the allotment of the branch as well. Therefore, the present Government Orders cannot be regarded as neither arbitrary nor unreasonable. Therefore, the present Government Orders are more reliable, equitable and it is just and it is in consonance with Unnikrishnan "s case, and there is no reason or logic to held that the scheme in Unnikrishnan"s case has not provided that branch allotment is not within the scope and power of the competent authority. Therefore, the scope and ambit of the present Government orders falls within the judgment of the Supreme Court and it has to be held that they are valid in law. The Government has taken steps only to put an end to the activities of collection of fees at the time of branch allotment at the beginning of the second year by some of the self-financing private Engineering Colleges and I, therefore, held that the present Government Orders are saved by the Supreme Court Judgment. Further, it is also stated in the additional counter-affidavit filed that the practice of allotment of branches to the students even in the first year of study is in vogue in some of the premier institutions of the country, like Indian Institute of Technology, Regional Engineering Colleges and P.S.G. College Coimbatore. That apart, the practice of allotting branches in respect of engineering course even in the first year according to the choice of the candidates and according to the merits, is prevalent in the State of Maharashtra, in the state of Karnataka and in the State

of Andhra Pradesh as well. Hence, the practice cannot be said to be a novel one introduces for the first time by the Government Orders.

26. Further, as already stated, the regulations framed under the A.I.C.T.E. have also to be interpreted in accordance with the decision of the supreme Court in Unnikrishnan's case and the regulations, would also show that the State Government has the necessary powers to issue the Government Orders to provide for allotment of branches at the time of admission of the students in the first year to the engineering colleges. I do not accept the arguments of the Learned Counsel for the Petitioners that the Supreme Court has not stated anything about the branch allotment. The judgment of the Supreme Court clearly indicates that the discretion of the self-financing Educational Institutions was taken away from their hands at the time of admission of the students and if the dichotomy between the admission of engineering course and the allotment of branch is maintained, the spirit of the scheme framed by the Supreme Court in Unnikrishnan's case would be defeated. I also held that the system adopted by the self-financing Educational Institutions to adjudge the performance of the students for the branch allotment cannot form the basis for the allotment of branches by self-financing Engineering Colleges. Viewed from any angle, the Respondents have the power to issue the present Government Orders.

27. Mr. Somayji, Learned Senior Counsel also submitted that there are no materials available with the Government to issue present Government Orders. I have already noticed the arguments of die Learned Senior Counsel. There are two ways of looking at the arguments. The judgment of the Supreme Court in Unnikrishnan's case itself would be sufficient to held that there were abuses in the matter of selection of students of Engineering Colleges. The Court can take judicial notice of the practice and if there is likelihood of abuse by the self-financing Educational Institutions in the matter of allotment of branches, no further material is necessary for the Government to produce the same before the Court to show that there were actual abuses and actual collection of fees by the self-financing Educational Institutions at the time of allotment of branches. The system so far adopted by the self-financing Educational Institutions clearly provides room for such abuse and in such a situation, the Government is not obliged to produce materials before the Court to show that there were actual abuses. That apart, I have directed the learned Additional Government Pleader (Education) to produce the relevant file and the learned Additional Government Pleader (Education) has also produced the files relating to the formation of High level Committee. The files contain the complaints received from the public, questionnaire submitted and the result of the public hearing held by the High Level Committee at various places of the State of Tamil Nadu, viz., Coimbatore, Tiruchirapalli, Chennai, Salem and other places. I have also seen the report of the High Level Committee, and noticed the list and types of grievances and dimension of harassment against the students. I have also gone through the report. The report also provides that taking advantage of the procedure of allotment of branches, some of the self financing engineering colleges were

indulging in the act of squeezing the students and parents for the payment of capitation fees for the allotment of branches which are in great demand. I have also noticed the amount demanded for courses like Computer Science and Electronic Engineering. In the complaints, it is also reported to the Government that the allotment is made not on the basis of merits of the students in the first year or on the basis of the original rank secured at the time of admission, but on the basis on huge amount and it has caused disappointment and frustration to the students. The Committee also felt that the practice should be put an end immediately. In my view, the report of the Committee would constitute good material for the Government to issue the Government Orders and it is not necessary for the Government to issue a show-cause notice to all the colleges when they issued the Government Orders regarding the allotment of branches in the first year. The Government framed a policy for all and it must be remembered that the Government is not taking any disciplinary action or punitive action against a particular college. It may be true that it cannot be stated that all self-financing, Educational Institutions have indulged in such practice. But, the fact remains that where there is a scope for indulging in practice of collection of fees by the self-financing Educational Institutions at the time of allotment of branches in the second year, that would be sufficient for the Government to act on the basis of the report of the High Level Committee. No doubt, it is true, the colleges which have not adopted such unethical practices and honest self-financing Educational Institutions which have not adopted the said practice are also covered by the Government Orders. But, the government has adopted a uniform practice and in order to catch the erring few members of the self-financing Educational Institutions, they have spread the net so wide to catch both erring and non-erring institutions and the uniform policy adopted for all self-financing Engineering Colleges cannot be stated to be arbitrary or unreasonable and it is not necessary for the Government to inform the self-financing Educational Institution the materials collected by the High Level Committee. The materials have been collected for the formation of the policy. I have gone through the materials carefully and I have to hold that Government Orders are based on the materials collected, and it is well-settled that the sufficiency of the materials cannot be subject matter of the judicial review. I, therefore, hold that the Government has acted on the materials and records and it cannot be stated that the Government Orders were issued without any materials.

28. Since I have already held that the present Government Orders are in consonance with the judgment and object of Unnikrishnan's case, and I have already held that the source of the power for issue of Government Orders is traceable to Unnikrishnan's case itself, though the Government Orders have not referred to the judgment of Unnikrishnan's case as the source of the power, it is not necessary for the Government to state the same in so many words in the Government Orders. I do not also accept the submissions of the Learned Senior Counsel for the Petitioners that the present system would not reflect the aptitude

of the students. As I have already held, the selection of the student to the college as well as to the branch is based on merits and it is common knowledge that candidates seeking admission to professional college " secure more than 90 per cent of marks in the subject of study prescribed for the allotment of seats and in such a situation, the difference of marks obtained in one subject from the another cannot be so high and the difference of marks between one subject and another subject can only be narrow and the total marks obtained in there qualifying examination as well as in the entrance test would be sufficient guide for the allotment of seat as well as branch. I, therefore held that the present Government Orders are perfectly valid and they have been issued for the benefit of the students community at large. In my view, I have taken that the source of power for the present Government Orders can be traceable to the decision of the Supreme Court in Unnikrishnan's case, it is not necessary for me to consider the arguments advanced by Mr. R. Krishnamoorthy, Learned Senior Counsel that the Government has no power to issue executive instructions invoking the powers under Article 162 of the Constitution. In this view of the matter, I deem it not necessary to consider the decisions relied upon by the Learned Senior Counsel in support of his plea that the State Government has no power to issue the impugned Government Orders in matter occupied by the Central Law, except to state the decisions which are as under:

State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, ; Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, ; Chandra v. Govt, of Tamil Nadu I.L.R (1996) 3 Mad 1007; Arunachalam v. The State of Tamil Nadu I.L.R (1996) 3 Mad 1508; Sundararajan B. v. Government of Tamil Nadu 1997 2 L.W.562; Rajesh G. v. State of Tamil Nadu and Ors. 1995 Writ L.R. 389; V.T. Khanzode v. Reserve Bank of India AIR. 1982 SC 1917; T. Cajee Vs. U. Jormanik Siem and Another, ;. Dr. T.M.A. Pai Foundation and others Vs. State of Karnataka and others, .

Adhiyaman Educational and Research Institutions v. The State of Tamil Nadu 1989 Writ L.R. 62 Suppl. Unreported judgment of a Division Bench of this Court in W.P. No. 7593/97, etc, dated 24.6.97.

Since I have already held that the government has power to issue present Government Orders on the basis of the scheme framed in Unnikrishnan's case, I have not considered in detail the above judgments cited by the Learned Counsel for the Petitioners. It is equally not necessary to consider and render opinion on the contentions raised by the learned Additional Solicitor General that if the expression, "admission, found in Section 10(o) of A.I.C.T.E. Act includes the allotment of branch as well, then the expressions, "admission" and "allotment of seat" in Unnikrishnan's case should be given the same meaning and if such a meaning is given, the impugned Government Orders are saved by Unnikrishnan's case. He further submitted that if the expression, "admission" in Section 10(o) of the A.I.C.T.E. Act does not include the allotment of branch, then, it would be open to the State Government to invoke powers under Article

162 of the Constitution and issue Government Orders on the subject matter which was not covered by the A.I.C.T.E. Act. He placed his case on the horns of dilemma and submitted that present Government Orders would be supported in any view of the matter. Since I have already held that the expression, "allotment of seat" in Unnikrishnan's case would include "allotment of branch" as well, it is not necessary to consider the arguments of the learned Additional Solicitor General for the Respondents on this aspect of the matter.

29. In my view, under the scheme framed by the Supreme Court in Unnikrishnan's case, the duty of the Government does not begin and end with the allotment of the college to the students. The expression "allotment of seat" is fairly comprehensive and encompasser within itself the allotment of the branch as well. The duty of the Government extends to take care of the welfare of the students and to oversee whether the students admitted to self financing engineering college received proper course of training in the subject of their choice. If the Government, on the basis of materials, comes to the conclusion that the students were not allotted branches of their choice or the materials collected sufficiently indicate that there is abuse in the matter of allotment of branches to students, it is the bounden duty of the Government to rectify the same in the best possible manner, of course, within its powers. In my view, it is, only with that object in view, the present Government Orders have been issued by the Government. I am of the view that the present Government Orders are educational experiments to be carried on by the Government so that the progress of the students in the educational institutions in the matter of their studies and in the subject of their choice is maintained culminating in their attainment of degree. I, therefore, hold that it cannot be stated that the method chosen by the Government is not a right method. The aim of the Government Orders is not a mistaken aim and the spirit in which they proceed is towards the accomplishment of objectives provided by the Supreme Court in Unnikrishnan's case. When the Government found that there were defects in the earlier system, it is incumbent on the Government to rectify the same and I am of the view that the Government has acted in a right direction, issuing the present Government Orders. The Chief merit of the present Government Orders is that the merit and the merit alone is the criterion for the allotment of the seat and for the allotment of branch and it eliminates altogether the discretion for the self-financing Engineering Colleges in the branch allotment and introduces an element of certainty and removes an area of uncertainty from the minds of the students even at the time of their admission to Engineering Colleges in their choice of the branch of study. I therefore, hold that is futile on the part of the Petitioners to claim that their rights have been taken away and Government has usurped the power of branch allotment. In my view on the basis of the decision of the Supreme Court, the allotment of the branch is already with the Government and it is a pity that the Government has not exercised that power even from the date of the judgment of the Supreme Court in Unnikrishnan's case. The self-financing Educational Institutions cannot arrogate to themselves the power of allotment of

branch and there is no essential difference between the two Government Orders and object of both the Government Orders is same to achieve the laudable object of Unnikrishnan 's case. It is no doubt true, the management will have to tax themselves more in order to maintain their educational institutions and to maintain their staff. But, that is natural consequence. But, on that account, Government Orders cannot be termed as being issued without any power on the part of the State Government. It is no doubt true that the competition and pressure of the students on some of the groups of study is so high and the clamour of the students over some of the groups is so severe and when some of the self-financing Educational Institutions take undue advantage of the situation, the Government cannot stand in the side line and watch the proceedings helplessly. It may be true that present Government Orders would have major effect on the landscape of the Educational Institutions, particularly self-financing Engineering Colleges of the country, but it cannot be stated that the Government has acted in radical way or in an arbitrary manner. There is nothing arbitrary in them; there is nothing unreasonable in them and there is nothing novel in them. I hold that the Government have the necessary powers to issue present Government Orders which are under challenge.

30. Before concluding the judgment, I felt that it is necessary to state the reason which prompted this Court to vacate the interim direction on the conclusion of the hearing of the case on 25.7.97. A Khmer proverb says that when two elephants fight, the ants get crushed. Here, in the litigation between the self-financing Engineering Colleges and Government, the admission process of nearly 25,000 students was kept at bay and with a view that the admission process need not be delayed, the interim direction earlier given was vacated when the hearing of the case was concluded.

31. Accordingly, the writ petitions are liable to be dismissed and they are dismissed. There will be no order as to costs..