

(2013) 07 MAD CK 0238

In the Madras High Court

Case No : W.A. (MD) No. 532 of 2013 and M.P. (MD) No. 1 of 2013

The Anna University

APPELLANT

Vs

Dhaya College of Engineering and Others

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

National Council for Teacher Education Act, 1993 — Section 14(3)(a), 14(3)(b), 16

Citation : (2013) 6 MLJ 354

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthkumar, J

Bench : Division Bench

Advocate : AL. Somayaji, A.G. for Mr. M. Rajarajan, for the Appellant; P. Wilson, for Mr. Veera Kathiravan for R2 and R3 in W.A. (MD).532/2013 and Mr. K. Chellapandian, A.A.G., assisted by Mr. B. Pugalendhi, Special Govt. Pleader for R2 in WA (MD).884/2012, for the Respondent

Judgement

N. Paul Vasanthkumar, J.—Both the writ appeals are preferred by Anna University, Chennai-25. W.A. (MD) No. 532 of 2013 is preferred challenging the order of the learned single Judge in W.P. (MD) No. 8719 of 2013 dated 7.6.2013, quashing the order passed by the University and directing the University to grant affiliation to the first respondent Engineering College for the year 2013-2014 and allot counselling code, so as to enable the College to participate in the counselling and admit students in five Engineering programmes viz., Civil Engineering (CE), Computer Science Engineering (CSE), Electrical and Electronics Engineering (EEE), Electronics and Communication Engineering (ECE), and Mechanical Engineering (Mech.E) under the management quota with a cost of Rs. 25,000/-. W.A. (MD) No. 884 of 2012 is preferred against the order of the learned single Judge made in W.P. (MD) No. 9695 of 2012 dated 21.9.2012 quashing the order of the University dated 6.7.2012 and directing the respondents therein to reconsider the application of the College strictly in accordance with the directions issued by the Court.

2. The case of the respondent College viz., Dhaya College of Engineering

(hereinafter called as "the College") before the learned single Judge was as follows:

(a) The College is being run by a Trust viz., M.K. Alagiri Charitable Trust and is functioning as per the amended Trust Deed dated 25.7.2008. The College was started with five Engineering Programmes, viz., Civil Engineering (CE), Computer Science Engineering (CSE), Electronics and Communication Engineering (ECE), Electrical and Electronics Engineering (EEE) and Mechanical Engineering (Mech.E). The College is situated in an under-developed village called Sivarakottai Village, Tirumangalam Taluk, Madurai District.

(b) The College approached the AICTE for approval from the year 2011-2012. AICTE conducted several inspections and granted approval for the academic year 2011-2012 for five courses referred above, by order dated 18.8.2011, along with two other colleges on identical situation and the said approval was also published in the website of AICTE, enabling the students to participate in admission for the year 2011-2012.

(c) For the year 2012-2013, AICTE granted approval after conducting inspection. According to the College, two other colleges, whose names are published in the official website of AICTE viz., C.R. Engineering College, Madurai and S.S.M. Engineering College, Dindigul were granted temporary affiliation by the appellant University without inspection and they were given Counselling Code and temporary affiliation was not granted to the respondent College alone for the year 2011-2012.

(d) The appellant University conducted inspection on 20.7.2011 for the grant of affiliation and three deficiencies were communicated to the college for rectification, viz.,

- (1) Non-availability of 175 books,
- (2) Request to shift cafeteria from inside the building to outside the premises,
- (3) To provide transport facilities to the students.

According to the College, those three deficiencies were complied with and a compliance report was submitted on 25.7.2011. The University has not taken any steps in spite of submission of compliance report and again appointed an Inspection Committee.

(e) The college approached this Court by filing W.P. (MD) No. 8354 of 2011 and prayed for the grant of affiliation and to participate in the counselling process in the year 2011-2012. The said writ petition was disposed of by this Court on 1.8.2011 with a direction to the University to consider the compliance report dated 25.7.2011 and pass orders within a stipulated time. The University preferred W.A. (MD) No. 740 of 2011, which was disposed of on 9.8.2011 giving direction to the University to consider the compliance report dated 25.2.2011 and pass appropriate orders, within a period of ten days from the date of receipt

of copy of the order.

(f) The University sent a further communication that inspection afresh should be conducted. The said communication was challenged by filing W.P. (MD) No. 9669 of 2011, which was disposed of on 21.10.2011 with a direction to the University to strictly act in accordance with the directions of the Division Bench made in W.A. (MD) No. 740 of 2011 dated 9/10.8.2011 and consider the reply of the College dated 25.7.2011 as per the statutes and pass orders within ten days.

(g) Against the said order, the University filed W.A. (MD) No. 1517 of 2011, which was also disposed of on 20.12.2011 with a direction to consider the reply submitted on 25.7.2011 as per the provisions of the statute, in respect of the applications made by the College seeking relief of affiliation for the academic year 2011-2012 without being influenced by the observation made by the Court in its order dated 21.10.2011, within a period of three weeks.

(h) The University thereafter filed M.P. (MD) Nos. 1 and 2 of 2012 and prayed for extension of time and also to direct the college to co-operate for further inspection. The said applications were disposed of on 9.5.2012 granting time till 31.5.2012 to inspect the college in the light of the reply dated 25.7.2011 and the College was directed to extend co-operation to the Inspection Committee to comply with the orders of the Division Bench dated 9.8.2011 and 20.12.2011. As against orders passed in the above miscellaneous petitions Special Leave Petitions were filed before the Hon'ble Supreme Court in SLP(C) Nos. 17760-17761 of 2012. The SLPs were dismissed by the Apex Court by order dated 30.10.2012.

(i) The college again filed W.P. (MD) No. 7525 of 2012 and prayed for issuing a writ of mandamus to forthwith grant temporary affiliation with consequential direction to permit the college to participate in the counselling for admission during the year 2012-2013 with counselling code for the Government Seats. The said writ petition was dismissed by this Court on 19.6.2012, against which, the college filed W.A. (MD) No. 469 of 2012 and the writ appeal was disposed on 29.6.2012, taking note of the approval granted by the AICTE for 2012-2013 with further direction to pass orders regarding affiliation of the college in accordance with law on or before 7.7.2012 as Inspection was already conducted on 26.6.2012.

(j) According to the College there was no further action in spite of the specific direction given on 7.7.2012 by the Division Bench. Hence the College was compelled to issue contempt notice on 30.6.2012 along with further representation for the grant of affiliation for the year 2012-2013. By communication dated 6.7.2012, the University, though inspected and found the compliance of three deficiencies pointed out, stated new reasons for rejection of affiliation for the year 2012-2013, which were stated in the order dated 6.7.2012. The said order was challenged in W.P. (MD) No. 9695 of 2012, which was allowed by order dated 21.9.2012 by issuing a writ of mandamus directing

the University to reconsider the application of the College strictly in accordance with the direction issued by this Court holding that the University was bound to consider only three deficiencies pointed out and its compliance and cannot state new reasons. As against the said order University filed W.A. (MD) No. 884 of 2012, which is being dealt with in this judgment.

(k) It is also stated in the affidavit filed by the College that the University sent a letter to the AICTE objecting the grant of approval by AICTE, pursuant to which a show cause notice was issued on 5.12.2012 calling upon the college to reply against the allegations made by the University. Suitable reply was given by the College to the AICTE and no further proceeding was taken. On 3.4.2013, the AICTE granted approval for the academic year 2013-2014. Thus the College is having extension of approval for the academic year 2013-2014.

(l) It is the case of the College that prior to getting approval for 2013-2014 from AICTE, the college submitted a request for the grant of affiliation for the academic year 2013-2014 on 5.3.2013. The appellant University chose to appoint a Committee of Inspection on 9.5.2013 fixing the date of Inspection as 13.5.2013. The college states that the said communication dated 9.5.2013 reached the College only on 13.5.2013 and there was no official/teaching staff available in the college for carrying out the inspection. The Inspection team came to the college on 13.5.2013 and left the premises without giving any order or inspection report to the College/Management. The said Inspection team said to have sent a report stating that the College was not functioning, based on which the affiliation request for 2013-2014 was rejected by the appellant by order dated 20.5.2013.

(m) The said order dated 20.5.2013 was challenged before the learned single Judge contending that the University is refusing to grant affiliation repeatedly on trivial grounds in spite of approval granted by the AICTE for the academic years 2011-2012, 2012-2013 and 2013-2014. The deficiencies pointed out for the grant of affiliation for the year 2011-2012 being three, and the same having been complied with, no other requirement is to be fulfilled for the grant of affiliation and the earlier orders rejecting affiliation having been set aside, and remitted the matter to pass orders based on the compliance report already filed on 25.7.2011, the appellant University is not justified in conducting fresh inspection and based on the said report dated 13.5.2013, affiliation for the year 2013-2014 was rejected on the ground that the college appears to be non-functional and inoperative.

(n) It is contended in the affidavit filed in support of the writ petition that the request for grant of affiliation for the year 2011-2012 and 2012-2013 was erroneously rejected due to which only the college was unable to admit students and is not able to function, for which the University cannot blame the college, as the University has not complied with the orders passed by this Court. The order passed by the appellant was with oblique motive as the founder trustee of the College is from opposite political party of the State. The College was not given

sufficient time before inspecting the College on 13.5.2013 as the communication for inspection itself was received by the College on 13.5.2013. The contention of the University that the College has not produced no objection u/s 37(b) of the Land Reforms Act is erroneous as no Engineering College in the State has produced NOC and as such the respondent college was discriminated. AICTE having satisfied with the availability of infrastructural and instructional facilities granted approval the University cannot contend that the College has not fulfilled the requirements for the grant of affiliation.

3. The learned Single Judge heard the writ petition on 7.6.2013 and the respective counsels appeared and addressed arguments. The writ petition was allowed with cost of Rs. 25,000/- against which W.A. (MD) No. 532 of 2013 is preferred.

4. When W.A. (MD) No. 532 of 2013 was posted for admission on 18.6.2013, the learned counsel appearing for the appellant submitted that the learned Advocate General will appear and argue the matter. The learned counsel appearing for the College submitted that he will also address the arguments on 20.6.2013 and by consent of both sides, the writ appeals were taken up for final hearing on 20.6.2013 and 21.6.2013.

5. Mr. A.L. Somayajee, learned Advocate General argued that the learned Judge was not justified in disposing the matter on 7.6.2013 without giving opportunity to file counter affidavit to the University. It is argued that approval obtained by the College from AICTE was doubted and a surprise visit was made by the AICTE officials on 17.4.2012 and a show cause notice was issued on 5.12.2012 calling upon the college as to why appropriate action shall not be initiated for non-observance of the terms and conditions of the approval. The direction issued by the learned Judge to issue counselling code is not within the purview of the University and the second respondent was not served with notice in the writ petition. The learned Advocate General further argued that the request for affiliation can be granted only on recommendation of the Standing Committee on affiliation, which is independent of Inspection Committee, has got power to review decision of the Inspection Committee as per the University statutes. The earlier inspection having been made on 21.7.2011, there has been a change of faculties as new Director and Principal have assumed charges and the status of other teaching faculties, non-teaching staff, academic experts and working committees and laboratories are to be verified. The learned Advocate General further submitted that the earlier direction issued to grant affiliation for the year 2012-2013 was challenged in WA(MD) No. 884 of 2012, and even though there is no stay, the University waited for disposal of the writ appeal and as on today the academic year 2012-2013 is over. The College having paid the Inspection fee along with application for affiliation for 2013-2014, the University is entitled to send an Inspection Team for inspection and the college also acknowledged the notice dated 9.5.2013 for conducting inspection on 13.5.2013. Hence the College is not justified in not co-operating for inspection.

6. The learned Advocate General further submitted that the earlier orders of this Court was giving direction to the University to consider the report of compliance and grant of affiliation as per the provisions of the statutes. Therefore, there is no embargo in verifying the availability of infrastructures and instructional facilities before granting affiliation by the University. The learned Advocate General also cited Division Bench judgment reported in *The University of Madras Vs. Loordhu Ammal Educational Trust and The Director of Collegiate Education*, Full Bench judgment reported in *Rukmani College of Education run by Rukmani Educational and Charitable Trust Vs. The State of Tamil Nadu*, and Supreme Court decision reported in *Avinash Mehrotra Vs. Union of India (UOI) and Others*, .

7. Mr. P. Wilson, learned Senior Counsel appearing for the College on the other hand submitted that the College was granted approval to conduct five B.E. degree programmes for the years 2011-2012, 2012-2013 and 2013-2014 by AICTE after satisfying with the compliance of the norms and standards for the grant of approval and the contention of the University that it will inspect the college independently for its satisfaction to ascertain the availability of infrastructural and instructional facilities, which are not contemplated under the AICTE Regulations, is not justified as the grant of approval and conducting of B.E. degree (Technical course) are now regulated by AICTE Act, 1987 and Regulations and the University Statute will not prevail over the AICTE Regulations and as such, the stand of the University that it will independently inspect the college for its satisfaction and thereafter only the affiliation request can be considered is an erroneous stand of the University. The learned Senior Counsel further submitted that the action of the University in not granting affiliation to the first respondent College in spite of directions issued by this Court for 2011-2012 and 2012-2013 is discriminatory and violative of the orders of this Court and the said action is tainted with mala fide as the founder trustee of the college is a leading member of the Parliament, belonging to the opposition party in the State. The learned Senior Counsel relied on the Division Bench judgment of this Court reported in *Vinayaka Mission's College of Nursing and Para-Medical Sciences Vs. The Tamil Nadu Nurses and Midwives Council, Pondicherry University, The Government of Pondicherry, Chief Secretariat (Health) and The Indian Nursing Council*, Full Bench decision of this Court reported in *Rukmani College of Education run by Rukmani Educational and Charitable Trust Vs. The State of Tamil Nadu*, and the decisions of the Supreme Court reported in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, *Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others*, , *Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others*, and certain other decisions of other High Courts and contended that once AICTE, which is the supreme/central authority, granted approval, the University/State body cannot reject affiliation to the approved courses. The learned Senior counsel further submitted that as the

counselling for admission to 2013-2014 is to commence from 21.6.2012, urgent orders may be passed enabling the college to get counselling code and admit students for the approved courses.

8. We have also heard Mr. K. Chellapandian, learned Additional Advocate General for respondents 2 and 3 in W.A. (MD) No. 532 of 2013 and second respondent in W.A. (MD) No. 884 of 2012, who supported the arguments of the learned Advocate General, who appeared for the Anna University.

9. We have considered the rival submissions of the learned Advocate General for the Anna University, learned Additional Advocate General for the State Government and the learned Senior Counsel appearing for the respondent College, perused the orders of approval, passed by the University and the orders of this Court as well as the decisions cited on both sides.

10. The respondent College has applied for approval of five B.E. Degree programmes viz., Civil Engineering (CE), Computer Science Engineering (CSE), Electrical and Electronics Engineering (EEE), Electronics and Communication Engineering (ECE), and Mechanical Engineering (Mech.E) before AICTE and the AICTE after inspection, granted approval for the academic year 2011-2012, which was renewed for the year 2012-2013 and again renewed for the year 2013-2014 by order dated 30.4.2013. The said extension of approval was granted in terms of the provisions under the All India Council for Technical Education (Grant of Approval for Technical Institutions) Regulations, 2012 with a condition that the approval granted is subject to the condition that the College shall follow and adhere to the regulations, guidelines, and directions issued by the AICTE from time to time and the undertaking/affidavit given by the Institution along with the application submitted by the institution on portal.

11. The University, for grant of affiliation for 2011-2012, conducted inspection and pointed out three deficiencies. For the said deficiencies pointed out, the College submitted compliance report on 25.7.2011. In spite of submitting compliance report, the University has not passed any order. Hence the College approached this Court by filing W.P. (MD) No. 8354 of 2011, which was disposed of by this Court on 1.8.2011 by giving direction to consider the reply and pass orders regarding affiliation to conduct five programmes. The said order was challenged in W.A. (MD) No. 740 of 2011. The Division Bench of this Court disposed of the writ appeal on 9.8.2011 by modifying the direction issued by the learned single Judge to consider the reply submitted by the College dated 25.7.2011 on merits and in accordance with law and based on its own statutes and pass appropriate orders regarding grant of affiliation. Thereafter the University gave an intimation to the College for inspection on 19.8.2011 and Inspection was conducted on 19.8.2011 and on 20.8.2011 new grounds were stated for rejecting affiliation. On 30.8.2011, the University sent a communication to AICTE for cancellation of the approval granted. The College filed W.P. (MD) No. 9667 of 2011 and prayed to quash the order dated 20.8.2011 raising new grounds during inspection. The said writ petition was disposed on

21.10.2011 with a direction to verify the compliance report regarding three deficiencies and re-do the exercise again. Again, W.A. (MD) No. 1517 of 2011 was filed by the University, which was disposed of on 20.12.2011 and the Division Bench gave direction to reconsider the matter afresh by the University as per the direction given by the Division Bench in W.A. (MD) No. 740 of 2011 and also consider the reply submitted by the college dated 25.7.2011 and as per the provisions of the statute, in respect of the application made by the College, seeking affiliation for the year 2011-2012, without being influenced by any observation made by the writ Court in its order dated 21.10.2011, within a period of three weeks.

12. Extension of time to comply with the direction was sought for in M.P. (MD) No. 1 of 2012 and M.P. (MD) No. 2 of 2012 was filed seeking direction to the college to co-operate with Inspection Committee to reconsider the application for the grant of affiliation. Both the applications were disposed of on 9.5.2012 extending time till 31.5.2012 and the college was directed to extend co-operation to the Inspection Committee of the University. The University filed SLP against the said orders passed in M.P. (MD) Nos. 1 and 2 of 2012 dated 9.5.2012 in SLP(C) Nos. 17760-17761 of 2012. The said SLPs were dismissed by the Hon''ble Supreme Court stating that no ground is made out to interfere.

13. It is the contention of the learned Senior Counsel for the college that specific grounds were raised before the Hon''ble Supreme Court regarding power of the University to conduct inspection and find out as to whether the college is having all infrastructural and instructional facilities, apart from three deficiencies pointed out earlier, and if that contention is not accepted by the Hon''ble Supreme Court, the University is not entitled to find new grounds to reject the request of affiliation of the College. The Standing Committee on affiliation of the University considered the report of the Inspection held on 26.6.2012 and in the said minutes it has stated nine reasons, while noting the compliance of all the three deficiencies, which were found for consideration of the affiliation request for the year 2011-2012. It was also pointed out in the report that new application made by the College shall be processed immediately. An order was communicated to the College on 6.7.2012. Thus, affiliation for the year 2011-2012 was not granted.

14. The said order dated 6.7.2012 was again challenged by the College in W.P. (MD) No. 9695 of 2012. The said writ petition was disposed of on 21.9.2012 and the order passed on 6.7.2012 was set aside and the University was directed to reconsider the application of the College strictly in accordance with the directions issued by this Court. Against the said direction, W.A. (MD) No. 884 of 2012 was filed.

15. It is relevant to note at this juncture that even though writ appeal was filed against the order of the learned single Judge, no stay of operation of the order was granted and the University has not complied with the order in spite of not getting any stay.

16. The academic year 2012-2013 was over by the end of May, 2013. Hence, granting affiliation for the year 2012-2013 at this juncture will not arise. Consequently, W.A. (MD) No. 884 of 2012 is liable to be dismissed as infructuous and accordingly dismissed.

17. Insofar as the affiliation request of the College for the year 2013-2014 is concerned, the college applied for affiliation on 5.3.2013 i.e., even before the grant of approval by AICTE for the year 2013-2014. The College also paid the inspection fee. Approval for the year 2013-2014 was granted by AICTE by order dated 13.4.2013. To process the said application, the University sent a communication on 9.5.2013 to fix the inspection date as 13.5.2013. The College failed to co-operate with the University Officials to conduct inspection on 13.5.2013. Instead, the College requested the University to grant provisional affiliation for the previous academic years. As the previous academic years were over, and no admission could be made for the previous academic years in May, 2013, the said stand of the College cannot be justified. The College having applied for affiliation for the year 2013-2014 and paid inspection fee, it is bound to co-operate for the conduct of inspection and non-co-operation of the college has resulted in such kind of situation for rejection of affiliation for the year 2013-2014. Hence, the order passed by the learned single Judge with positive direction to grant provisional affiliation for the academic year 2013-2014, without conducting inspection, is not sustainable.

18. The learned Advocate General appearing for the University as well as learned Senior Counsel appearing for the College agreed with one proposition of law that the college cannot admit students without approval from AICTE and affiliation by the University/Examining Body, and factually also the College has not admitted students for any course during the academic years 2011-2012, 2012-2013.

19. The issue as to whether once approval is granted by the Central Agency, whether the University can find a new ground to reject the affiliation, came up for consideration before the Honourable Supreme Court in the decision reported in Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, the question arose regarding the functioning of three bodies viz. NCTE, University and State Government, regarding the grant of recognition, permission and affiliation of Teacher Training Course. In paragraph 52 to 54 it is held thus,

52. Under the scheme of the NCTE Act, there are three principal bodies involved in processing the applications for grant or refusal of recognition for running of teacher training courses by various institutions. They are the NCTE, the State Government, the affiliating body or the University, as the case may be. Each of these stakeholders has been assigned a definite role under the provisions of the NCTE Act and even the stage at which such role is required to be performed. The provisions of the NCTE Act even identify the scope and extent of power which each of these bodies is expected to exercise. As already noticed, the NCTE Act has been enacted with the object of constituting a National Council with a view to achieve planned and coordinated development of teacher education system

throughout the country and also to ensure maintenance of proper norms and standards in teacher education system. The NCTE is a specialized body and is expected to perform varied functions including grant of recognition, ensuring maintenance of proper norms and standards in relation to teacher education, inspection of the colleges through experts and to ensure strict adherence to the time schedule specified under the NCTE Act and rules and regulations framed therein.

53. The NCTE Act is a special act enacted to cover a particular field, i.e. teacher training education and, thus, has to receive precedence over other laws in relation to that field. No institution or body is empowered to grant recognition to any institution under the NCTE Act or any other law for the time being in force, except the NCTE itself. Grant of recognition by the Council is a condition precedent to grant of affiliation by the examining body to an institute.

54. The non-obstante language of Section 16 requires the affiliating body to grant affiliation only after recognition or permission has been granted by the NCTE. The provisions of Section 16 give complete supremacy to the expert body/ NCTE in relation to grant of recognition. In fact, it renders the role of other bodies consequential upon grant and/or refusal of recognition. When the NCTE is called upon to consider an application for grant of recognition, it has to consider all the aspects in terms of Section 14(3)(a) of the NCTE Act. The amplitude of this provision is very wide and hardly leaves any matter relatable to an educational institution outside its ambit. To put it simply, the NCTE is a supreme body and is vested with wide powers to be exercised with the aid of its expertise, in granting or refusing to grant recognition to an educational institution. The NCTE is the paramount body for granting the approval/recognition not only for commencing of fresh courses but even for increase in intake, etc. The Council has to ensure maintenance of educational standards as well as strict adherence to the prescribed parameters for imparting of such educational courses, including the infrastructure. The provision and scheme of the NCTE Act is *pari materia* to that of the Medical Council of India Act, 1956 and the All India Council for Technical Education Act, 1987 etc." Further in paragraph 59, how the three bodies should function while conducting of course by the College was emphasised, which reads thus,

59. The above enunciated principles clearly show that the Council is the authority constituted under the Central Act with the responsibility of maintaining education of standards and judging upon the infrastructure and facilities available for imparting such professional education. Its opinion is of utmost importance and shall take precedence over the views of the State as well as that of the University. The concerned Department of the State and the affiliating University have a role to play but it is limited in its application. They cannot lay down any guideline or policy which would be in conflict with the Central statute or the standards laid down by the Central body. State can frame its policy for admission to such professional courses but such policy again has to be in conformity with

the directives issued by the Central body. In the present cases, there is not much conflict on this issue, but it needs to be clarified that while the State grants its approval, and University its affiliation, for increased intake of seats or commencement of a new course/college, its directions should not offend and be repugnant to what has been laid down in the conditions for approval granted by the Central authority or Council. What is most important is that all these authorities have to work ad idem as they all have a common object to achieve i.e. of imparting of education properly and ensuring maintenance of proper standards of education, examination and infrastructure for betterment of educational system. Only if all these authorities work in a coordinated manner and with cooperation, will they be able to achieve the very object for which all these entities exist.

In the said judgment in paragraph 77 and 79, it is further held as follows:

77. The fields which are sought to be covered under the provisions of Section 37 of the Universities Act and the Statutes of various universities are clearly common to the aspects which are squarely covered by the specific language under the Act. That being so, all State laws in regard to affiliation in so far as they are covered by the Act must give way to the operation of the provisions of the Act. To put it simply, the requirements which have been examined and the conditions which have been imposed by the NCTE shall prevail and cannot be altered, re-examined or infringed under the garb of the State Law. The affiliating/ examining body and the State Government must abide by the proficiency and command of the NCTE's directions. To give an example, existence of building, library, qualified staff, financial stability of the institution, accommodation, etc. are the subjects which are specifically covered u/s 14(3)(b) of the Act. Thus, they would not be open to re-examination by the State and the University. If the recognition itself was conditional and those conditions have not been satisfied, in such circumstances, within the ambit and scope of Sections 46 and 16 of the Act, the affiliating body may not give affiliation and inform the NCTE forthwith of the shortcomings and non-compliance of the conditions. In such situation, both the Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the University cannot act in derogation to the NCTE.

79.... Once it grants recognition, then such grant attains supremacy viz-a-viz the State Government as well as the affiliating body. Normally, these questions cannot be re-agitated at the time of grant of affiliation. Once the University conducts inspection in terms of its Statutes or Act, without offending the provisions of the Act and conditions of recognition, then the opinion of the State Government at the second stage is a mere formality unless there was a drastic and unacceptable mistake or the entire process was vitiated by fraud or there was patently eminent danger to life of the students working in the school because of non-compliance of a substantive condition imposed by either of the

bodies. In the normal circumstances, the role of the State is a very formal one and the State is not expected to obstruct the commencement of admission process and academic courses once recognition is granted and affiliation is found to be acceptable.

(Emphasis Supplied)

20. The conduct of technical courses, which were granted approval by the AICTE, and the role of the University and the State Government came up for consideration before the Supreme Court in the decision reported in *Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others*, . In the said judgment it is held that the AICTE is a specialised body, constituted for bringing uniformity in technical education all over the country and to ensure the institution possess complete infrastructure, staff facilities and are capable of maintaining educational standards for imparting technical education. Hence, the department of the States and affiliating University cannot lay down any guideline or policies in conflict with the central statute or standards laid down by the Central body. It is further held that the procedure for obtaining affiliation and any condition, which may be imposed by the University, could not be inconsistent with the provisions of the Central Act and the authorities viz., AICTE and affiliating University have to work in tandem, as all of them have common object to ensure maintenance of proper education for the betterment of technical educational system. The harmonious construction of both the statutory bodies viz., AICTE and the affiliating University should be applied and the proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. The University, which is the examining body is mainly to satisfy with regard to the requirements in the aspects of eligibility of students for admission, conduct of examinations and the manner in which the prescribed courses should be completed. The Hon"ble Supreme Court further pointed out that even though approval/recognition was granted for particular course, the affiliating body need not grant affiliation automatically, but must exercise its discretion fairly and transparently, while ensuring that the conditions of the law of the University and the functions of the affiliating body should be complementary and not to be in derogation.

21. The above two decisions were rendered by following earlier decisions of the Supreme Court, reported in *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, , *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, , *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, and *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, etc. Thus, the power of the University so far as the grant of affiliation to the technical courses, which were granted approval by the AICTE is well settled. The other decisions cited by the learned Advocate General and the learned Senior Counsel for the College are stating the very same principles, which we

have stated above based on the Supreme Court judgments.

22. It is relevant to note at this juncture that based on the complaint/report of the University, AICTE issued a show cause notice on 5.12.2012 to the College directing as to why it should not be considered that AICTE was misled by the Institute by manipulating and giving false information and it should not be considered as violation of the terms and conditions contained in the letter of approval and as to why proper action including withdrawal of approval, shall not be initiated. The college submitted reply to the said show cause notice and thereafter no action was taken by the AICTE, withdrawing the approval granted for the year 2012-2013 and the AICTE chose to grant approval for the five programmes by order dated 30.4.2013 for the academic year 2013-2014. Thus, the University is not justified in contending that the College suppressed material facts and obtained the order of approval for the courses from the AICTE.

23. We are aware that even though approval for conducting five B.E. degree programmes was granted by the AICTE for the academic year 2011-2012, 2012-2013, due to non grant of affiliation by the University, the college has not started the courses. No admission of students took place. Some of the staff members, who were shown as staff members in the original application are not available as on date and new faculty members were appointed by the College. All the said facts are to be verified by the University, which could be ascertained only after conducting inspection, for which the College also paid inspection fee while seeking affiliation for the year 2013-14. The College should have co-operated for conducting inspection as intimated by the University. Instead of co-operating to conduct inspection, the College management refused to permit the University officials to enter the college and to make inspection. Once it is held that the AICTE and affiliating University should have worked in tandem and their functions are complementary to each other, University is well within its right to conduct inspection to satisfy whether the infrastructural and instructional facilities, which were shown before the AICTE for the grant of approval, are still available to run the college, so as to enable the University to grant affiliation for the courses.

24. In such circumstances, we are not in agreement with the order of the learned single Judge in giving positive direction to grant provisional affiliation to the first respondent College for the academic year 2013-2014 and to allot counselling code, so as to enable the college to participate in the counselling and admit students in five Engineering programmes under the management seats, as well as in awarding cost of Rs. 25,000/- to be paid by the Registrar, Anna University to the first respondent College and the said order is set aside.

25. The order of rejection of affiliation dated 20.5.2013 having been passed by the University on the ground of not permitting the Inspection Team to inspect the college and without ascertaining availability of infrastructural and instructional facilities, the said order is liable to be set aside and accordingly set aside. Consequently, we restore the application filed by the College before the

University with a direction to the appellant University to sent an Inspection Team to the first respondent college to compare and verify the availability of infrastructural and instructional facilities, including faculty members, which were submitted before the AICTE for the grant of approval of the courses for the year 2013-2014, and pass fresh orders within a period of ten days from the date of receipt of copy of this order. It is further directed that the University shall intimate the inspection date to the College three days in advance and the College should co-operate for inspection. W.A. (MD) No. 532 of 2013 is disposed of with the above directions and W.A. (MD) No. 884 of 2012 is dismissed as infructuous. No costs. Connected miscellaneous petitions are closed.

Vr

Note to Registry: Issue order copy today itself (3-7-2013)