

(2004) 06 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 282 of 2004

The Coordinator of All India Engineering/Pharmacy/Architects
Entrance Examination (AIEEE), Central Board of Secondary
Education

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-06-2004

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10

Constitution of India, 1950 — Article 19, 19(1), 245, 246, 26

University Grants Commission Act, 1956 — Section 12, 12A(2), 13, 25, 26

Citation : (2005) 3 RLW 1700 : (2005) 1 WLC 387

Hon'ble Judges : Anil Dev Singh, C.J.; Harbans Lal, J

Bench : Division Bench

Advocate : N.N. Goswami, Munindra Singh and Neeraj Chandrana, S. Mishra, Alok Sharma and R.P. Singh, Shanti Bhushan and M.M. Ranjan, Mahesh Dausawala and Nipul Malhotra, for the Appellant; Raju Ram Chandran, Addl. Solicitor General, Govt. of India, B.P. Agarwal, General and Bharat Vyas, A.A.G. for University Grants Commission, for the Respondent

Final Decision : Allowed

Judgement

Anil Dev Singh C.J.

1. These three appeals by the Union of India, through Secretary, Ministry of Human Resource Development, Department of Secondary & Higher Education, Shastri Bhawan, New Delhi; the Coordinator, All India Engineering/Pharmacy/Architects Entrance Examination (AIEEE), Central Board of Secondary Education, New Delhi; and All India Council for Technical Education, New Delhi, are directed against the judgment & order of the learned Single Judge of this Court, dated April 02, 2004, rendered in SB Civil Writ Petition No. 2379/2003, whereby the Policy Notification dated October 18, 2001 of the Government of India, Department of Secondary Education, Ministry of Human Resource Development relating to framework for admission to engineering, architecture and pharmacy

courses at undergraduate level in the country; the letter o the University Grants Commission dated December 06, 2001 informing the various institutions that the Government of India had resolved to conduct an All India Engineering Entrance Examination (AIEEE) for admission to engineering, architecture & pharmacy courses at under-graduate level in the institutions, including the deemed universities as well as central institutions; and University Grants Commission (Admission To Specified Professional Programmes) Interim Regulations, 2003, dated December 17, 2003, framed by the University Grants Commission for admissions on all- India basis to the under-graduate programmes in engineering, architecture & planning and pharmacy in all institutions in the country, including the deemed universities, except admissions of Indian Institute of Technologies, Indian School of Mines (Dhanbad) and Institute of Technology (Banares Hindu University), have been found to be inapplicable to Birla Institute of Technology & Science, Pilani (for short "BITS, Pilani"), the first respondent herein (the sole petitioner in the writ petition).

2. On May 13, 1964, the first respondent was registered under the Rajasthan Societies Registration Act, 1958. Thereafter on June 27, 1964, within a period of less than a months, the Central Government by a publication in the Official Gazette declared the first respondent as a deemed university u/s 3 of the University Grants Commission Act, 1956 (for short "UGC Act").

3. The first respondents, BITS, Pilani, as a deemed university, offers admissions to 17 degree programmes, which include all engineering subject, namely, chemical, civil, mechanical, electrical & electronics, electronics & instrumentation and others subjects like computer science, management, pharmacy, mathematics, physics, chemistry, biological sciences, economics, information systems, finance etc.

4. Admissions to BITS, Pilani, are made on the basis of merit, which is determined by the aggregate marks obtained by the candidates in 10+2 Examination of the Central Board or a State Board or its equivalent in physics, chemistry, mathematics & English and modified by a method of normalization. According to the first respondent, this system of admissions to the various courses, is being followed by it for the last thirty years and the same has been commended by the Supreme Court in STATE OF MAHARASHTRA AND OTHERS V/ s. RAVINDRA KUMAR RAI, 1999 (2) SCC 48 ; and U.P. Public Services Commission Vs. Subhash Chandra Dixit and Others, . The first respondent, BITS, Pilani, also claims that as per the survey of the top most engineering institutions of the country conducted by India Today, it has been assigned the third place, leaving behind IIT, Delhi, IIT, Mumbai and IIT, Guwahati. That apart, the report of the Peer Team, on accreditation of BITS, Pilani, by the National Assessment & Accreditation Council (NAAC), Bangalore, has also appreciated its admission process. The report while adverting to the admission system of BITS, Pilani, recorded as follows:-

"The admission process is highly streamlined and admissions are given only on

the basis of merit. The Institute admits students from all over the country and cut-off percentage is minimum 96% (normalized) for the students who have passed 10+2 examinations. The entire process is transparent."

As per the certificate of accreditation, issued by the National Assessment and Accreditation Council, dated February 07, 2000, BITS, Pilani, has been accredited at the Five Star Level.

5. The grievance of the first respondent, which led to the filing of the writ petition, emanates from the decision of the authorities whereby admission to the engineering courses offered by the first respondent, are required to be made on the basis of All India Engineering Entrance Examination, conducted by the Central Board of Secondary Education from the year 2004-2005. The sequence of events leading to admissions through the All India Engineering Entrance Examination need to be stated.

6. A National Policy on Education (NPE) was announced in the year 1986. In order to implement the policy, Programme of Action (PoA) was formulated in the year 1992. The Programme of Action, 1992 (PoA) inter alia envisaged a common entrance examination on All India basis for admission to professional and technical programmes in the country.

7. Under the Guidelines of 2000, issued by the UGC for Evidencing Proposals For Declaring An Institution As Deemed To Be University u/s 3 of the UGC Act, admissions to the identical courses in all the Deemed to be Universities are required to be made under para 13 on an all-India basis through a common entrance test conducted either by the UGC or by an Institution/Agency identified & approved by the UGC. Para-13 of the Guidelines read as under:-

"Admissions shall be made on an All-India basis to the identical courses in all the deemed to be universities through a common entrance test conducted either by the University Grants Commission or by pan Institution/Agency identified and approved by the UGC. This shall apply also to those institutions which have already been given the deemed to be university status."

8. By a policy notified on October 18, 2001, the Government of India following that concept, expressed its decision to organize an All India Engineering Entrance Examination (AIEEE) from the year 2002. This examination was envisaged to determine merit for admission to engineering, architecture and pharmacy programmes offered in the deemed universities, central institutions, other than those covered by the Joint Entrance Examinations conducted by the IITs and institutions in States/Uts willing to join. According to the Notification, in fact, three examinations are conceived for entrance to engineering programmes in the country, viz.

(a) The Joint Entrance Examination (JEE) conducted by the IITs;

(b) The State Level Engineering Entrance Examination (SLEEE) conducted by the States for entrance to institutions located within their respective territories

against seats reserved for students from within the States; and

(c) The All India Engineering Entrance Examination (AIEEE).

The responsibility for conducting the All India Engineering Entrance Examination has been assigned to the Central Board of Secondary Education (CBSE). The Central Board of Secondary Education was selected to conduct the All India Engineering Entrance Examination, as it is already conducting the All India Quota of 15% seats in Medical/Dental Colleges in the country in accordance with the decisions of the Supreme Court in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, ; *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, ; and *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* AIR 1986 SC 1877.

9. As a result of the Notification dated October 18, 2001 a duty has been case on the National Advisory Board (NAB) to advise the Central Board of Secondary Education for conducting the All India engineering Entrance Examination. The members of the Board are required to the drawn from the Ministry of Human Resource Development, participating States/Uts/UGC/ AICTE/NCERT/NIEPA/KVS, NVS.

10. While adopting the Notification dated October 18, 2001, the Government of India took note of the fact that candidates in order to secure admissions, are required to appear in different examinations conducted by various institutions. Multiplicity of such tests places the students and their parents under immense mental and financial burden without adding any value to the system.

11. The Government of India also took note of Section 10(o) of the AICTE Act, 1987, by virtue of which, All Indian Council for Technical Education (AICTE) is empowered to issue guidelines for admission of students to technical institutions and universities imparting technical education.

12. The Notification dated October 18, 2001, also refers to Guidelines for deemed universities u/s 3 of the UGC Act, where under admission to the identical courses in all deemed universities are required to be made on an all-Indian basis through a common entrance test.

13. In regard to above, the Notification records as follows:-

"Programme of Action (PoA) 1992 under the National Policy on Education (NPE) 1986 envisaged conduct of a Common Entrance Examination on all All India basis for admissions to professional and technical programmes in the country. Presently, a number of test are conducted for entrance to such programmes. Multiplicity of such tests causes immense mental and financial burden on students and their parents without adding any value to the system. u/s 10(o) of the AICTE can provide guidelines for admission of students to technical institutions and universities imparting technical education. As per Guidelines for Deemed Universities u/s 3 of the UGC Act, 1956, admissions to the identical courses in all deemed universities are required to be made on an All-India basis

through a common entrance test. In view of this, there have been attempts to hold an All India Engineering Entrance Examination for past some time."

14. On November 21, 2001, the Ministry of Human Resource Development, Department of Secondary & Higher Education constituted a National Advisory Board (NAB) for All India Engineering Entrance Examination to lay down policy framework for admissions to engineering, architecture and pharmacy programmes at the under-graduate level in the country. The composition of the Board so constituted is as follows:-

- "1. Secretary, Department of Secondary & Higher Education Chairman.
2. Special Secretary, Department of Secondary & Higher Education.
3. Chairman, UGC.
4. Chairman, AICTE.
5. Director, one of the IITs (by rotation)
6. Joint Secretary (Secondary Education), Department of Secondary & Higher Education.
7. Joint Secretary (Technical Education), Department of Secondary & Higher Education.
8. Director, NIEPA.
9. Director, NCERT
10. Commissioner, KVS
11. Commissioner, NVS
12. Chairman, CBSE-Member Secretary
13. Head of one of the participating deemed universities.
14. Head of one of the participating central institutions.
15. Principal Secretary/Secretary, Technical Education of the participating State/ Uts."

On November 21, 2001 itself, the order constituting National Advisory Board along with a copy of the Notification dated October 18, 2001 was sent by the Government of India to the Vice- Chancellor, BITS, Pilani. By the same communication, the Vice- Chancellor, BITS was informed that the first meeting of the national Board will be held on November 26, 2001 at 4.00 p.m. under the chairmanship of the Secretary, Department of Secondary & Higher Education at Conference Rooms No. 127 (First Floor), "C" Wing, Shastri Bhawan, New Delhi. The Vice-Chancellor was requested to attend the meeting. Pursuant to the letter dated November 21, 2001, of the Government of India, Human Resource Development Department, the Director, BITS, Pilani, by his letter dated

November 26, 2001, expressed his inability to attend the meeting as it was not physically possible to do so but, however, the following views were expressed, so that the same could be placed before the National Advisory Board:-

"1. BITS, Pilani has been making admissions purely based on merit on an All India basis through the marks obtained in the Board examination by a unique normalized process. This process basically tries to find the relative displacement of a candidate from the candidate who stood first in the examination of the Board from which the candidate under review has passed. Through this process a normalized percentage of marks for every candidate is calculated and All India merit list is prepared. This process has eliminated an entrance examination and also has reduced disparities between absolute marks awarded by different Boards. This process has worked very well for us and again this process is used not just for engineering admission but for admissions for the entire Institute as a whole. Institute makes admission for 17 degree programmes which include all engineering subjects (Chemical, Civil, Mechanical, Electrical & Electronics, Electronics & Instrumentation, Computer Science), Management, Pharmacy, all sciences (Mathematics, Physics, Chemistry, Biological Sciences), Economics, Engineering Technology, Information Systems, Finance and General Studies through a single application form and the students give preference. A student may give first preference to a subject in engineering, second preference in sciences and third preference to pharmacy and fourth may be to Management and again fifth may be to engineering etc. Through this process the Institute is getting students above 90% (normalized) to all its programmes. Every year we get the first rank students from about 15 Boards from different States.

2. The type of universities and the type of programmes within the various universities have lot of variations and hence a uniform entrance examination would be difficult.

3. Institutions like BITS will be making admission through a single merit list not only for engineering programmes but also for all other programmes like science, economics, finance etc. Hence it will be detrimental for integrated educational programmes like the programmes in BITS if we have separate attention given only to engineering education.

4. Too much importance to a single entrance examination makes a student neglect the studies in the Board examination and hence the input to our system will not be properly prepared.

5. Any system of admission must give some importance, if not full, to the performance in the school board examination.

One suggestion which could be examined carefully will be to create an autonomous National Testing Service, Which will conduct examinations similar to the United State's SAT type of examination and give Percentile Scholastic Score for each candidate. Universities should use this fully or with a combination of Boards examination marks. This will enable merit based admissions on an All

India not only for engineering but for all subjects. This SAT type examinations can be subject-wise, Physics, Mathematics, Chemistry, English, Biology, Economics etc. and the universities can use an intelligent combination of these scores."

15. On December 06, 2001, the University Grants Commission apprised the institutions that the Government of India had resolved to conduct an All India Engineering Entrance Examination (AIEEE) for admission to engineering, architecture and pharmacy course at the under-graduate level in the institutions in India. The communication stated that the entrance examination shall be applicable to all deemed universities as well as central institutions like Aligarh Muslim University, Banares Hindu University, Delhi University, Hyderabad University, Visva-Bharati and Jamia Millia Islamia. It was clarified in the communication that the Notification of the Government of India dated October 18, 2001 permits the deemed universities and central institutions either to opt for Joint Entrance Examination (JEE) being conducted by IITs or to opt for All India Engineering Entrance Examination to be conducted by the Central Board of Secondary Education, for admission to engineering, architecture and pharmacy courses at the under-graduate level. A reference was made to para-13 of the UGC Guidelines for deemed universities, which provides for admission to engineering, architecture and pharmacy courses to be made on all-India basis through a common entrance test. The institutions were informed that for the year 2001-2002 the question of joining the Joint Entrance Examination by the deemed universities and central institutions, which so far had not joined did not arise.

16. In reply to the communication of the University Grants Commission dated December 06, 2001, BITS, Pilani by its letter dated December 12, 2001, emphasized that admission to BITS, Pilani was being done purely on merit, based on the marks obtained by the students in the board examination and not through any entrance examination. According to the letter of BITS, Pilani, the admissions were being done on All India basis and the marks obtained in different board examination were being normalized through a well-known & well-documented procedure. BITS, Pilani indicated that it was not in favour of change in the procedure adopted by it for admission to technical programmes, as according to it, that would create confusion, discontent and hardship to the participant students from all-over the country. The University Grants Commission was informed that BITS, Pilani will not be joining the Joint Entrance Examination mode for admissions. Again, its letter dated December 12, 2001, BITS, Pilani informed the Board of Secondary Education that it will not be opting for the All India Engineering Entrance Examination system for granting admissions to candidates in technical programmes.

17. The Government of India on June 10, 2003, with a view to further streamline admissions in under-graduate programmes leading to professional qualifications, constituted a committee comprising of the following persons to look into the

related issues of Joint Entrance Examination:-

- "1. Prof. Arun S. Nigavekar, Chairman, UGC-Chairman.
2. Prof. R. Natarajan, Chairman, AICTE.
3. Shri Syed Shahid Mahdi, Vice Chancellor, Jamia Millia Islamia.
4. Prof. M.P. Kapoor, Vice Chancellor, TIET, Patiala.
5. Prof. B.P. Khandelwal, Director, NIEPA.
6. Prof. NSV Rameshwara Rao, Chairman, CCB-AIEEE 2002 & Prof., IIT, Kanpur.
7. Shri V.S. Pandey, Joint Secretary, Secondary Education, Ministry of HRD.
8. Shri M.M. Jha, Joint Secretary, Secondary Education, Ministry of HRD.
9. Shri S.P. Gaur, Joint Secretary, Higher Education, Ministry of HRD.
10. Prof. A.K. Maitra, Director, School of Planning and Architecture.
11. Shri N. Ravi Shankar, Secretary, Technical Education, Uttaranchal.
12. Shri A.V. Singh, Principal Secretary, Technical Education, Madhya Pradesh.
13. Shri R. Ramabhadran, Secretary, Technical Education, Gujarat.
14. Dr. Malti Das, Principal Secretary, Technical Education, Karnataka.
15. Prof. Ashok Ganguly, Chairman, CBSE.
16. Prof. D.V. Sharma, General Secretary, Council of Boards of Secondary Education.
17. Shri Pawan Agarwal, Director, Technical Education Member-Secretary."
18. On July 30, 2002, the committee aforesaid (hereinafter referred to as "the Committee to Streamline Admissions In Undergraduate Programmes Leading To professional Qualifications In The Country, presented its report to the Department of Secondary and Higher Education, Ministry of Human Resource Development. The Committee was of the opinion that the central and deemed universities should participate in Common Entrance Examination, 2003.
19. It appears that BITS, Pilani participated in the meeting of the Committee to Streamline Admissions In The Undergraduate Programmes Leading To Professional Qualifications In The Country. By its letter dated July 19, 2002 to the Director, Ministry of Human Resource Development Department, BITS, Pilani reiterated the points which it had made with regard to the draft report. The letter also highlighted that BITS, Pilani has always maintained that the treatment, which was given to IITs, should also be given to BITS, Pilani owing to its rank in the country in the field of engineering education. The letter also pointed out that it would not be acceptable to BITS, Pilani, if there was any examination for admission to engineering programmes, which was based on minimal syllabus

since this would reduce the quality of the students. In this regard, the letter stated as follows:-

"BITS has always maintained that the treatment which is given to IITs should also be given to BITS owing to its rank in the country in the field of engineering education. It will not be acceptable to BITS if there is any examination, which is based on minimal syllabus since this will reduce the quality of the students. The quality of the student of BITS should at least be the same as of IITs, if not higher. The population who aspire for BITS Pilani is the same as IITs. At present those whose score very high marks in their board examinations are able to get into BITS. If they get very high rank in JEE they go to IITs. So, there is no conflict. But, if we hold an entrance examination it would be the same for BITS and IITs. Otherwise we will create a hardship for students because BITS and IITs have similar ranking. As a matter of fact this year BITS is ranked higher than many of the IITs."

20. On June 10, 2003, University Grants Commission issued Interim Policy Regulations. The relevant part of the Regulations, is extracted below:-

"No. F.1-6/2003(CPP-II):- In exercise of the powers conferred by Clause (i) of Sub-section (1) of Section 26, read with Sub-section (2) of Section 12A, of the University Grants Commission Act, 1956 (3 of 1956), the University Grants Commission, hereby makes the following interim Regulations

Background:

Consequent to the judgment delivered on 31.10.2002, by Eleven Judges' Bench of the Hon'ble Supreme Court in W.P. No. 317 of 1993, titled TMA Pai Foundation v. State of Karnataka and Ors., certain changes are required to be undertaken in the various provisions of UGC Regulations and Guidelines.

It has been decided by the UGC that an interim policy pronouncement may be made in furtherance of the judgment of Hon'ble Supreme Court so as to pass on some benefits to the Universities/Institutions deemed to be universities/colleges from the ensuing academic year 2003-2004.

The revision of UGC Regulations in respect of fees and admissions is under consideration and till such time the same are amended, the following interim Regulations shall apply, in supersession of existing provisions, as given below:

Applicability : these shall be applicable to :

(a) colleges affiliated to the universities other than all such technical institutions and the technical courses/programmes which are governed by the existing Regulations of AICTE;

(b) Institutions deemed to be universities u/s 3 of the Act including such institutions which operate on self-financing basis without receiving maintenance or development grants from the Central Government, any State Government or any statutory body under their control and disbursing grants;

(c) All the Universities including Universities not receiving grant-in-aid from the Central Government or any State Government or any grant disbursing statutory bodies of such Governments for the maintenance or development expenditure of such universities; and

(d) Universities established as a joint venture between a private trust or society and a State Government.

(1) Admission:

The management of the University/institutions deemed to be universities/colleges, minority and non-minority shall follow some identifiable or reasonable methodology of admitting students as held by Hon''ble Supreme Court. The Hon''ble Court also held that excellence in professional education would require greater emphasis on merit of students seeking admission and appropriate Regulations for this purpose may be made. For professional and technical courses, the merit is usually determined by common entrance test conducted by Government agencies. In the matter of admission into professional and technical programmes the merit of the students shall be determined by entrance test conducted in favour manner.

Therefore it has been decided all the seats including the seats reserved for the management must be filled up through Joint Entrance Test/Common Entrance Test conducted by Central/State Govt. or University followed by counseling as per present practice. However, the private unaided institutions may fill up the management seats by having their own counseling in an objective and transparent manner taking the students from same merit list prepared on the basis of Joint entrance Test/Common entrance Test of Central/State Government. As per Section 13 of the guidelines for Deemed Universities these institutions shall join the common entrance examination notified by UGC. Hence all the Deemed Universities offering technical and professional programmes shall join AIEEE exam, conducted by CBSE for the purpose of admission.

For all such admissions the minimum eligibility criteria, under management or otherwise must be in accordance with the existing Regulations and Guidelines of UGC and others regulatory bodies.

21. Again on December 17, 2003, the University Grants Commission notified UGC (Admission To Specified Professional Programmes) Interim Regulations, 2003. The said Regulations to the extent relevant is quoted below:-

"In pursuance of the Judgment on august 14, 2003 of the 5 Judge Bench of the Supreme Court in the case of Islamic Academy of Education and Ors. v. State of Karnataka and ors. Read with the Majority judgments on October 31, 2002 of 11 Judge constitution Bench of the Supreme Court in the case of TMA Pai Foundation and Ors. v. State of Karnataka and Ors. And with a view to avoiding mental, physical and financial burden on students due to multiplicity of entrance examination(s), and in exercise of the powers conferred by Clause (g) of Sub-

section (1) of Section 26 of the University Grants Commission Act, 1956 (No. 3 of 1956) and in partial supersession of Interim Policy Regulations No. F.1-6/2003 (CPP-II) dated 10th June, 2003, the University Grants Commission (UGC) makes the following Interim Regulations for admission to specified professional programmes in the country during the year 2004-2005.

1. Short title, application and commencement:

(1). These Regulations may be called the University Grants Commission (Admission to specified professional programmes) Interim Regulations, 2003.

(2) They shall apply to every university established or incorporated by or under a Central Act, a Provincial Act or a State Act, including all institutions recognized by/or affiliated to them and every institution deemed to be University u/s 3 of the UGC Act, 1956 conducting specified professional programmes.

(3) They shall come into force for all admissions to the specified programmes during the year 2004-2005.

2. Definitions

In these Regulations unless the context otherwise requires:

2.1 "Institution" means every university established or incorporated by or under a Central Act, a Provincial Act or a State Act, including all institutions recognized by or affiliated to them and every Institution deemed to be University u/s 3 of the UGC Act, 1956.

1.1 All India Common Entrance Examination(s)

These examinations shall be for all the institutions that are presently admitting all their students or certain percentage of them on All India basis.

3.1.1 Entrance Examination for admissions to undergraduate Programmes in Engineering, Architecture & Planning and Pharmacy.

Admission on All India basis to the undergraduate programmes in Engineering, Architecture & Planning and Pharmacy in all institutions in the country shall be made through an All India Engineering, Architecture & Planning and Pharmacy Entrance Examination (AIEEE) conducted by the Central Board of Secondary Education (CBSE). The AIEEE shall, however, not be applicable for admissions to Indian Institute of Technologies, Indian School of Mines (Dhanbad) and Institute of Technology (Banares Hindu University) that are admitting students on the basis of Joint Entrance Examination conducted by the Indian Institute of Technologies."

22. Aggrieved by the Notification dated October 18, 2001 issued by the Government of India requiring the candidates seeking admission to engineering colleges of the country to appear in the All India Engineering Entrance Examination (AIEEE) to be conducted by the Central Board of Secondary Education (CBSE); the communication dated December 6, 2001, which mandates

all deemed universities to grant admission on the basis of the AIEEE conducted by the CBSE; Interim Regulation dated December 17, 2003 framed by the University Grants Commission (UGC) providing for admission to the engineering programmes for the years 2004-05 on the basis of AIEEE conducted by the CBSE; Interim Policy Regulation of June 10, 2003; and the decision of the government declining the request of BITS, Pilani to exempt it from the application of the policy decision to admit the students to engineering programmes on the basis of AIEEE conducted by the CBSE, the first respondent BITS, Pilani filed the writ petition. The learned single judge while allowing the writ petition held that the policy was unfair and, therefore, it was a fit case for judicial interference. The learned single judge also held that the first respondent herein (the original petitioner) has established the institute under the constitutional right guaranteed by Article 19(1)(g) of the Constitution. Though the learned single judge has not held in so many words that the imposition of admission procedure by the Notification dated December 17, 2003 are violative of Article 19(1)(g), yet it was held that the respondent herein, which is an unaided institution is entitled to autonomy in its administration and the committee headed by the Chairman, UGC did not properly consider the request of the respondent for exclusion of the deemed universities from AIEEE system. According to the learned single judge the first respondent has very high standard of education and ranks higher than some of the Indian Institute of Technologies (IITs) and it could be clubbed with the Joint Entrance Examination (JEE) conducted by the IITs rather than linking it with AIEEE, which has a lower standard. The learned single judge did not find any good reason to direct the first respondent to abandon thirty years old practice of admitting students on the basis of merit, determined by the marks obtained at 10+2 examination and modified by process of normalization. The learned single judge restrained the appellants from forcing BITS, Pilani to admit students on the basis of AIEEE.

23. Not satisfied by the decision rendered by the learned Single judge, the aforesaid appellants have filed three separate appeals. We have heard learned counsel for the parties in these appeals.

24. The Central Government u/s 3 of the University Grants Commission Act, 1956 declared BITS, Pilani as a deemed university in the year 1964. According to Section 3 of the Act, an institution on being declared a deemed university by the Central Government, is required to abide by the provisions of the UGC Act. This position emerges from reading of Section 3 of the UGC Act, which is as follows:-

"The Central Government may, on the advice of the Commission, declare, by Notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed recognized to be a University for the purpose of this Act and, on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of Clause (f) of Section 2."

25. Thus, it is clear that once an institution for higher education other than a

university is declared a deemed university, all provisions of the UGC Act apply to the institution as if it were a university within the meaning of Clause (f) of Section 2 thereof. Section 2(f) of the UGC Act defines "University" to mean that a university established or incorporated by a or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. Since a deemed university has to be considered as a university, the provisions of the UGC Act, which are applicable to the university, are applicable to the deemed university as well. u/s 26(1) of the UGC Act the University Grants Commission by a Notification in the official gazette, is authorized to make regulations consistent with the Act and the Rules made there-under. Clause (g) of Section 26(1) of the UGC Act has bearing on the merits of the case. The provision reads as under:

"26(1) xxx xxx

(g) regulating the maintenance of standards and the coordination of work of facilities in Universities." .

According to Section 26(1)(g), regulations can be framed for regulating the maintenance of standards and the co-ordination of work or facilities in universities. The legislative provision derives its sustenance from Articles 245 & 246 of the Constitution, read with Entry-66 of List I of the Seventh Schedule to the Constitution, which entry deals with the field of co-ordination & determination of standard in the institutions for higher education or research and scientific & technical field. Even if the Parliament had no enacted Clause (g) of Section 26 of the UGC act, it was open to the Central Government to evolve policies and issue guidelines/orders & instructions on the subject under Article 73 of the Constitution, since the executive power of the Union extends to the matters with regard to which, the Parliament is empowered to legislate. In others words, the power of the Union to frame policies and issue guidelines/orders & instructions on a particular subject, is co-extensive with the power of the parliament to legislate on that subject. Therefore, pursuant to Article 73, the guidelines of 2000 and Notification dated October 18, 2001 were issued by the Central Government even before the Interim Regulations under the UGC Act were framed on June 10, 2003 & December 17, 2003.

26. The question, however, which falls for determination, is whether u/s 26(1)(g) of the UGC the UGC could make regulations for requiring the deemed universities to be a part of the AIEEE system.

27. In Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , it has been held that the process of admission falls within the scope of determining standards of education. The question arose with reference to Entry 66 of List I, which reads as under:-

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

While interpreting the Entry, the Supreme Court held that norms of admission have nexus with the standard of education. In this regard the Supreme Court observed as follows, in paras 36 & 37 of the aforesaid judgment:-

"It would to be correct to say that the norms for admission have no connection with the standard of education, or that the rule for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education...

While considering the standards of education in any college or institution, the caliber of students who are admitted to that institution or college cannot be ignored. If the students are of a high caliber, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the caliber of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the caliber of the students as on the caliber of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses."

Thus, it is clear from the aforesaid decision that the norms of admission have a strong effect on the maintenance of standards of education and, therefore, a provision requiring engineering institutions to follow a particular system of admission based on a common entrance examination, cannot be said to fall outside the purview of Section 26(1)(g).

28. In *The Gujarat University, Ahmedabad v. Krishna Ranganath Mudholkar and Ors.* 1963 Supp (1) SCR 112 , and *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , it was held that expression "Co-ordination" used in Entry-66 of List I of the Seventh Schedule to the Constitution, does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or

plan of development.

29. Both the words "Co-ordination" and "Standard" which came up for interpretation before the Supreme Court in the aforesaid decisions are also used in Clause (g) of Section 26(1) of the UGC Act and, therefore, they have to be given the same meaning and connotation.

30. The aforesaid decisions were relied upon in recent decision of the Supreme Court rendered in *Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another*, . After referring to these decisions, the Supreme Court held as follows:-

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

It is now settled position in law that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall...."

The following observations of the Supreme Court in the aforesaid case also need to be noticed as they have a strong relevance to the merits of the case in hand:-

"Under Section 3 of the Act, deemed University status will be given to those institutions that for historical reasons or for any other circumstances are not Universities and yet are doing work of a higher standard in specialized academic field compared to a University and that granting of a University status would enable them to further contribute to the course of higher education which would mutually enrich the institution and the University system. Guidelines for considering proposals for declaring an institution as deemed to be University were also issued by the UGC. Under the said guidelines aspects relating to admission was specifically entrusted with the UGC and admission could be made only through a common entrance test on All-India basis. Such an exercise was intended to maintain a uniform standard and level of excellence. As we have pointed out admission plays a crucial role in maintaining of the high quality of education. And for the proper maintenance of academic excellence, as intended by the UGC Act, admissions to deemed University has to be made under the control of UGC. This further goes to show that admission procedure to a deemed to be University is fully occupied by Entry 66 of List I and the State cannot exercise any powers over admission procedure....

...The Commission is also authorized to frame regulations u/s 26 of the UGC Act. Section 26(1)(f) in particular defines the minimum standards of instruction for the grant of any degree by any university and regulating the maintenance of standards and the co-ordination of work or facilities in universities and to

regulate the establishment of institutions referred to in Clause (ccc) of Section 12 and other matters relating to such institutions. It also provides for fees to be charged and scales of fees in accordance with which fees may be charged. It is also empowered u/s 25 to frame rules for carrying out the purposes or the Act in general and in particular any function that may be performed u/s 12 and additional functions which may be performed by the Commission under Clause (j) of the Act.

Learned counsel appearing for the State very strenuously urged that the U.G.C. Act is only for the purpose of making grants to various institutions governed by and it was not an authority which would create a university and give a special status to it so as to keep it out of the control of the University or the State where it is located. This argument ignores the provisions of the enactment and particularly those to which we have adverted to just now, for such institutions are recognized or granted deemed status for the maintenance of the standards in the institutions and for coordinating the teaching in universities which is a higher purpose than merely giving grants and with that object the enactment is made. We do not think it could be confined only to making of grants as has been contended by the respondents. This arguments, therefore, needs to be rejected."

31. In Dr. Preeti Srivastava's case (supra), the Supreme Court struck a discordant note by disagreeing with the earlier decisions rendered in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , Ajay Kumar Singh and Others Vs. State of Bihar and Others, , and Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., , in which it was held that standards come into play after admissions are made. Clarifying the proposition of law, their Lordships of the Supreme Court in Dr. Preeti Srivastava's case, held as follows:-

"In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In Ajay Kumar Singh and Others Vs. State of Bihar and Others, , this Court, relying on State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , said that everybody has to take the same postgraduate examination to qualify for a postgraduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc., . This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If

excellence is to be promoted at postgraduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs-caliber of students, caliber of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, , and *Post-Graduate Institute of Medical Education and Research etc. Vs. K.L. Narasimhan and another etc.*, ."

Thus it is well-established that:-

- (1) Process of admission falls within the scope of determining standards of education in an institution.
- (2) Norms or rules of admission in institutes of higher education and research & technical institutions (for short "institutions") have a direct bearing or impact on the standards of education.
- (3) The maintenance of standards of education not only depends upon the quality of education being imparted in the institutions but it also depends upon the quality of the students admitted to the institutions. The quality of students at the exit stage is largely depended upon one single factor, namely quality of the material allowed entry into the portals of the institutions.
- (4) Concepts of coordination & determination of standards in institutions cover the entire gamut of admissions to the institutions.

It can, therefore, be concluded that the words "standards" and "co-ordination" would include the process of admission. Hence under Clause (g) of Section 26(1) of the UGC Act, the University Grants Commission was well within its rights to require the deemed universities including BITS, Pilani, to be part of the AIEEE system.

32. I was argued by Mr. Shanti Bhushan, learned Senior Counsel appearing of the first respondent that the common entrance test has been designed not with a view to get the best material for admission to the engineering colleges, but to see that students from rural background are benefited. In support of his submission he has referred to Clause-6 of the Notification of the Government of India, Department of Secondary and higher education, Ministry of Human resource Development dated October 18, 2001. Clause-6 reads as follows:-

"The Entrance Examination shall be designed in such a manner that the students coming form rural background are not put to any disadvantage. Syllabus for the test shall be based on common minimum syllabus drawn from different State Boards of School Education. Efforts would be made to ensure that no special coaching would be essential for appearing in this Examination. Timing shall be such that the students can fully use their preparations for Class 12 examination."

33. The learned Senior Counsel contended that the concept of common entrance test stems from the idea to accommodate the students from rural backgrounds to the technical institutions at the cost of merit. He also highlighted the fact that the syllabus for the test is required to be based on common minimum syllabus drawn from the different Stage Boards of School education. He argued that since many of the students from rural areas will not be able to write the entrance examination of a high standard, the idea of a common minimum syllabus was invented for the entrance examination. The learned counsel further contended that the aforesaid system of entrance examination is meant to help the students with low caliber, thus eroding the standards of education of the deemed universities, including the first respondent.

34. The meaning ascribed by the learned Senior Counsel to Clause-6 of the Notification dated October 18, 2001 is based on misreading of the contents thereof. The Clause has to be read in the context of the fact that a student aspiring to seek admission to a professional and technical programme in the country has to appear in number of entrance examinations, which are conducted by individual institutions. It has been pointed out in the Notification dated October 18, 2001 that multiplicity of such tests causes immense mental and financial burden to the parents and the students without adding any value to the system. The committee appointed by the government of India to streamline admissions to under-graduate programme leading to professional qualifications, in its report dated July 30, 2002 pointed out that there was a strong rationale for common admission test(s) at the national level for maintenance of standards in the interest of students and parents and for ensuring transparency and objectivity in admissions. The committee arrived at this opinion after taking into consideration the national policy on education, constitutional & statutory provisions and directions of the Supreme Court. Taking into consideration all the imputes received during the course of the deliberations of the Committee, it came to the conclusion that all the deemed universities need to participate in the common entrance test. The relevant part of the report reads as under:-

"Based on the experience of AIEEE-2002, Government of India in the Department of Secondary and Higher Education, Ministry of HRD constituted a Committee under the chairmanship of Dr. Arun Nigavekar, Chairman (UGC) to further streamline admissions in undergraduate programmes leading to professional qualifications. The Committee met on 3rd and 15th July at the UGC Office at New Delhi. Chairman of the professional Council, DG (NIC) and representative of the Ministry of Health attended the meeting as special invitees. Written feedbacks received from the professional councils, central/deemed universities, State Governments, Central Board of Secondary Education-CBSE, Central Counseling Board-CCB were taken into consideration.

The Committee felt that there is a strong rationale for common admission test (s) at the national level for maintenance of standards, in the interest of students and parents and for ensuring transparency and objective in admissions. The

Committee noted that the National Policy on Education, constitutional and statutory provisions and Supreme Court directions validate and support common exam for admission to professional programs. Taking into consideration all inputs received in course of the meeting and received in writing, the Committee made 17 (seventeen) specific recommendations to streamline admissions in undergraduate programs leading to professional qualifications. The Committee suggested that the Government may lay down revised policy framework. Based on which, UGC, AICTE and other Professional Councils could frame new regulations or revise existing regulations (where required). This needs to be done within a definite time-frame, so that the Common Exam could be held timely in a more systematic manner next year.

The Committee also suggested that on a long basis, a National Testing Service (NTS) should be established independent of the Secondary Boards for the purpose.

Gist of Recommendations

1. AICTE, in consultation with the stockholders should frame Regulations for entry level qualifications for engineering architecture and pharmacy programs within August 2002. MCI on its part should consider extend in relaxed criteria to physically challenged category and also desirability of having age limit.
2. All central/deemed universities (including National Institutes of Technology) should participate in the common exam during 2003. Their difficulties and unique characteristics should be accommodated to the extent possible.

Background

3. The Committee noted that many institutions favour a common exam. Some object to it because of their unique characteristics. Still other link it to their academic autonomy. The Committee felt that autonomy is a conceptual issue. Common Exam to provide for a national yardstick for admissions does not dilute academic autonomy. They have full autonomy to determine curriculum and impart instruction. In this regard the Committee noted the exclusive constitutional jurisdiction of the Central Govt. (under Entry 66 of the Union List) for coordination and maintenance of standards in higher education. It was informed that Section 10(o) of the AICTE Act, 1987 provides for issue of guidelines for admission to technical institutions and universities. This power of the AICTE has been validated by the Supreme Court/High Court on more than one occasion. The Committee was also informed that deemed university guidelines of the UGC provide for admission on all-India basis to identical courses in all deemed universities through a common entrance test. Judgment of the Supreme Court in Tamil Nadu Deemed Universities" case (March 2002) that upheld that authority of the UGC was brought to the Committee's notice. The Committee therefore notes that the Central Government through UGC, AICTE and other professional councils has adequate statutory authority to regulate admissions in professional programs in the country.

... ..

a. There are nearly 10 central universities and 30 deemed universities that had undergraduate programs awarding professional degrees. 11 deemed universities had participated in AIEEE 2002. 3 deemed universities namely ISM Dhanbad, IIIT Allahabad and IIITM Gwalior and IIT (BHU) & NIFET Ranchi are being de-linked from JEE (IIT) and would participate in this examine in 2002. Common exam for 4 deemed universities in Tamil Nadu is being conducted by UGC this year. Regional Engineering Colleges (RECs) on conversion of National Institutes of Technology (NITs) and their declaration as deemed universities would now participate in the common exam. Therefore, only a every few deemed universities and central universities remain to be converted. In view of the statutory position and the rationale given above, the Committee recommends that all central/deemed universities should participate in the common exam during 2003.

b. For 2002 Exam, some of the universities did not participate conveyed their difficulties in participation. Some sought a year. However, a few did not respond at all. The Committee recommends that there should be no exemption of any central/deemed university from the common exam. To the extent possible difficulties of the universities should be accommodated. In event of a university not being able to furnish admission related date timely, such information available in their printed information brochure/website for previous years could be used for planning the common exam. All acts of non-cooperation on the part of the universities may be taken up seriously by the UGC. Action should be initiated in all such cases and reached to a logical conclusion.

13. The Committee took note of Supreme Court directions of 1986 that resulted in 15% seats in Govt. medical/dental colleges (including some private colleges) being filled up on all India basis through AIPMT conducted by CBSE from 1987. The Committee noted that this has helped in removing regional imbalances in facilities for medical/dental education in the country and also promoted national integration by ensuring that all these institutions have all India body of students. Some states like Haryana, Rajasthan, Orissa, Punjab, Karnataka, UP etc. already have provision of open seats in State level institutions. The Committee recommends that there should be at least 15% open seats (to be filled up on All India basis) in all professional institutions Govt., Govt. aided and self-financing. In self- financing institutions half of these seats should be in the free category. Reservations as applicable in Central Govt. may apply for open seats and admission to seats should be held on all India through a common exam."

35. It is clear that while coming to the conclusion that the central and deemed universities should participate in the All India Engineering Entrance Examination, a detailed consideration was bestowed on the matter. The committee also considered Entry- 66 of List I of the Seventh Schedule of the Constitution, which covers the topic of co-ordination and maintenance of standards in higher education. It also referred to Section 10(o) of the All India Council For Technical

Education Act, 1987 under which guidelines can be issued for granting admission to technical institutions. The committee also took into consideration the guidelines dated October 18, 2001. On a detailed consideration of the matter, the committee was of the opinion that common entrance examination will provide for a national yard-stick for admissions and it will not dilute academic autonomy.

36. In arriving at the aforesaid opinion, the Committee also took note of the decisions of the Supreme Court in *Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors.* (supra) in which the Supreme Court directed that 15% seats in Government Medical/Dental Colleges should be filled up by holding an All India Entrance Examination through the agency of the Central Board of Secondary Education as it was considered the most appropriate instrumentality to hold the All India Entrance Examination for MBBS/BDS course. The precise observations of the Supreme relating to the question of entrusting the holding of the All India Entrance Examination to the Central Board of Secondary Education need to be quoted:-

"The question then is to which body should the holding of this Examination be entrusted. We are of the view that the Central Board of Secondary Education which has not only the infrastructure but also the experience of holding an All-India Examination for the 12th year would be the most appropriate agency to hold the All-India Entrance Examination for admission to MBBS/BDS course. The argument of the Medical Council of India against entrusting the holding of this Examination to the Central Board of Secondary Education was that "there is great variation in the standard of examination conducted by the Central Board of Secondary Education." But this argument is without force since the examination is going to be an objective test where the subjective element which might lead to variations in the standard of examination would be eliminated. We would therefore direct the Central Board of Secondary Education to hold the All-India Entrance Examination for admission to the MBBS/BDS course. The Government of India will provide the necessary finances for holding such examination.."

37. Thus, it is evident from the observations of the Supreme Court that Central Board of Secondary Education is quite experienced in holding examinations. In case the Central Board of Secondary Education can hold the examinations for 15% seats in the medical/dental college, there is no reason why the Central Board of Secondary Education cannot handle the Joint Entrance Examination for admission to engineering, architecture and pharmacy courses at under-graduate level in the institutions including the deemed universities. It is, however, true that lately there were certain allegations about the leakage of CBSE papers, but that may require taking of adequate steps to maintain secrecy and plugging the loopholes in the system. It cannot, however, be held that just because in the recent past papers were leaked out, the Central Board of Secondary Education should be held disentitled to hold the AIEEE. It is not in dispute that even the system of admission, which is being followed by BITS, Pilani does not debar the students passing 10+2 examination of the Central Board of Secondary Education.

It needs to be noticed that BITS, Pilani utilizes the marks of the first rank student in the Central Board of Secondary Education examination for the purposes of resorting to moderation/normalization of marks of candidates applying for admission to the professional courses offered by it. In N.K. Batra and others Vs. The Kurukshetra University and others, , the Punjab & Haryana High Court appears to have made a detailed study with regard to the scheme of moderation normalization adopted by Birla Institute of Technology & Science, and in this regard the High Court observed as follows:-

"...In practice the Institute as an all India Institute recognizes the Central Board (which incidentally is the largest single contributor of students year by year) and the Indian School Certificate examination for normalization of the percentage marks of an individual candidate based on the percentage marks of the first rank student in that Board for a stream which consists of at least Physics, Chemistry and Mathematics and English, if it is provided in the offerings of that board.."

The above observations show that BITS, Pilani recognizes the Central Board of Secondary Education examination for working out the technique of moderation or normalization.

38. When BITS, Pilani is itself depending on the marks obtained by that student who secures first rank in the CBSE examination for applying the method of scaling, we find no reason why CBSE should not be allowed to hold the AIEEE.

39. We are also not impressed by the submissions of Mr. Shanti Bhushan, learned Senior counsel, that the Notification dated October 18, 2001, attempts to give under advantage to the students coming from rural background. From the report of the Committee to streamline admissions in the under-graduate programmes leading to professional qualifications in the country date July 30, 2002, it appears that there are ten central universities and thirty deemed universities that have under- graduate programmes. Most of the students from rural areas and large number of students even from urban areas do not have the financial means to apply for admissions to individual institutions and to obtain the prospectus and forms from each one of them and yet, at the same time, in spite of the financial hardship they have to apply to a large number of institutions as there are too few seats as compared to candidates chasing them. Since the admission seekers have to apply to several institutions, most of the rural and large number of urban candidates with limited finances are placed at a disadvantage. The Government of India realized the hardship of the students and thought of a common entrance examination. We are unable to agree with Mr. Shanti Bhushan, learned Senior Counsel, that Clause-6 of the Policy Notification of October 18, 2001, which envisages common minimum syllabus drawn from different Boards for All India Engineering Entrance Examination, was meant to accommodate candidates from rural background in the technical institutions. The submission is based on conjectures and surmises. No reference has been made by the learned Senior Counsel to the syllabus to show that it is not of requisite standard. We cannot lose sight of the fact that after the Notification of October 18, 2001, as already

pointed out, the matter was examined by an expert committee and as a result of its opinion, the University Grants Commission notified the Interim Policy Regulation dated June 10, 2003 u/s 26 of the UGC Act. Subsequently, the University Grants Commission in partial supersession of the Interim Policy Regulation dated June 10, 2003, framed the UGC (Admission To Specified Professional Programmes) Interim Regulations, 2003 on December 17, 2003. The Regulations of 2003 have a statutory flavour. It cannot be said that the Regulations were framed to help the rural students to get into technical institutions at the cost of merit. The Regulations fall in the category of subordinate legislation. Since the Government of India was competent to frame the Regulations, the question of motive in framing the Regulations is irrelevant, it is well settled that no provision of law can be held to be bad on the ground that the legislation was motivated.

40. The same principle would apply to the subordinate legislation and it cannot be allowed to be urged that the subordinate legislation was motivated by extraneous considerations. The Regulations of December 17, 2003, allude to the background in which they were framed. Even the Interim Policy Regulation dated June 10, 2003 records the reasons, which impelled the State to frame the same. The Interim Policy Regulation dated June 10, 2003 states that consequent to the judgment delivered by 11 judges' Bench of the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , certain changes were required to be undertaken in the various provisions of the UGC Regulations and guidelines. In the UGC Regulations dated December 17, 2003 it is specifically recorded that the Regulations were framed in pursuance of the judgment dated August 14, 2003 of the 5 judges' Bench of the Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, , read with the majority judgment dated October 31, 2002 of 11 judges' constitution Bench of the Supreme Court in the case of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors., and with a view to avoiding mental, physical and financial burden on the students due to multiplicity of entrance examinations. Once the object of the Regulations have been spelt out, it is not permissible to urge that apart from the reasons which are stated in the subordinate legislation, there are certain hidden reasons as well for framing the same. That part, Clause-6 of the Notification dated October 18, 2001 does not show that the common entrance examination was designed to help the candidates with low merit. Besides, nowhere in the expert committee report dated July 30, 2002, it has been suggested that the standard of the syllabus and paper for the common entrance examination needs to be lowered or is being lowered. The committee comprised of eminent people in the field of education and their views cannot be lightly brushed aside. Even otherwise, the policy framework/Notification dated October 18, 2001, is a matter of the past but even if it is deemed to be in vogue the court cannot strike it down unless it is shown that the same is irrational & arbitrary and is based on extraneous considerations. If any authority is needed for the proposition, reference can be usefully made to

M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, , State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, .

41. As already pointed out, the policy was framed to mitigate the hardship of the students as they were required to appear in more than one entrance test while applying for admission to professional college/universities. They were made to expend large sums of money for obtaining prospectus and the admission from from several college/institutions/universities. The acquisition of prospectus and admission forms from different institutes was imposing a heavy financial burden on the students and their parents. Since the students had to appear in individual test conducted by each professional college/institution/university, the students were traversing almost every nook and corner of the country thereby entailing huge expense and suffering inconvenience. That part, the students were faced with real practical difficulties of appearing in different and separate entrance tests at different venues and cities, on the same date. In such an eventuality, it was almost impossible for the students to be present at different places on the same date to appear in the entrance tests. They policy is meant to give a fair deal to the students seeking admission in various technical college. In fact the policy tends to look-after the poorer and the backward sections of the students hailing from towns and villages. We may not dilate any further on the Policy Notification dated October 18, 2001, which was framed in consonance with the National Policy on Education, 1986, since the policy has been replaced by the Regulations framed under the statute, which has the backing of Article 245 & 246 and Entry-66 of List I of the Seventh Schedule. Thus, we find no force in the submission of the learned counsel for the first respondent that the Regulation requiring the technical institutions to be part of the Joint Entrance Examination was meant to give undue advantage to the rural candidates at the cost of merit.

42. It was submitted by Mr. Shanti Bhushan that BITS, Pilani for the last more than thirty years, has been following a system of judging them merit of the students seeking admission to its technical courses by system of normalization. According to the learned senior Counsel, the system has proved extremely effective and was appreciated even by the Supreme Court in the State of Maharashtra v. Ravindra Kumar Rai (supra). The system of normalization/scaling of marks obtained by the candidates has been upheld by the Supreme Court in UP Public Service Commission v. Subhash Chandra Dixit (supra). According to the learned Senior Counsel, a system, which has worked well for more than thirty years, should not be replaced by the Joint Engineering Entrance Examination conducted by the Central Board of Secondary Education. It may be correct that the system which BITS, Pilani has been following for admissions for the last thirty years, has given good results. There is also no manner of doubt that BITS, Pilani enjoys a high reputation in the academic field. According to the survey conducted by "India Today", BITS, Pilani has been assigned the third place, leaving behind some of the IITs. Even as per the certificate issued by the National Assessment

and Accreditation Council (NAAC) dated February 07, 2000, the admission process is highly streamlined and admissions are given only on the basis of merit. The entire process of admissions was found to be transparent. It is also evident from the said certificate that BITS, Pilani has been accredited at the Five Star Level. These achievements of BITS, Pilani do not provide any reason as to why BITS, Pilani should not form part of the Joint Entrance Examination, specially when several deemed universities and central institutions are participating in that system. Even the Supreme Court has directed that central Board of Secondary Education, to conduct examination for all-India quota of seats in medical/dental colleges all-over the country. The Central Board of Secondary Education has long experience in conducting the examinations. A system, which has not been tried by BITS, Pilani cannot be faulted, deprecated and discarded merely for the reason that the system which is being followed by BITS, Pilani, for the last three decades has worked well. A system, which remains static, becomes stale. There must be fresh thinking and initiatives to suit and meet the demands of changing times.

43. Mr. Shanti Bhushan, learned Senior Counsel, submitted that under Article 26 of the Constitution the first respondent society has a fundamental right to establish and maintain the educational institution, which includes right to follow its own system of selection of candidates for admission to the institution. According to him the right of the institution to select candidates for admission is being infringed by the aforesaid Policy Notification dated October 18, 2001, the letter of the University Grants Commission dated December 6, 2001 and the Regulations of 2003. He highlighted the fact that the institution is not getting any grant from the Government or from the University Grants Commission and this being so, it is an unaided educational institution. According to the learned Senior Counsel, the autonomy of the unaided educational institution is being affected by requiring it to abandon the system of admission devised by it and to adopt the Joint Entrance Examination programme for admission to its various technical courses. He also canvassed that the activity of the first respondents resulting in imparting education and knowledge to the students must be regarded as an "occupation" within the meaning of Article 19(1)(g). Learned Senior Counsel, urged that the learned Single Judge was right in directing that the aforesaid Policy Notification dated October 18, 2001, the letter of the University Grants Commission dated December 6, 2001 and the Regulations of 2003 must be ignored as it affects the autonomy of the institution.

44. At the outset, we may point out that there is no challenge to the Regulations in the writ petition. That apart, Article 19(1)(g) of the Constitution, which gives a right to the citizens to practice any profession, or to carry on any occupation, trade or business is not available to BITS, Pilani since it is a society registered under the Societies Registration Act and is not a citizen. Therefore, BITS Pilani cannot complain of violation of Article 19(1)(g) of the Constitution. We are fortified in this view by the decisions of the Supreme Court in *Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others*, , State

Trading Corporation of India Ltd. v. Commercial Taxes Officer and Ors., AIR 1963 SC 1811, The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, , The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , Municipal Committee, Amritsar and Others Vs. State of Punjab and Others, .

45. Though, BITS, Pilani cannot invoke the provision of Article 19(1)(g) of the Constitution, it can certainly bank upon the provisions of Article 26 of the Constitution to establish and maintain educational institution, subject to public order, morality and health. Article 26, inter alia, ensures that every religious denomination or any section thereof has freedom to establish and maintain institutions for religious and charitable purposes, which includes an educational institution as well. In this regard observations of the Supreme Court contained in para- 18 of the decision rendered in TMA Pai Foundation Case (supra), need to be noticed:-

"With regard to the establishment of educational institutions, three articles of the Constitution come into play. Article 19(1)(g) gives the right to all the citizens to practice any profession or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article 19(1)(g). Article 26 gives the right to every religious denomination to establish and maintain an institution for religious purposes, which would include an educational institution. Article 19(1)(g) and Article 26, therefore, confer rights on all citizens and religious denominations to establish and maintain educational institutions. There was no serious dispute that the majority community as well as linguistic and religious minorities would have a right under Article 19(1)(g) and 26 to establish educational institutions. In addition, Article 30(1), in no uncertain terms, gives the right to the religious and linguistic minorities to establish and administer educational institutions of their choice."

46. It needs to be recalled that in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , a five Judges' Bench was of the view that the fundamental right to establish and administer educational institution was conferred only on the minority institutions, it was also held that imparting education cannot be treated as a "trade" or "business" and it cannot be called a "profession" within the meaning of Article 19(1)(g). It was further held that the words "to practice any profession" refers to such profession as may be practiced by citizens, i.e., by individuals alone and establishing educational institutions cannot be treated as "practicing any profession." The five Judges' Bench was of the view that teaching may be a profession, but establishing an educational institution, employing teaching and non-teaching staff, and procuring the necessary infrastructure for running the same is not practicing a profession. The question whether the right to establish and administer an educational institution can be said to be carrying on any occupation within the meaning of Article 19(1)(g), was left open. At the same time, it was pointed out that the content of the expression "occupation" has to be ascertained keeping in mind the fact that

Clause (g) of Article 19(1)(g) employees four expression/words, namely profession, occupation, trade and business. It was observed that their fields may overlap but each of them certainly has content of its own. In TMA Pai Foundation case, the Supreme Court gave a new dimension to Article 19(1)(g) of the Constitution by holding that establishing and running an educational institution, where a large number of persons are employed as teachers and administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. The Supreme Court also observed that it was difficult to comprehend that education, per se, will not fall under any of the four expressions used in Article 19(1)(g). The Supreme Court dealing with private non-aided educational institutions, held that the right to establish and administer educational institutions broadly comprises the following rights:-

- (a) to admit students;
- (b) to set up reasonable fee structure
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

47. The learned Senior Counsel for the first respondent contended that right of the society to admit students to the institution, by itself independent of governmental control, is a fundamental right, but the same has been breached by the Regulations of 2003 and the policy Notification dated October 18, 2001. The learned Senior Counsel placed reliance on the following observations of the Supreme Court in TMA Pai Foundation case (supra), contained in paras-40, 41, 50, 51, 53 and 54 thereof.

"40. Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system of selection can involve both written and oral test for selection, based on principle of fairness.

41. Surrendering the total process of selection to the State is unreasonable, as was sought to be done in Unni Krishnan scheme. Apart from the decision in St. Stephen's College v. University of Delhi, which recognized and upheld that right of a minority aided institution to have a rational admission procedure of its own, earlier Constitution bench decision of this Court have, in effect, upheld such a right of an institution devising a rational manner of selection and admitting students.

50. The right to establish and administer broadly comprises the following rights:

- (f) to admit students;

- (g) to set up a reasonable fee structure;
- (h) to constitute a governing body;
- (i) to appoint staff (teaching and non-teaching); and
- (j) to take action if there is dereliction of duty on the part of any employees.

51. A University Education Commission was appointed on 4.11.1948, having Dr. S. Radhakrishnan as its Chairman and nine other renowned educationists as its members. The terms of reference, inter alia, included matters relating to means and objects of university education and research in India and maintenance of higher standards of teaching and examination in universities and colleges under their control. In the report submitted by this Commission, in paras 29 and 31, it referred to autonomy in education which reads as follows:

"University autonomy.-Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their population and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process.

Higher education is, undoubtedly, an obligation of the State but State aid is not to be confused with State control over academic policies and practices. Intellectual progress demands the maintenance of the spirit of free inquiry. The pursuit and practice of truth regardless of consequences has been the ambition of universities. Their prayer is that the dying Goethe: "More light", or that of Ajax in the mist "Light, though I perish in the light."

* * * The respect in which the universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. Our universities should be released from the control of politics.

Liberal education.-All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of this darkness. To lead us from darkness to light, to free us from every kind of domination except that of reasons, is the aim of education."

53. With regard to the core components of the rights under Article 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by

granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the State or the university concerned, it will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies. Nomination by the State, which could be on a political basis, will be an inhibiting factor for private enterprises to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution.

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of mal-administration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

48. It needs to be noticed that in TMA Pai Foundation Case (supra), the Supreme Court was dealing with several issues. These were:-

1. Is there a fundamental right to set up educational institutions and if so, under which provision?
2. Does Unnikrishnan P.J. and Others Vs. State of A.P. and Others, require reconsideration?
3. In case of private institutions (unaided and aided), can there be government regulations and, if so, to what extent?
4. In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit, the State or the country as a whole?
5. To what extent can the rights of aided private minority institutions to administer be regulated?

49. While dealing with these questions, the Supreme Court discussed the questions relating to Private Unaided Non-minority Professional Institutions, Private Unaided Educational Institutions, Private Aided (Non-Minority) Professional Institutions, other aided institutions etc. Insofar as the question of private unaided non-minority educational institutions is concerned, the same has been dealt with in paras 48 to 57, 60 to 62, 65 & 66 and partly in para-59 of the

judgment. As regards the questions relating to private unaided professional institutions and the framing of Regulations for administering them, have been discussed in paras-67 to 70.

50. A look at paragraphs dealing with Private Unaided Professional Colleges show that Rules and Regulations regulating admissions to unaided and aided professional colleges can be framed by the State. Though unaided professional institutions are entitled to autonomy in their administration, at the same time they are required to follow the principle of merit in granting admissions to the students. According to the decision in TMA Pai Foundation case it is permissible for the university or the government at the time of granting recognition to an unaided professional institution to provide for merit based selection. A certain percentage of seats have been permitted to be reserved by the management. These seats can be filled by testing the merit of the candidates on the basis of common entrance test to be conducted by the institution itself or by the State/university and the rest of the seats can be filled up on the basis of counseling by the State agency.

51. In this regard, the Supreme Court in paras 67 & 68 of the aforesaid judgment observed as follows:-

"67. We now come to the regulations that can be framed relating to private unaided professional institutions.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, given the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non- professional but unaided educational institutions viz. graduation and post-graduation non-professional colleges or institutes."

52. Thus, it is evident from the aforesaid observations that the Regulations can be framed permitting the institute to full up the management seats on the basis of an entrance test held by itself or by the State/University and the rest of the

seats to be filled up on the basis of counseling by the State agency. Observations made in para-59 of the aforesaid judgment are also relevant and need to be referred to:-

"Merit is usually determined, for admission to professional and higher education colleges, by either the marks the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

53. Therefore, it is clear that while merit for admission to the educational institutions can be determined either by the marks that the students obtain at the qualifying examination or school-leaving certificate stage followed by interview or by a common entrance test conducted by the institute, in the case of a professional colleges, however, merit for admission is to be determined by Government agency.

54. Both paras-59 & 68 clearly postulate that a common entrance test can be conducted by the State agency for determining the merit of the candidates applying to professional institutions.

55. After the delivery of the judgment by eleven judges' Bench in the aforesaid case, the Union of India, various State Governments and the Educational Institutions understood the majority judgment in different perspectives. Different statutes/regulations were enacted/framed by different State Government. This led to litigation in several courts. Under these circumstances, a five Judges' Bench was constituted in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , so that the doubts/anomalies, if any, could be clarified. The majority judgment in Islamic Academy of Education case framed four questions, which arose for consideration:-

"(1) whether the educational institutions are entitled to fix their own fee structure;

(4) whether minority and non-minority educational institutions stand on the same footing and have the same rights;

(5) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100% and if not, to what extent; and

(6) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission."

56. It appears that question Nos. 3 and 4 have relevance to para-68 of the majority judgment in TMA Pai Foundation case. In para 12 of the judgment in Islamic Academy of Education Case, para-68 of the majority judgment, in TMA Pai Foundation Case was alluded to and the content & essence thereof was split into seven parts. While doing so, it was stated as follows:-

"Firstly, it deals with the unaided minority or non-minority professional colleges.

Secondly, it will be unfair to apply the rules and regulations framed by the State Government as regards the government aided professional colleges to the unaided professional colleges.

Thirdly, the unaided professional institutions are entitled to autonomy in their administration; while at the same time they should not forego or discard the principles of merit;

Fourthly, it is permissible for the University or the Government at the time of granting recognition to require an unaided institution to provide for merit-based admission while at the same time giving the management sufficient discretion in admitting students.

Fifthly, for unaided non-minority professional colleges certain percentage of seats can be reserved for admission by the management out of those students who have passed the common test held by itself or by the State/University and for applying to the college/University for admission, while the rest of the seats may be filled up on the basis of counseling by the State agency.

Sixthly, the provisions for poorer and backward sections of the society in unaided professional colleges are also to be proved for.

Seventhly, the prescription for percentage of seats in unaided professional colleges has to be done by the Government according to the local needs. A different percentage of seats for admission can be fixed for minority unaided and non-minority unaided professional colleges."

57. In the next para, which is para-13 of the judgment, the Supreme Court observed as under:-

"Undoubtedly, the majority judgment makes a distinction between private unaided professional colleges and other educational institutions i.e. schools and undergraduate colleges. The sub-heading "Private unaided professional colleges" includes both minority as well as non-minority professional colleges. This is also clear from a reading of paragraph 68. It appears to us that this distinction has been made (between private unaided professional colleges and other educational institutions) as the judgment recognized that it is in national interest to have good and efficient professionals. The judgment provides that national interest would prevail, even over minority rights. It is for this reason that in professional colleges, both minority and non-minority, merit has been made the criterion for admission. However, a proper reading of paragraph 68, indicates that a further distinction has been made between minority and non-minority professional colleges. It is provided that in cases on non-minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on the basis of counseling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as medical

colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in *State of Maharashtra v. Indian Medical Assn.*. Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the private educational institution or imparting education therein. A reading of paragraphs 59 and 68 shows that in non-minority professional colleges admission of student, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter."

58. Thus, the Supreme Court highlighted the distinction between the private unaided professional colleges and other educational institutions.

59. Insofar as the private unaided professional college/institutions are concerned, their Lordships of the Supreme Court, who rendered the majority decision in *Islamic Academy* case, by referring to paragraphs 59 and 68 of *TMA Pai Foundation Case* (supra), came to the conclusion that the admission of candidate other than the candidates admitted against management seats can only be made on the basis of merit as per the common entrance test conducted by the State agency.

60. A reference to para 16 of the judgment in *Islamic Academy Case* shows that the Supreme Court agreed with the contention that if a student is required to appear at more than one entrance test, it would lead to great hardship as he would be required to pay to each institute application-fee ranging from Rs. 500/- to Rs. 1000/-. The students will also have to arrange for boarding, lodging and transport indifferent places in case they had to appear for individual tests conducted by each college. The Supreme Court, therefore, adopted a practical approach keeping in view the need for merit biased selection on the basis of common entrance test to be conducted by the State or on the basis of common entrance test to be conducted by an association of colleges of a particular type.

61. Insofar as the minority institutions are concerned, the Supreme Court in para-17 of the judgment rendered in *Islamic Academy* case, made the following observations :-

"At this juncture, it is brought to our notice that several institutions, have since long, had their own admission procedure and that even though they have been admitting only students of their own community no finger has ever been raised against them and no complaints have been made regarding fairness or transparency of the admission procedure adopted by them. These institutions submit that they have special features and that they stand on a different footing from other minority non-aided professional institutions. It is submitted that their cases are not based only on the right flowing from Article 30(1) but in addition

they have some special features which require that they be permitted to admit in the manner they have been going for all these years. A reference is made to few such institutions i.e. Christian Medical College, Vellore, St. John's Hospital, Islamic Academy of Education etc. The claim of these institutions was disputed. However, we do not think it necessary to go into those questions. We leave it open to the institutions which have been established and who have had their own admission procedure for, at least, the last 25 years to apply to the Committee set out hereinafter."

62. We have quoted para-17 of the judgment to clear that air of misconception, if any, that any institute which had been established 25 years ago and which had been following its own admission procedure, is exempt from AIEEE system. The observations of the Supreme Court have been made with reference to and in the context of minority institutions alone. This is clear from the aforesaid observations, which have been underlined by us.

63. In para-19 of the aforesaid judgment, the Supreme Court directed the respective State Government to appoint a permanent committee to ensure that the test conducted by the association of colleges is fair and transparent. For each State, a separate committee was directed to be formed.

64. Thus, the observations of the Supreme Court in paras-59 & 68 of the decision rendered in TMA Pai Foundation Case and the observations of the Supreme Court in Islamic Academy Case leave no manner of doubt that the Supreme Court did not hold that a common entrance test for granting admission to students in non-minority unaided professional colleges/institutions conducted by the State agency falls foul of Article 26 of the Constitution, it is not claimed before us that the machinery envisaged in para-19 of the decision rendered in Islamic Academy case is available for admission to professional courses undimmed and central universities. Therefore, at present as per the Regulations of the University Grants Commission framed u/s 26 of the UGC Act, to which there is no challenge, the Common entrance test is required to be conducted by the Central Board of Secondary Examination, for determining the merit of the students seeking admission in professional colleges/institutions.

65. The first respondent having been declared a deemed university by virtue of Section 3 of the UGC Act, is bound by the Regulations. It cannot be permitted to urge that it is exempt from the application therefore and it should be allowed to admit students to its professional programmes on the basis of its own admission procedure and on its own assessment of merit of the candidates. We do not find any element of unfairness in the Regulations. The expert committee felt the need for a common entrance test. Common entrance test is conducive to assess the aptitude of the students for programmes in which admissions are sought. Common entrance test will place all the candidates on level playing ground. The professional/technical institutions are required to follow the common entrance test system structured to streamline the admission of students to undergraduate programmes in professional technical institutions.

66. The Common/Joint Entrance Examination only evaluates the merit of the students. Ultimately, the admission of students is the business of the deemed universities/central institutions, which can prescribe cut off marks/percentage for admission. The university autonomy is not affected by the facility of Joint Entrance Examination system, which has been made available to the students seeking admissions to engineering institutions.

67. Pursuant to Section 26(1)(g) of the UGC Act, the Regulations have been framed. The Constitution itself confers power on the parliament to legislate with regard to co-ordination and determination of standards in institutions of higher learning, which includes the entire gamut of admissions. That power emanates from Articles 245 & 246 and flows into the field of legislation covered by Entry-66 of List I of the Seventh Schedule of the Constitution. Under the Regulations of 2003, which have the backing of the aforesaid provisions. All India Engineering Entrance Examination has been devised. The private unaided non-minority professional/technical institutions do not stand on the same footing as the unaided non-minority educational institutions simpliciter. The non-minority unaided professional/ technical institutions are required to admit students on the basis of common entrance test to be conducted by the State agency, as held and clarified in TMA Pai Foundation and Islamic Academy cases respectively. In the circumstances, therefore, we do not find any fault with the system of All India Engineering Entrance Examination prescribed by the Regulations framed under the UGC Act.

68. The learned Senior Counsel for the first respondent argued that certain professional/technical institutions have been exempted from following the Joint Entrance Examination system. According to him, this subject BITS, Pilani, to hostile discrimination. In order to determine the controversy, it needs to be pointed out that certain professional/technical institution, which have been exempted, were part of IIT-JEE system, while the first respondent was not part of that system. Besides, the first respondent was asked whether it would like to become part of the Joint Entrance Examination system or part of the examination conducted by the IITs, but it failed to exercise its option.

69. In the circumstances, therefore, we have no hesitation in holding that the Policy Notification dated October 18, 2001, Interim Policy Regulations dated June 10, 2003, and University Grants Commission (Admission To Specified Professional Programmes) Interim Regulations, 2003 dated December 17, 2003, do not suffer from the vice of unconstitutionality. Therefore, the directions of the learned Single Judge to ignore the Regulations cannot be sustained. Accordingly, the appeals succeed and the judgment of the learned Single Judge, dated April 02, 2004, is set aside.

70. Before parting with the case, we would like to observe that in order to determine the merit of candidates the Central Board of Secondary Education should consider the feasibility of having a Common/Joint Entrance Examination comprising of two stages:-

(1) based on objective type questions, and

(2) main examination having three separate papers (non-objective type) in Physics, Chemistry and Mathematics.

In doing so, it may study the IITs' JEE model.