

(2004) 10 MAD CK 0147

In the Madras High Court

Case No : W.A. No's. 3238, 3239, 3289, 3294, 3363, 3385 and 3466 of 2004 and WAMP. No's. 6101, 6102, 6184, 6210, 6316, 6317, 6358, 6316 and 6504 of 2004 and W.P. No's. 19203, 19204, 19390, 21404, 21851, 22143 and 22924 of 2004

Trichy Engineering College and Others

APPELLANT

Vs

Anna University and Others

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Anna University Act, 1978 — Section 29, 38A(3), 5

Citation : (2004) 5 CTC 572

Hon'ble Judges : P.K. Misra, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : R. Krishnamurthy, for Kandavadivel Doraisamy, in W.A.No. 3238 and 3239/04 and W.P. No. 19203 and 19204/04; Rita Chandrasekaran, in W.A. No. 3280/04; K. Alagirisamy, for T. Meikandan, in W.A. No. 3385/04 and W.P. 22143/04; K. Chandru, for V. Sanjeevi, in W.A. No. 3363/04 and W.P. 19390/04; K. Selvaraj, in W.A. No. 3294/04 and W.P. 21851 and 21404/04 and R. Suresh Kumar, in W.A. 3466/04 and W.P. 22924/04, for the Appellant; G. Masilamani, for G.M. Mani Associates for Anna University, Vijay Narayan, for A.I.C.T.E. and Karthikeyan, Additional Government Pleader for Government, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—In all these writ appeals, the interim orders passed by the learned single judge in the respective writ petitions are questioned. The basic issue which requires to be examined in the main writ petitions and the interim orders passed thereon being one and the same, learned counsel for the parties have consented for the disposal of the main writ petitions.

2. In view of the nature of the issue involved and the manner of disposal of these writ petitions it would be unnecessary to state in detail the pleadings in each writ petition. The writ petitions are by various Technical/ Engineering colleges approved by A.I.C.T.E. and presently affiliated to Anna University. Most of the petitioner colleges were affiliated to the respective Universities vis-a-vis the area in which the colleges are situated. For instance, the petitioner in W.P.No.19203 of

2004/Trichy Engineering College, was affiliated to Bharathidasan University. Though the respondent/Anna University was established in the year 1978 itself by virtue of Anna University Act, 1978 (hereinafter called "the Act") with the object of establishing a University of Technology in the State of Tamil Nadu, the colleges in different areas in Tamil Nadu continued to be affiliated only to the respective universities which were established for different and specific areas/districts in the State.

3. The Act was later amended by virtue of Amending Act 26 of 2001 with a view to bring all the Engineering and Technical colleges all over the State under one University except the colleges affiliated to Annamalai University. In short, after the amendment, these petitioner colleges came to be affiliated to Anna University irrespective of the areas in which each of them are situated.

4. It is not in dispute that all the petitioner colleges have the approval of A.I.C.T.E. to conduct the specific courses with the permitted strength of student intake. While so, the respondent-University after conducting inspection, issued, notice directing the colleges to rectify the deficiencies pointed out thereunder. According to the University, after the lapse of the time stipulated for rectification of the defects, inspection was conducted again by another Inspection Committee. Not being satisfied with the rectification of the defects, the University called upon the respective colleges to show cause against further action failing which, the University would take action to suspend the affiliation and to stop admission for the specific courses for the Academic Year 2004-2005. The colleges had sent in their reply/explanation to the show-cause notice. However, not being satisfied with the explanation, the Standing Committee on Affiliation recommended disaffiliation of the courses with reference to which the Standing Committee found that the deficiencies had not been rectified. The Syndicate, in their subsequent meeting, considered and approved the recommendations of the Standing Committee and thus ordered suspension of affiliation of specific course or courses and the admission to the said courses was also stopped for the Academic Year 2004-2005. The University communicated the said orders to the respective colleges and also informed the colleges that the Management may apply for affiliation of the courses concerned for the Academic Year 2005-2006 after rectifying the deficiencies and fulfilling all the requirements for affiliation. In these writ petitions, those orders are challenged.

5. In all these cases, the impugned orders either impose suspension of affiliation of the specific course or directed reduction of intake of students in the specific course or both in respect of each of the Institutions. In the interim petitions, the colleges had sought for interim stay of the impugned orders. The learned single Judge, after hearing parties, had passed separate orders in each of the writ miscellaneous petitions depending on the facts of each case.

6. In W.P. Nos. 19203 and 19204 of 2004, while rejecting the request for stay of suspension of affiliation of B.Tech (I.T.) course and the order of reduction of intake in Computer Science and Engineering and Electronics and Communication

Engineering courses, the reduction of intake in the Electrical and Electronics Engineering and Mechanical Engineering courses alone was stayed.

7. In W.P. No. 21851 of 2004, while rejecting the interim prayer, the learned Judge, taking note of the submission that the deficiencies had been rectified, gave liberty to the petitioner college to request for re-inspection and directed re-inspection to be conducted as expeditiously as possible.

8. In W.P. No. 22780 of 2004, though the counselling for admission was permitted to go on, it was ordered that allotment letters to the candidates would not be issued until further orders.

9. In W.P. Nos. 19390 of 2004, 22143 of 2004 and 22924 of 2004, the interim petitions were dismissed.

10. We have heard Mr. R. Krishnamurthy, Mr. K. Alagirisamy, Mr. R. Thiagarajan, Mr. K. Chandru, learned Senior Counsel and other learned counsel representing the appellants/petitioners and the contentions raised by them are detailed as follows:

(i) All the alleged defects/deficiencies are factually incorrect and nonexistent and even the defects pointed out which were minor in nature, had been duly rectified by the colleges. Such rectification have not been properly considered while passing the impugned orders.

(ii) All the alleged defects pointed out by the University pertain to the requirements stipulated in A.I.C.T.E. Regulations. When admittedly A.I.C.T.E., after due inspection, was satisfied about the requirements and granted approval, it was beyond the powers of the University to complain that such requirements were not fulfilled by the colleges. The University has no power to call upon the colleges to fulfil the requirements under the A.I.C.T.E. Regulations, more so when

(iii) The deficiency of non-availability of Professors/Assistant Professors is only a temporary phenomena faced by every Institution, including Government Institutions at the time of summer vacation as the incumbents choose to move from one Institution to another in search of promotion and higher emoluments.

(iv) Reference was made to the various provisions under the Anna University Act, 1978, in support of the contention that the University can act only in terms of their own Regulations and its control over the constituent colleges can be exercised only in terms of those Regulations. Admittedly, no regulations have yet been formulated in terms of Section 5(a)(c) of the Act.

(v) Chapter VIII-A of the Act deals with the manner of control over colleges which were earlier affiliated to the other Universities and are deemed to be affiliated to Anna University as a result of the amendment. As no conditions for affiliation of such colleges had yet been prescribed, the conditions prescribed by the erstwhile Universities to which the colleges were affiliated alone would apply.

(vi) Assuming without admitting that the University will have the power to

prescribe higher standards and qualifications and infrastructural requirements than prescribed by the A.I.C.T.E., such requirements could be enforced only after framing proper regulations as provided under the Act, and admittedly, no such regulations have yet been prescribed.

11. All the learned counsel appearing for the petitioners have also emphasised that several lakhs of rupees are incurred in establishing an Institution and the manner in which different statutory authorities act inconsistently results in causing grave prejudice and loss to them, not to mention the uncertainties which are caused to the student community.

12. Mr. G. Masilamani, learned Senior Counsel appearing for the Anna University, contends that as a fact, the existence of the deficiencies pointed out by the Inspection Committee of the University are not seriously disputed by the colleges. In fact, the learned single Judge had clearly recorded such admitted position. The petitioner colleges, apart from lacking in certain infrastructural requirements, as pointed out in each case, also, admittedly, did not have the required strength of staff, Professors and Assistant Professors and in fact, some of the appointees did not have even the minimum qualifications to be designated as Professor or Assistant Professor. It is the University which ultimately grants the Degree and it is the reputation of the University which is at stake if proper standards are not maintained and if the constituent" colleges are being run without even satisfying such basic requirements. The University has, therefore, the duty and responsibility to see that all the requirements are satisfied. The fact that the A.I.C.T.E. had chosen to overlook certain requirements cannot bind the University. It has been repeatedly held by the Supreme Court that it will be improper to allow Technical Institutions to be run without satisfying the basic requirements. The Supreme Court has also held that Universities were free to stipulate their own conditions, infrastructural facilities and even higher specifications. Accepting the contentions of the petitioners would mean that the University is to function only like a rubber stamp. When the deficiencies are admitted, the petitioners cannot be heard to contend that the University can have no say in the matter. The respondent University was also not interfering with the recognition/affiliation already granted by the A.I.C.T.E. or the erstwhile University to which each college was affiliated. The order of suspension of affiliation was only prospective and would mean that admission to the first year alone would be suspended. Learned Senior Counsel further contends that the Court will not be a party to allow grave and defective affairs to continue, more so, when the deficiencies are clearly admitted.

13. Mr. Vijay Narayan, learned Senior Counsel for the A.I.C.T.E., states that though it is true that the University has its own sphere of control and superintendence over the colleges and in terms of the judgment of the Supreme Court in State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, , can even prescribe higher standards and higher minimum qualification than what has been prescribed by A.I.C.T.E., it was not open to the University to express

different opinion on the areas/infrastructural requirements in terms of the A.I.C.T.E. Regulations. The attitude of all the statutory authorities should be to act in coordination and not to express differently which would only have the effect of undermining the role of A.I.C.T.E. and other similarly placed Institutions like Medical Council, Dental Council, etc. If in the opinion of the University any requirement in terms of A.I.C.T.E. was found wanting or lacking, it is expected of the University to inform the A.I.C.T.E. and may contemplate further action only in the event of no further action being taken by the A.I.C.T.E. The unilateral action of the University holding that A.I.C.T.E. norms are not satisfied would run contra to the decision of the A.I.C.T.E. and such action by the University cannot be appreciated. Reference was also made to the judgment of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , to emphasise his contention that issues/areas covered by the A.I.C.T.E. Regulations cannot be dealt with by the State Government or the University and that the A.I.C.T.E. would be the ultimate authority to deal with those issues. The A.I.C.T.E. has been adopting pragmatic approach in dealing with certain requirements if the Institution was in an infant stage. The approval is made subject to review with constant and periodical supervision and to permit postponing the need to fulfil such requirements by a year or two. It was only from the year 1994 or 1995, Information Technology Courses are being conducted in this country and therefore, there was dearth of the required number of qualified post-graduates and with Doctorate. The respondent-University ought to have approached the issue in a realistic manner.

14. In answer to Mr. Vijay Narayan's contention that A.I.C.T.E. had not been informed about the proceedings, Mr. G. Masilamani points out that copies of all the orders have been marked and despatched to A.I.C.T.E. Mr. Vijay Narayan, however, points out that only the final orders (impugned orders) were formally communicated to the A.I.C.T.E. and not the earlier proceedings.

15. We have considered the submissions of both sides as well as perused the provisions of A.I.C.T.E. Act, 1987, Anna University Act, 1978, the Regulations issued thereon under both the Acts and the various decisions relied upon by both sides.

16. At the outset, it may be stated that the following two vital submissions on behalf of the petitioners are not disputed by the respondent-University and in fact, they are admitted:

(i). The deficiencies/requirements which are allegedly not complied with by the petitioner-Institutions pertain only to the requirements contemplated under the A.I.C.T.E. Act and Regulations and not to any other requirements prescribed by the University.

(ii) No separate order or specific Regulations have been issued by the University as visualised under the Anna University Act nor is there any Regulation by the University even adopting the A.I.C.T.E. Regulations/requirements.

17. It is now necessary to have an overview of the relevant provisions under both the Acts:

Anna University Act, 1978:

Under Section 5, while dealing with the powers and functions of the University, power is given to the University to affiliate colleges to the University under conditions "prescribed" and to withdraw such affiliation vide Section 5(ac). The word "prescribed" is defined in Section 2(h) as meaning "prescribed by the Statutes, Ordinances or regulations made under this Act".

18. Chapter VII deals with Statutes, Ordinances and Regulations. Section 29(xvi-a) enables statutes being made prescribing the conditions for affiliation of colleges to the University.

19. Chapter VIII-A was inserted by an amendment in the year 2001 by virtue of Section 18 of the Anna University (Amendment) Act, 2001, whereby, these Technical and Engineering colleges were affiliated. Other universities all over Tamil Nadu (except colleges affiliated to Annamalai University) were brought into the fold of Anna University. All the provisions of the respective Acts under which those other universities had control over the colleges and institutions to which Anna University Act would be applicable (Engineering and Technical Institutions) would cease to apply.

20. u/s 38-A(3), it is stipulated that notwithstanding such cessation, all such Statutes, Regulations, etc., under the respective University Acts in force as on the notified date shall, in so far as they are not inconsistent with the provisions of the Anna University Act, continue to be in force until they are replaced by statutes, ordinances and regulations under the Anna University Act.

21. u/s 38-A(4), it is provided that students who have studied in the colleges affiliated to those other Universities before the Academic Year 2001-2002 shall be permitted to complete their courses of study in the respective universities.

22. Section 38-A(5) is a deeming provision under which such colleges affiliated to the other Universities are deemed to be colleges affiliated to the Anna University.

23. Section 38-A(6) stipulates that anything done or action taken thereon before the notified date under any of the provisions of the Acts relating to the other Universities shall be deemed to have been done or taken under the corresponding provisions of the Anna University Act and shall continue in force accordingly, unless and until superseded by anything done or any action taken under the corresponding provisions in the Anna University Act.

24. The above provisions make it clear that notwithstanding the fact that such colleges have been brought under the control of Anna University, those colleges will continue to be governed by the provisions of those Acts governing the other Universities to which the respective colleges were affiliated to, until they are

replaced by statutes, ordinances and regulations to be made under the Anna University Act. Even Actions taken under the other Acts would continue to be operative until superseded by any action taken under the corresponding provisions of the Act.

A.I.C.T.E. Act:

Section 10(1)(i) of the All India Council for Technical Education Act, 1987 empowers the Council to lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.

Section 10(1)(k) empowers the Council to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

Under Section 10(1)(n), the Council shall take all necessary steps to prevent commercialisation of technical education.

Section 10(1)(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education.

Under Section 10(1)(p), the Council may inspect or cause to inspect any technical institution.

Under Section 10(1)(q), the Council may withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council.

Under Section 11, inspection can be undertaken for the purpose for ascertaining the standards of teaching, examination and research.

Regulation 6 of the All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake capacity of Seats for the Courses or Programmes) Regulations, 1994, provides:

6. Conditions for grant of approval.-- Every application under sub regulation (1) of Regulation 4 shall be considered subject to the fulfilment of the following conditions; namely:--

(i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructural and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting the annual recurring expenditure;

(ii) the courses or programmes shall be conducted as per the assessed technical manpower demands;

(iii) the admissions shall be made according to the regulations and directions of the Council for such admissions in the respective technical institution or university;

(iv).....

(v) the staff shall be recruited as per the norms and stands specified by the Council from time to time.

(vi) and (vii).....

Regulation 8 provides for Scrutiny of Applications. Regulation 8(7) provides,

8 (7) After considering the recommendations of the agencies concerned and after making such further inquiry as it may deem necessary, the Council may, by 15th April, --

(i) Issue a letter of viability on the proposal to the applicant stating therein that the proposal is viable and that the applicant may proceed to take further action for getting final approval of the Council under these regulations; or

(ii) Issue a letter of regret to the applicant stating therein the specific ground or grounds on which the application has been rejected:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

Under Regulation 8(9), in case of applications for introduction of new courses or programme or for increase in the intake capacity of seats in any institution approved by the Council, the information about additional requirement of infrastructural, and instructional facilities only shall be required to be furnished by May 15.

Under Regulation 8(10), an Expert Committee appointed by the Chairman of the Council shall, at the cost of the applicant visit the premises of the proposed institution or existing institution, as the case may be, and verify all the details furnished application, prior to final approval being given.

As per Regulation 8(12), Subject to the provisions of sub-regulation (8), the final decision of the Council shall be communicated to the State Government concerned or the University Grants Commission, the University or the Directorate of Technical Education concerned, as the case may be, the Regional Office concerned and the applicant by 15th June in case the application was made before the preceding 31st, December.

According to Regulation 8(14), The Council shall, in every year, before 31st December publish the names of approved technical institutions, University Departments or deemed Universities conducting courses in technical education; the courses and programmes approved by the Council and the number of seats permitted (annual intake capacity) for each course or programme and communicate relevant extracts of the same to the concerned authorities and

agencies.

Under Regulation 10(1), if any question arises as to the interpretation of these regulations, the same shall be decided by the Council.

Under Regulation 10(2), the Council shall have the power to issue clarification to remove any doubt which may arise in regard to implementation of these regulations.

Under Regulation 11, the council may, for removal of any hardship or such other reasons to be recorded in writing relax any of the provisions of these regulations in respect of any class or category of institutions.

Regulation 12 deals with withdrawal of approval.

Under Regulation 4(1)(b) no course or programme shall be introduced by any technical institutions, University including a deemed University or University Department or College. Similarly under 4(1)(d), no approved intake capacity of seats shall be increased or varied; except with the approval of the Council.

Under, 4(2), Applications for grant of approval under sub-regulation (1) shall be made by any of the following, namely:

(i) Government institutions, Government aided institutions deemed Universities and University Departments or Colleges;

(ii) registered societies/trusts

These Regulations have been framed by exercise of power granted u/s 23 of the AICTE Act.

25. Analysis of the above provisions and Regulations under the A.I. C.T.E Act make it abundantly clear that the power of granting and withdrawal of approval is with the A.I.C.T.E. which has the exclusive power and discretion to deal with the issues relating to staff pattern, infrastructural and instructional facilities.

26. Disputes have frequently arisen regarding the power exercised by the A.I.C.T.E. (Dental Council, Medical Council, etc.) the respective Universities and the State Government regarding the control of those authorities over the colleges.

27. In State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, the, question was whether after coming into force of All India Council for Technical Education Act, the State Government had power to grant and withdraw permission to start technical institutions.

27-a. The Government while according permission, permitted three degree courses of 60 students in each of the subject. The Government had also stipulated that if any of the conditions imposed by them was not fulfilled, permission would be withdrawn. The University had granted affiliation subject to certain conditions. It had also stipulated that the Trust should make an application for affiliation for the second year B.E. degree for the academic year

1988-89 and no admission should be made to the degree course until the permission is granted by the University. The College started functioning from July 1987. On 17.9.1988, the University extended the affiliation for first year of B.E. degree course for the academic year 1988-89, subject to the implementation of the recommendations of the Inspecting Commission and subject to the conditions of affiliation already intimated while granting temporary affiliation. The Trust applied for affiliation for third year degree course for the academic year 1989-90 and continuation of affiliation for first year and second year. In March 1989, the Committee appointed by the Director of Technical Education, inspected the College and submitted its report.

27-b. In the meanwhile, on 27.3.1989, the State Government appointed a High Power Committee, which in its report stated that the Trust has not fulfilled the conditions imposed by the Government and the conditions imposed by the University while granting affiliation and notice was issued by the Government. In the meanwhile, in May 1989 the University appointed a three member Inspection Commission. However, even before the receipt of the report by such Inspection Commission, the Syndicate of the University accepted the report of the High Power Committee appointed by the Government and decided to reject the request for provisional affiliation for the academic year 1989-90 and issued show cause notice as to why the affiliation for the year 1987-88 and for the year 1988-89 should not be cancelled. Ultimately, the University resolved to reject the provisional affiliation for 1989-90 and for the previous years and informed the Trust that it should make alternative arrangements to distribute the students already admitted.

27-c. Two writ petitions were filed by the Trust, one against the Director of Technical Education seeking to prohibit the latter from taking further proceedings and another for quashing the resolution passed by the Syndicate and for directing the University to grant provisional affiliation. The Committee appointed by the learned single Judge has submitted a report that the Trust had not provided the requisite infrastructural facilities for conducting different courses. By a common judgment, the Single Judge allowed the writ petition filed against the Government, but dismissed the writ petition filed against the University by observing that after the passing of the Central Act, the State Government has no power to cancel the permission granted to the Trust and it could not rely on the report of the High Power Committee as there was no such power and according to the Single Judge, the only course open to the State Government was to refer the matter to the All India Council of Technical Education and the duty was imposed on the AICTE to recognise or de-recognise any technical institution and it was not open to the State Government or the University to give approval or disapproval to any technical institution. However, the Single Judge held that the University could take action under Statute 44(A) in Chapter XXVI of Vol.1 of the Calendar of the University on the ground that one of the conditions imposed by the University for grant of affiliation that the Trust should obtain concurrence of the Council was not fulfilled and consequently the resolution was upheld.

27-d. Appeals were filed by the College, State Government as well as the University. The Division Bench allowed the writ appeal of the Trust and quashed the resolution of the University and dismissed the writ appeals filed by the State Government and the University. The Division Bench confirmed the decision that the State Government had no jurisdiction to de-recognise.

Ultimately, the Supreme Court held as follows :

41. What emerges from the above discussion is as follows:

(i) The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme of plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also 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 and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State Legislation being repugnant to the Central Legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid

down by then, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

.....

43. As a result, as has been pointed out earlier; the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the de-recognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

28. The decision of the Constitutional Bench of the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, , is to the following effect:

"Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government.

Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254. "

29. The crux of the various decisions of the Supreme Court finally highlighted in the judgment of the Constitutional Bench in *Dr. Preeti Srivastava's* case is therefore clear namely, that when once the field is occupied by Central Legislation, the State cannot have any control over issues under the exclusive control of the Union Legislation. The views thus expressed by the Constitution Bench have been followed in many subsequent judgments of the Supreme Court as well as this Court and it is unnecessary to catalogue all the cases. It would be sufficient to refer to two recent judgments in the subject.

30. In *Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another*, , while dealing with the admission procedure, the Supreme Court held that when the subject of admission procedure to a deemed University is fully occupied by Entry 66 of List I, the State cannot exercise any power over the admission procedure.

31. The University, however, seeks to place reliance on a later judgment in *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, . In that case, the State Government prescribed higher/better standards of education and qualifications for admission than fixed by A.I.C.T.E. The Court held that even as per the observations in *Adhiyaman's* case and *Dr. Preeti Srivastava's* case, prescription of additional or higher qualification by the State Government was permissible. The Court, finally, held that if standards have been prescribed by the Union Government in Entry 66 of List I, then, those standards will prevail over the criteria fixed by the State in exercise of its powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union Government. In other words, the Court held that if standards are provided by the Union Government/Authority, the State Government/University cannot prescribe standards adverse to or lesser than the standards fixed by the Union Government. It would be open to the University/State Government to fix higher qualifications.

32. We are inclined to hold that the said observations in the judgment in *S. V. Bratheep's* case on which much reliance was placed by the University, do not, in any manner, alter or vary the law laid down by the Supreme Court in the earlier cases in the context of the issue which arises for consideration in these writ petitions, namely, the staff pattern, qualification for holding the post of Professor or Assistant Professor or for infrastructural requirements admittedly within the sphere of A.I.C.T.E. Regulations. To repeat what has already been stated above, the University does not dispute the position that the requirements which are now found lacking thus leading to the issuance of the impugned orders are all matters which pertain only to the requirements under the A.I.C.T.E. Regulations. In contrast, the issue which arose for consideration in *S. V. Bratheep's* case is whether the State or University has the power to prescribe higher standards or higher minimum qualification for admission into Engineering colleges. In the case of *Dr. Preeti Srivastava*, the Constitution Bench had laid down that while it was not permissible to lower the standards prescribed by the central authority, it was, however, open to the State to prescribe higher qualifications which will lead to the selection of better students. The observations are as follows:

"46. There are, however, two cases where there are observations to the contrary. One is the case of *State of M.P. v. Nivedita Jain*, a judgment of a Bench of three Judges. In this case the Court dealt with admission to the MBBS course in the medical colleges of the State of Madhya Pradesh. The rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed: (SCC p.305, para 17)

That it was not in dispute and it could not be disputed that the order in question

was in conflict with the provisions contained in Regulation II of the regulations framed by the Indian Medical Council.

But it held that Entry 66 of List I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation II of the regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory.

Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education, or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of *Indira Sawhney v. Union of India*, 1999 (5) Scale 426 the question of standards being lowered at the stage of postgraduate medical admissions was not before the Court for consideration. The Court merely said that since Article 16 was not applicable to the facts in *Nivedita Jain* case Article 335 was not considered there. For postgraduate medical education; where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in *Nivedita Jain* is approved in all its aspects by *Indira Sawhney Vs. Union of India*, "

33. It was only this view which was again re-stated in *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, . The right of the University or State to describe higher qualifications or standards for admission into professional or higher courses of study is not the issue in dispute in these batch of writ petitions. The ratio decidendi of both the judgments would apply only to the issue decided in those cases; namely, whether the State Government or the University was at liberty to prescribe higher qualifications for admission. The said

observations cannot be sought to be applied for other issues which are admittedly within the exclusive scope of A.I.C.T.E., Medical Council, "Dental Council, University Grants Commission, etc. Any such attempt would violate the basic constitutional principle of "occupied field" and also specific declaration by the Supreme Court, some of which are cited above, positively holding that when the field is occupied by Entry 66 of List I, the State or the University cannot exercise any power over those issues.

34. It is true that some of the deficiencies which are pointed out by the University and as accepted by the learned single Judge, are practically admitted by the petitioner institutions, especially in the context of either lack of sufficient number of professors/Assistant Professors or the appointees not having the qualification prescribed either by the A.I.C.T.E. or U.G.C. Though certain practical difficulties are pleaded by the Institutions, which are, in fact, endorsed by the A.I.C.T.E. to a certain extent, those are issues which have to be brought to the notice of A.I.C.T.E. before taking any action.

35. It is true that the Universities have a decisive role to play in the grant of Degree/Diploma certificates. Their anxiety to maintain standards and the resultant reputation of the University is perfectly understandable. If the Institutions which are affiliated to a particular University offer and maintain the courses below the standards, the reputation of the University is bound to be adversely affected. Therefore, the Universities have a right or duty to see that all the requirements for running the institution are properly complied with and to ensure proper standards, failing which, the student community is also bound to be affected. There is nothing wrong in a public statutory body taking note of any violation by a citizen or Institution of the regulations relating to another public statutory body and to insist rectification of the same. Such an action would certainly be in furtherance of public interest. But the methodology or approach to the issue has to be in consonance with the mutual statutory obligations and limitations. While on the same issue when A.I.C.T.E., which is the competent body to grant approval and had in fact granted approval, if another statutory body like the University should strike a different note and also proceed further to disaffiliate the courser it would lead to total chaos and confusion and not to mention the resultant situation, as pointed out by Mr. Vijay Narayan, rendering the functioning of the A.I.C.T.E. itself ineffective.

36. The Supreme Court as well as this Court had, on several occasions, pointed out that the scheme of the various legislations relating to the manner of control over the educational institutions contemplate consultative process among the various authorities. Grant of approval/affiliation/consent by different authorities and renewal of the same have to be achieved by cohesive exercise of all the statutory authorities. All the statutory bodies involved in the process, actually perform the duty of a single entity, namely, that of the sovereign Government. A situation of uncertainty and incongruity cannot be made to prevail by the action or inaction of the statutory authorities. They have to function in a cohesive

manner in public interest and not lead to a situation as in the present case, the University complaining that A.I.C.T.E. norms had not been fulfilled and ordering disaffiliation, and in contrast, the A.I.C.T.E., being aggrieved that they have not been taken into confidence before ordering disaffiliation and complaining that the University had not taken into account certain practical issues and the situation of the availability or non-availability of persons with Post-Graduate or Doctorate qualifications in Information Technology. These are issues which both the authorities should have consulted with each other instead of the University acting unilaterally on its own conclusions over issues which are exclusively within the domain of A.I.C.T.E.

37. A similar situation arose in *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, . There, the dispute between the State Government and the Institution was over the refusal of the Government to grant sanction though the A.I.C.T.E. had granted approval. After considering the legal position in the background of the facts, the Supreme Court held that the field of "grant of approval" was occupied by Section 10(k) of the A.I.C.T.E. Act, 1987, and therefore, the insistence by the University that the institution should obtain approval from the State Government was not proper and such a requirement would be repugnant to Section 10(k). The Supreme Court proceeded further to observe that if any further facts had come to light after the approval by the A.I.C.T.E. and the State, felt that the requirements of A.I.C.T.E. had not been complied with the State Government could write to the A.I.C.T.E. for taking appropriate action. The observations in paragraph 27 in the said context are as follows:

"The so-called "policy" of the State as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, which was a case relating to medical education and which also related to the effect of a Central law upon a law made by the State under Entry 25 List III, it was held (at SCC p.35, para 34) that the "essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the central Government alone"

Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State

Government could always write to AICTE, to enable the latter to take appropriate action.

38. In this batch of cases, it was open to the University to have informed the A.I.C.T.E. about the deficiencies and interacted with the A.I.C.T.E. and thereafter, to issue directions to the institution to rectify the defects, failing which, the University would have to take action. Such an approach would have resulted in a healthy coordination and proper solution to the issue.

39. Admittedly, at that time when action was proposed against the institutions by conducting inspection, issuing directions to the institutions to comply with the requirements and at the stage of show cause notice, no intimation was given to the A.I.C.T.E. This assertion on the part of the institutions as well as A.I.C.T.E. is not denied except for stating that the copy of the final order had been sent to the A.I.C.T.E. Merely sending a copy of the final order of disaffiliation cannot be a substitute for the requirement of the University to interact with A.I.C.T.E., who is the appropriate authority to deal with the issues, more so considering the fact situation that approval has been granted by A.I.C.T.E., which was very much subsisting.

40. Apart from the reason stated above with reference to the competence of the University to deal with the issues within the exclusive jurisdiction/assessment by A.I.C.T.E., another factor which requires to be mentioned is that, admittedly, no regulations have been framed by the University in terms of the provisions of the Anna University Act, 1978. The Act provides for exercising the power to affiliate and disaffiliate the colleges and to withdraw such affiliation vide Section 5(ac) and other provisions as detailed above. The power thus given can be exercised only in terms of the Statutes, Ordinances or Regulations prescribing such conditions. u/s 29(xvi-a) also, power is given to the University to frame conditions of affiliation of colleges to the University. Admittedly, as on date, no conditions/regulations have been prescribed by the University in terms of the Act. It is also not the case of the University that they have adopted the requirements/regulations of the A.I.C.T.E. as their own, thus enabling the University to refer to the A.I.C.T.E. Regulations as their own for considering affiliation/disaffiliation. Therefore, the absence of any such Regulations dealing with affiliation/disaffiliation, it is not open to the University to have resorted to the impugned exercise.

41. In view of the above discussion, we are inclined to feel that the unilateral action of the University without coordinating with the A.I.C.T.E. cannot at all be sustained. It would be a different situation if even after the complaint to A.I.C.T.E., no further action is taken by the A.I.C.T.E. and the institutions also do not rectify the defects.

42. Though the result of the above discussion would be to set aside the impugned orders of the University ordering disaffiliation, suspension of disaffiliation or reduction in the number of student intake, this Court cannot also

ignore the deficiencies which have been pointed out by the University as well as by the learned single Judge. Public interest has to ultimately prevail and the institutions cannot be permitted to run with such defects if they truly exist. The claims of the institutions that as on date the defects have been rectified should also be borne in mind. Ends of justice would be met by directing the A.I.C.T.E. to form an inspection panel, conduct inspection and proceed further.

43. With the result, the writ petitions are allowed subject to the following observations:

(i) The writ petitions are allowed and the impugned orders are quashed;

(ii) The A.I.C.T.E. is directed to form an inspection panel, inspect the petitioner-colleges with specific reference to the deficiencies pointed out by the University and pass a considered order within a period of three weeks. The issue of deficiencies falling within the scope of A.I.C.T.E. Regulations will abide by the findings of A.I.C. T. E. and the directions to be issued thereon;

(iii) It is further made clear that in the event of the petitioner colleges admitting any students in the courses disaffiliated by the University and over and above the strength of student intake, as envisaged in the impugned orders, neither the college nor the students so admitted will be entitled to claim any equity or right to continue their studies in the respective institutions, if the A.I.C.T.E. also holds that the deficiencies subsist. However, the admission fees and other fees collected from the students shall be refunded.

(iv) No separate orders are required to be passed in the writ appeals and the writ appeals are disposed of in the above terms.

No costs. Connected W.A.M.Ps. are closed.