IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1145 OF 2004

ASSOCIATION OF MANAGEMENT
OF PRIVATE COLLEGES ... APPELLANT

VS.

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NOS. 5736-5745 OF 2004

ADAIKALAMATH COLLEGE ETC. ETC. ... APPELLANTS

VS.

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ORS. ... RESPONDENTS

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J U D G M E N T

V. Gopala Gowda, J.

The appellants filed these civil appeals questioning the correctness of the common judgment and order dated 19.11.2003 passed by the High Court of

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judicature at Madras in W.A. 2652 of 2001, W.A. No. 3090 of 2001, WA 2835 of 2001, WA 3087 of 2001, WA 2836 of 2001, WA 3091 of 2001, WA 3092 of 2001, WA 2837 of 2001, WA 3088 of 2001, WA 2838 of 2001 and WA 3089 of 2001, dismissing the writ appeals thereby affirming the dismissal of writ petitions by wrongly interpreting the provisions of All India Council for Technical Education Act, 1987 (for short AICTE Act) and held that even though the University is not required to take permission from the All India Council for Technical Education (for short AICTE), its affiliated colleges are required to do so. Further, the High Court has held, while dismissing the writ appeals, that the appellant colleges should get its course of MCA ratified by AICTE as per the prescribed format which according to the appellants herein is in contravention of settled principles of interpretation of Statutes and also runs contrary to the law laid down by this Court in case of **Bharathidasan University & Anr**. Vs. **AICTE & Ors**.[1]

2. Certain relevant facts in relation to the appeals are stated hereunder:--

The appellant colleges in the State of Tamil Nadu are running Arts and Science courses. Most of them are affiliated to Bharathidasan University and some of them are affiliated to Manonmaniam Sundaranar University. The member colleges of the appellant in C.A.No.1145 of 2004 and the appellants in the connected appeals are running MCA course which have so far not obtained the approval of the AICTE. According to the information placed before the

[1] (2001) 8 SCC 676

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Court by the AICTE, as of the academic year 2001-2002, there were 865 institutions in the country offering 40,792 seats for the MCA course which had the approval of the AICTE. Within the State of Tamil Nadu the number of institutions which have received such approval are 208. As per the affidavit filed on behalf of the State, it is stated that apart from the member colleges of the first appellant and colleges of the second appellant, all other institutions offering MCA have obtained the approval of the AICTE.

3. Regulations 1994 have been prescribed in Form II which is in terms of Regulation 5(2)(b) and were framed pursuant to Section 10(k) of the AICTE Act for grant of approval to the colleges who have started new technical institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes. Form II is titled "Application for Existing Institution(s) seeking AICTE approval without additional course(s) and/or additional intake(s) in engineering/technology, architecture, pharmacy, applied arts, etc."

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4. In the 1997, Regulation 2(2) framed by the AICTE was added by way of an amendment to the 1994 Regulations, providing that the regulations are not applicable *inter alia*, to the proposals relating to post graduate courses for MBA, MCA or equivalent.

5. On 16.8.2000, the aforesaid sub-regulation (2) was deleted and the said courses were added in Regulation 8(c) enabling the AICTE to prescribe the land

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and deposit requirements even in respect of Arts and Science Colleges having MBA or MCA courses.

6. On 3.3.2001, a communication was sent by the AICTE to the member colleges of the appellant in C.A. No.1145 of 2004 in respect of its proposal to commence MCA course requiring the colleges to furnish information regarding the proposed land and building. On 14.3.2001, a writ petition was filed by the appellant's association seeking relief to prohibit the AICTE from in any way exercising its jurisdiction over its member colleges with reference to the MBA and MCA courses conducted by them. The said writ petition was dismissed by the learned single Judge holding that the AICTE Act and Regulations are enforceable against the said member colleges of the appellant, against which the Association had filed writ appeal. The same came to be dismissed by affirming the judgment of the learned single Judge by passing impugned common judgment which is under challenge in CA No.1145 of 2004.

6(a) So far as the facts in the connected appeals are concerned, they are stated in brief as under:

The colleges run by the appellants in the connected appeals are affiliated to Bharathidasan University and it has approved the courses and programmes which are being conducted by the said colleges including MCA and MBA. The AICTE Regulation is applicable to professional colleges only that to from academic year 1994. There is no provision for existing arts and science colleges which are running MCA courses. The letter dated 31.5.2000 from the AICTE

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was received by Bharathidasan University wherein it was mentioned that no admission should be made by the competent authorities in unapproved or unrecognized professional colleges from the academic year 1994. Some of the colleges filed writ petitions in the High Court of Judicature at Madras challenging the letter dated 31.5.2000 being ultravires of the AICTE Act itself. The High Court passed an interim order dated 20.7.2000 staying the direction of the AICTE as contained in its letter dated 31.5.2000. During the pendency of the writ petition, the AICTE amended regulations vide notification dated 16.8.2000. By the said amendment it deleted the earlier amendment of 1997 in which MCA course was not within the purview of the AICTE Act. Through the said amendment MCA course was conspicuously added in Rule 8(c) of the Regulations. By virtue of the said amendment, the AICTE claimed that it has got powers to check and regulate the MCA course. The High Court of Madras after hearing some of the appellant colleges quashed the letter dated 31.5.2000 of the AICTE. However, the High Court left it open to the appellant colleges to challenge the vires of the amended AICTE Regulation vide order dated 22.11.2000.

The appellant colleges preferred writ petitions in the High Court of Madras challenging the amended Regulation dated 16.8.2000 mainly on the ground that it is ultra vires to the AICTE Act as the MCA course which are being run by the appellants colleges do not fall under the definition of technical education as contained in Section 2(g) of the Act and it was also challenged on

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the ground that since the amended Regulation has not been placed before the Houses of Parliament for approval they cannot be enforced.

The aforesaid appeals are filed framing certain questions of law which are mentioned hereunder:-

(a) Whether the colleges affiliated to University are obliged to take separate permission/approval from the AICTE to run classes in Technical Courses in which the affiliated university of the colleges is not required to obtain any permission/approval under the AICTE Act itself?

(b) Whether the course leading to a degree of Master of Computer Applications is a technical course within the purview of the definition of 'technical education' as contained in Section 2(g) of the AICTE Act as it stands today?

(c) Whether the Courts can read something in a Statute, which is not expressly provided in the language of the Act, and/or insert words and/or punctuations, which are not there?

(d) Whether the impugned amendment dated 16.8.2000 of the 1994 Regulations would not take effect without the same being placed before the Parliament?

(e) Whether the Rules or Regulations made under an Act can override or enlarge the provisions of the Act?

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7. In support of the aforesaid questions of law, the learned senior counsel and other counsel on behalf of the appellants have urged the following legal contentions:-

The High Court has erred in holding that even though the University is not required to take permission of the AICTE to start or run a course of technical nature, the colleges affiliated to the University/Universities cannot claim such a right. This interpretation is not the correct legal position for the reason that when the Universities are exempted from taking permission/approval from the AICTE, the High Court in view of the law laid down in **Bharathidasan University's** case (supra) could not have held that the colleges affiliated to their respective universities which are imparting tuition to the students under them by conducting courses are required to take permission or approval from the AICTE.

8. It is further contended that the colleges who have opened the courses in question are affiliated to the universities. They are the controlling authorities with regard to their intake capacity for each course, the standards to be followed for each course, the syllabus of the course, the examination process etc. It is urged that the High Court has failed to consider the relevant aspects of the case namely that it is the university/universities only which awards/confers degree on the students studying the course in question in their affiliated colleges. Thus, for all intents and purposes the courses are being run by the Universities.

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9. It is further urged that if the interpretation given by the High Court with regard to the provisions of the AICTE Act and Regulations is accepted by this Court, it will run contrary to the law laid down by this Court in the **Bharathidasan University case** (supra). In this decision, this Court clearly dealt with the scope and purpose of the University for which it has been established, the relevant para of which reads as under:-

> "**2.** The Bharathidasan University Act, 1981 created the University in question to provide, among other things, for instruction and training in such branches of learning as it may determine; to provide for research and for the advancement and dissemination of knowledge; to institute degrees, titles, diplomas and other academic distinctions; to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on persons who have pursued an approved course of study in a university college or laboratory or in an affiliated or approved college and have passed the prescribed examinations of the University; to confer honorary degrees or other academic distinction under conditions prescribed; and to institute, maintain and manage institutes of research, university colleges and laboratories, libraries, museums and other institutions necessary to carry out the objects of the University etc. In other words, it is a full-fledged University recognized by the University Grants Commission also."

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10. The High Court has noticed that the University was created under the statute "to provide, among other things, for rendering instruction and training to their students of the affiliated colleges in such branches of learning as it may determine; to provide for research and for the dissemination of knowledge; to institute degrees, titles, diplomas and other academic distinctions on persons who have pursued an approved course of study in a university college or

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laboratory and have passed the prescribed examination of the university" in the light of the afore-mentioned judgment pronounced by this Court.

11. It is clear from the Bharathidasan University Act that the colleges affiliated to University impart education in different courses run by University in which the students have to pass the prescribed examination of the University for making themselves eligible for degrees. Therefore, the interpretation given by the High Court in the impugned judgment that the colleges affiliated to the University which are imparting education to their students on behalf of the University will have to seek AICTE's approval for technical courses, though such approval is not required to be obtained by the affiliated colleges as the same will be contrary to the judgment of this Court referred to supra.

12. Further, it is contended that the High Court has erred in not appreciating that the colleges are affiliated to a University, which is their controlling authority and has been established by an Act of State legislature which has given it suitable powers to regulate the procedure of the affiliated colleges regarding their education standards, infrastructure, examinations etc. This can be noticed by perusing various provisions of Bharathidasan University Act, 1981 and especially Section 8, 33 (xvii) and (xviii), 39 and 63, which read as under:-

> "8. **Visitation-** The Chancellor shall have the right to cause an inspection or inquiry to be made, by such person or persons as he may direct, of the University, its buildings, laboratories, library, museums, workshops and equipment, and of any institutions maintained, recognized or approved by, or affiliated to, the

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University, and also of the examinations, teaching and other work conducted or done by the university and to cause an inquiry to be made in respect of any matter connected with the University, The chancellor shall in every case give notice to the University of his intention to cause such inspection or inquiry to be made and the university shall be entitled to be represented thereat.

33. **Statutes**- Subject to the provisions of this Act the statutes may provide for all or any of the following matters, namely:-

….

(xvii) the conditions of recognition of approved colleges and of affiliation to the University of affiliated colleges;

(xviii) the manner in which, and the conditions subject to which a college may be designated as an autonomous college or the designation of such college may be cancelled and the matters incidental the administration of autonomous colleges including the constitution and reconstitution, powers and duties of Standing Committee on Academic Affairs, Staff Council, Boards of Studies and Boards of Examiners;

39. **Admission to University examinations**.- No candidate shall be admitted to any University examination unless he is enrolled as a member of a University college or a laboratory or of an affiliated or approved college and has satisfied the requirements as to the attendance required under the regulations for the same or unless he is exempted from such requirements of enrolment or attendance or both by an order of the Syndicate passed on the recommendation of the Standing Committee on Academic Affairs made under the regulations prescribed. Exemptions granted under this section shall be subject to such condition, as the syndicate may think fit.

63. **Report on affiliated colleges**- The syndicate shall, at the end of every three years from the notified date, submit a report to the Government on the condition of affiliated and approved colleges within the University area. The Government shall take such action on it as they deem fit."

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Therefore, the control upon the affiliated colleges of the University is vested with the University itself and it cannot be said that for certain type of courses the control will be with the AICTE. Further, the High Court has failed to notice the fact that the University to which the member colleges of the appellants belong is controlled by the University Grants Commission, which is a Central Governing Body formed under the Act of Parliament known as University Grants Commission Act of 1956, for controlling the affairs of the University recognized by it. The Bharathidasan University is recognized by the UGC. The relevant provisions of this Act which cover the said University and its colleges are Sections 12, 12A, 13 and 14, which will be extracted in the relevant paragraphs of this judgment. It is further urged that the aforesaid provisions would show that the UGC provisions for controlling the University are applicable and analogous to its affiliated colleges also and therefore to carve out a distinction between the University and its affiliated colleges and not treating the affiliated colleges as an integral part of the University in the impugned judgment by the High Court is not only erroneous in law but also suffers from error in law.

13. The High Court has failed to take into consideration the relevant legal aspect of the cases viz. that the AICTE has been given adequate power to inspect the colleges and University running technical courses, to check the syllabus, standard of education being imparted in them and their examination process under Section 10 of the AICTE Act.

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14. Dr. Rajiv Dhavan, learned senior counsel appearing on behalf of the appellant in CA No.1145 of 2004 submits that the AICTE Act and its Regulations do not apply to University/Universities or constituent colleges and its institutions but according to the AICTE the provisions of AICTE Act would apply to the affiliated colleges of the Universities. He further submits that the issues in questions in this case are-- notification of 6th February, 2001 about the governing body of the member colleges of the appellant Association, notification of 3rd March, 2001 regarding land area and also pointed out the other notifications issued by the AICTE covering a wide canvas namely notifications issued on 9.9.2002 in relation to the governing body, staff etc. of the member colleges of the appellant, notification dated 22.10.2003 regarding the unaided institutions, notification dated 30.10.2003 regarding salary and notification dated 28.10.2003 regarding guidelines for common entrance test(s) for admission to MCA Programmes in the country. In contrast, UGC guidelines are issued on 20th December, 2003 and 29th December, 2003 whereby instructions were given not to issue the advertisement for admission and not to conduct any entrance test for admission to professional programmes until they receive the policy guidelines of the UGC. He submits that the notifications issued by the AICTE amount to AICTE having control over the colleges affiliated by the Universities by displacing UGC norms.

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15. Further, the learned senior counsel places strong reliance on **Bharathidasan University's** case (supra) and contends that the affidavit filed by the UGC does not raise any issue which has been dealt with by this Court in the **Bharathidasan University's** case. He has placed reliance upon paragraph 8 of the **Bharathidasan University's** judgment in support of his submissions, that though legislative intent finds specific mention in the provisions of the Act itself, the same cannot be curtailed by conferring undue importance to the object underlying the Act particularly, when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Further strong emphasis is placed by him at Paragraph 10 of the **Bharathidasan University's** case (supra) wherein this Court, with reference to the provisions of AICTE Act held that the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting technical education or programmes in any of its departments or units. Further, observations are made after careful scanning of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the Universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. Further, he had placed

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reliance on Paragraph 12 of the abovementioned case and contended that the intention of the Parliament was very clear while enacting the AICTE Act as it was fully alive of the existence of the provisions of the UGC Act which was in full force and its effect and which specifically dealt with coordination and determination of standards at university level of institutions as well as institutions for higher studies. Further, with reference to definition of "technical institution" as defined in Section 2(h) of the AICTE Act, the Parliament has taken special care to make conspicuous and deliberate mention of the universities to highlight wherever and whenever the AICTE alone was expected to interact with the university, its departments as well as its constituent institutions. In this regard, he also placed strong reliance upon Section 12A of the UGC Act under Chapter III which deals with the powers and functions of the University Grants Commission. Clause (a) of Section 12A speaks of affiliation with its grammatical variations and includes in relation to a college, recognition of such college, Association of such college with admission of such college to the privileges of a university. Clause (d) speaks of qualification which means a degree or any other qualification awarded by a University. Also strong reliance is placed upon sub-section (4) of Section 12A which authorizes UGC to conduct an inquiry in the manner provided under the Regulations, if the Commission is satisfied after providing reasonable opportunity to such colleges that such college contravenes the provisions of sub-section (3) of the above Section of the Act. In such case, the Commission may, with the previous

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approval of the Central Government pass an order prohibiting such college from presenting any students then undergoing such course of study therein to any university for the award of the Degree for the qualification concerned. Sub-section (5) of Section 12A further provides for the Commission to forward a copy of the order made by it under sub-section (4) to the University concerned, and on and from the date of receipt by the University of a copy of such order, the affiliation of such college to such University shall, in so far as it relates to the course of study specified in such order, stand terminated and on and from the date of termination of such affiliation for a period of three years thereafter affiliation shall not be granted to such college in relation to such similar course of study by that or any other University. Sub-Section (6) speaks that in case of termination of affiliation of any college under sub-section (5), the Commission shall take all such steps as it may consider appropriate for safeguarding the interests of the students concerned. Sub-section (7) further states that regulations made for the purpose of the aforesaid provisions of Section 12A of the UGC Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

16. Further, reliance has been placed by him upon Section 12B of the UGC Act which confers power on the Commission to pass an order of prohibition regarding giving any grant to a University declared by the Commission not fit to receive such grant. This provision was inserted in the UGC Act through an

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Amendment Act, 1972 (33 of 1972) which came into force on 17.6.1972. Further, reliance was also placed upon Section 13 regarding the power of inspection upon the UGC for the purpose of ascertaining the financial needs of the university or its standards of teaching, examination and research.

17. Dr. Dhavan, learned senior counsel for the appellant placing reliance upon the aforesaid provisions of the UGC Act, submits that the provisions of the UGC Act will regulate and control the functions of the university as defined in terms of Section 2(f) of the UGC Act and also its affiliated colleges. He has placed reliance upon the observations made by this Court in Para 19 of **Parashavananth Charitable Trust & Ors.** v. **AICTE**[2]. In the written submission submitted by the appellant's counsel with reference to UGC affidavit filed in this Court he has placed reliance upon Para 20 of the case referred to supra wherein it is observed by this Court in the said decision that the AICTE created under the Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting the technical education or programmes in any of their departments or units. He further submitted that a careful scanning of the provisions of the AICTE Act and the provisions of UGC Act, 1956 in juxtaposition it is observed that the said provision will show that the role of AICTE with regard to the university/universities is only advisory, recommendatory and one of providing

[2] 2013 (3) SCC 385

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guidance, to subserve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself.

18. Further, it is stated with reference to the UGC's affidavit on the question of affiliated colleges that it is very mechanical; and is simply gratuitous and without foundation, it adds affiliated colleges of a university to the definition of technical institution. Paragraph 23 of its affidavit is without any foundation and it has stated that the affiliated colleges are distinct and different than the constituent colleges of the University, therefore, it cannot be said that constituent colleges also include affiliated colleges. The learned senior counsel further submitted that the assertion made by the UGC that the UGC Act does not have any provision to grant approval to technical institution, is facile. It is stated in its written submission that the AICTE norms will apply through UGC as observed by this Court in **Bharathidasan University** and **Parshvanath Charitable Trust** cases (supra). A reading of the notifications referred to supra issued by the AICTE shows that regulation of governing council, infrastructure such as land and in matters of salary and employment of staff in the affiliated colleges are totally without jurisdiction and contrary to the decisions of this Court. Further, strong reliance is placed by learned senior counsel Dr. Dhavan that issues which are raised in this case are answered in the **TMA Pai Foundation v. State of Karnataka.**[3]

[3] (2002) 8 SCC 481

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19. The learned senior counsel submitted that Section 14 of the UGC Act provides for consequences of failure by Universities to comply with recommendations of the Commission which provides that if any University grants affiliation in respect of any course of study to any college referred to in sub-section (5) of Section 12A in contravention of the provision of that sub-section or fails within a reasonable time to comply with any recommendation made by the Commission under Section 12 or Section 13 or contravenes the provisions of any rule made under sub-section 2(f) or 2(g) of Section 25, or of any regulation made under clauses (e), (f) or (g) of Section 26, the Commission after taking into consideration the cause, if any, shown by the University or such failure or contravention, may withhold from the University the grants proposed to be made out of the fund of the Commission. This clearly goes to show that there is control of the functions of the university by the UGC under the provisions of UGC Act, Rules and Regulations. Therefore, the learned senior counsel Dr. Dhavan submits that the role of AICTE under the provisions of the Act is only advisory and recommendatory in nature and it cannot have any administrative or any other control upon the colleges which are affiliated to the universities which fall within the definition of Section 2 (f) of the UGC Act including the grant of approval for opening of a new course in relation to technical education including MCA.

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20. Further, after referring to the earlier decisions of this Court, namely, **State of Tamil Nadu v. Adhiyaman Education and Research Institute**[4], **Jaya Gokul Educational Trust v. Commissioner and Secretary to Government High Education Department, Thiruvananthapuram**[5] and **Parshvanath Charitable Trust (**supra), wherein this Court has referred to the provisions of UGC Act and made certain observations that if there is conflict between two legislations namely the State Legislation and the Central Legislation, under clause (2) of Article 254 of the Constitution, the State Legislation being repugnant to the Central legislation would be inoperative as the State Law encroaches upon Entry 66 of Union List under which AICTE Act of 1987 is enacted by the Parliament and the Bharathidasan University Act, 1981 enacted by the State Legislature under Entry 25 of the Concurrent List. The observations and conclusions arrived at in those cases that the provisions of AICTE Act must prevail over the State enactments is totally untenable in law. Learned senior counsel submits that the legislation can be derived from a single Entry from the List mentioned in VIIth Schedule of the Constitution. For a single Legislation that is AICTE Act, the Parliament cannot operate under both, List I as well as List III. He further submits that the phrase "subject to' used in Entry 25 of List III of VIIth Schedule limits the power of both the Union as well as the State. Therefore, reference to Article 254 in those judgments by this Court in the cases referred to supra are wholly inapplicable to the fact situation

[4] (1995) 4 SCC 104
[5] (2000) 5 SCC 231

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in this case on the question of repugnancy under Article 254 (2) of the Constitution as it does not arise for the reason that the law in relation to establishment of Bharathidasan University and other University in respect of which member colleges of the appellant Association are affiliated to, is legislated by the State legislature and the AICTE Act is enacted by the Parliament under Entry 66 of List I. Therefore, the question of repugnancy between the two enactments referred to supra do not arise at all since repugnancy under Article 254(2) of the Constitution would accrue only in relation to the law legislated by the Parliament and the State legislature from the entries of the concurrent list of VII schedule.

21. Learned senior counsel Dr. Dhavan has also placed strong reliance upon the report of Kothari Commission (1964-1966) which shows that the AICTE Act should be held to cover only non-university education and the said report emphasizes upon the importance of education and universities and further emphasizes the importance of autonomy of the university and finances of the universities and the role of UGC. Further, he placed reliance upon the National Policy of Education which envisages vesting of statutory authority for planning, formulation and the maintenance of norms and standards in the education. Therefore, he submits that the AICTE cannot have any kind of control or regulation for the functioning of the colleges affiliated to the universities which

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are governed by the provisions of the respective Universities Act and the UGC Rules and Regulations.

22. Mr. Prashant Bhushan, the learned counsel for the appellants in the connected appeals contended that in the impugned judgment, the High Court has erred in holding that the Master of Computer Applications is a technical education course and is therefore covered by the definition of 'technical education' as defined in Section 2(g) of the AICTE Act, which is extracted in the relevant portion of the judgment. It is further contended by learned counsel that the definition of 'technical education' in the Act as it stands today is an exclusive definition and does not cover the courses of Master of Computer Applications imparted by the colleges run by the appellant colleges. The Central Government has been given power to include any other area or course/courses in its purview by issuing an official notification to be published in the Official Gazette to this effect. Such notification has not been issued so far by the Central Government. Therefore, he submits that when the MCA course is not covered within the definition of 'technical education' it does not come under the purview of the AICTE Act at all and the question of the AICTE exercising its power on the institutions/colleges running MCA course does not arise.

23. Further, Mr. Prashant Bhushan, the learned counsel has vehemently urged that the High Court has committed serious error in reading a comma in between

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the words ‘engineering’ and ‘technology’ when it is one word in the statute and is mentioned as “engineering technology” in the definition of ‘technical education’ as contained in Section 2(g) of the AICTE Act. The High Court has committed serious error in giving such an erroneous reading of the aforesaid provision of Section 2(g) and enlarging the scope of the Act and extending its sphere to the colleges involved in these proceeding which was not intended by the Parliament. Therefore, the learned counsel submits that the interpretation made by the High Court on the phrase ‘engineering technology’ by reading the words ‘engineering’ and ‘technology’ to bring within the definition of the “technical education” as defined in Section 2(g) of the AICTE Act, is not only in contravention of the settled principles of interpretation of statutes but also in contravention to the settled position of law as laid down by this Court in catena of cases.

24. It is further contended by the learned counsel that this Court has held in number of cases that the courts cannot add or delete words or punctuations in a statute. It is also well settled proposition of law that the court shall gather the meaning of the statute by its simple and plain reading specially where there is no ambiguity in the language used in the definition provision and it should be construed in its literal sense.

25. It is further urged by him that the High Court has failed to take into consideration that the amendment dated 16.8.2000, i.e. deletion of Regulation

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No. 2(2) and addition of 8(c) and 8(iv) of Regulations of 1994 could not take effect unless the same was placed before the Parliament as required under Section 24 of the AICTE Act, wherein the amended Regulations have been framed. The amendments must be laid before both the Houses of the Parliament which is mandatory as provided under the aforesaid provision of the Act. The authority which frames Regulations as provided under Section 23 could not be validly exercised unless such Regulations are laid before both the Houses of the Parliament at the earliest opportunity. The very amendment dated 16.8.2000 of Regulations 2(2), 8(c) and 8(iv) has been kept ignoring the mandatory provision of Section 24 and therefore the impugned amendment to the aforesaid Regulations has been rendered invalid and void ab initio in law. This aspect of the matter has not been considered by the High Court while interpreting the said provisions in holding that as a result of the amendment of the aforesaid Regulations, the provisions of AICTE Act will be applicable to the courses which are being conducted by the colleges affiliated to the University/Universities. This approach of the High Court is erroneous and therefore the same cannot be allowed to sustain in law.

Further, it is contended by the learned counsel that the High Court has failed to examine the above said legal aspect of the amendment to the Regulations of AICTE in the year 2000 enlarging the scope of the Act to areas for which it is not meant. Such amendment in Regulations will be ultra vires to the Act itself and cannot be sustained on this count alone. This Court in several

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cases has laid down the legal principle that the Rules and Regulations made under the Act cannot override or enlarge the object or purpose of the Act.

26. The learned counsel further contended that 7 out of 10 colleges of the appellants herein in the connected appeals were granted approval by the Bharathidasan University under the Bharathidasan University Act, 1981 before the amended AICTE Regulations, 1994 came into force and undoubtedly all the colleges of the appellants herein got approval from the above said University and started running MCA course much before the amended Regulations of 2000 came into force. Therefore, the said regulations cannot be applied to the appellants' colleges. Further, the provision of Section 10 (k) of the AICTE Act, which deals with power and functions of the Council, clearly states that the council may "grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned".

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27. The learned counsel further contends that the Bharathidasan University is regulated and controlled by the UGC constituted under the provisions of the UGC Act, Rules and Regulations. The relevant provisions of the UGC Act cover the institutions and its constituents colleges as well as its affiliated colleges which are being run by the appellants herein and similarly placed colleges under Section 12, 12A, 13 and 14 of the UGC Act.

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The aforesaid provisions of UGC Act would show that those provisions would speak of Regulations of the university that is applicable and analogous to its affiliated colleges also.

28. Further, the learned counsel placing strong reliance upon the law laid down in the judgment of this Court in **Bharathidasan University** case (supra) wherein this Court has specifically held after referring to certain provisions of the AICTE Act and earlier judgments of this Court in **Adhiyaman Education and Research Institute** (supra) and **Jaya Gokul Educational Trust** (supra) that the AICTE is not intended to be controlling or supervising authority over the University merely because the University is also imparting courses of "Technical Education". Further, it was held that Regulation No.4 insofar as it compels the university to seek for and obtain prior approval and not start any new department or course or programme in Technical Education and empower itself to withdraw such approval, in a given case of contravention of the Regulation No.12, is directly opposed to and inconsistent with the provisions of Section 10 (k) of the AICTE Act and consequently void and unenforceable in law.

Placing strong reliance on the observations made in para 14 of said judgment and after referring to the Regulations, this Court held that the AICTE could not have been made to bind universities/UGC within the confines of the powers conferred upon it. It cannot be enforced against or to bind a university

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as a matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions. The said observation also applies in the present case that the Regulations have no application to the MCA course which is being run by the colleges of the appellants herein.

29. It is further contended by the learned counsel that Bharathidasan University which was incorporated under the provisions of UGC Act, 1956 is a controlling authority of its affiliated colleges for all its courses including MCA course. The University confers degrees on the students studying in its affiliated colleges. Thus, for all intents and purposes, the courses are run by the University. In fact in **Bharathidasan University's** case (supra) at paragraph 2, this Court has dealt with the scope and purpose of the University. It says that the University has been created "to provide among other things, instruction and training in such branches of learning as it may determine; to provide for research and for the dissemination of knowledge; to confer degrees, titles, diplomas and other academic distinctions on persons who have pursued an approved course of study in a university college or laboratory or in an affiliated or approved college and have passed the prescribed examination of the University". Thus, it is clear that the colleges are affiliated to the university to impart education in different courses run by the university in which the students have to pass the prescribed examination of the University for making

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themselves eligible to obtain degrees. Therefore, any provision or direction requiring the colleges affiliated to university or imparting education to the students on behalf of the university to seek AICTE's approval for conducting MCA course when no such approval is required for the university for the aforesaid purpose will be contrary to the judgment rendered in **Bharathidasan University's** case (supra).

30. Learned counsel placed strong reliance upon the counter affidavit filed by the AICTE on 16.1.2013 in Civil Appeal No.1145 of 2004. Subsequent to the filing of the present appeal in 2004, the AICTE framed new Regulations in 2005 and 2006 which provide that "technical institution" means institution conducting the course, inter alia, in the field of technical education, training and research in engineering, technology including MCA. The Regulations of 2005 and 2006 further provide that not only new technical institutions but even existing technical institution cannot conduct any technical course without prior approval of the AICTE. The learned counsel submitted that it is more than apparent that the said Regulations have been specifically framed to counter the challenges posed by the appellant institutions to their authorities and power to regulate the course of MCA. Also after taking clues from the impugned judgment in **Bharathidasan University's** case they had taken care that there is comma in between 'engineering' and 'technology' in the definition of "technical institution". Therefore, it is submitted that the said Regulation which

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has not only come into force much after the introduction of MCA course in the appellant colleges but also after the impugned judgment in this appeal and after filing of the appeals, cannot be made applicable to the colleges of the appellant herein who are running MCA course since this will result in giving the amended Regulations retrospective effect as the Regulations do not provide for it.

31. On the other hand, Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of respondent AICTE, sought to justify the impugned judgment in these appeals by placing strong reliance upon the dictionary meaning of the expression "engineering" and "technology" from the following dictionaries, namely Webster's Comprehensive Dictionary, Wharton's Law Lexicon, Encyclopedic Law Lexicon, The New Shorter Oxford English Dictionary, Advanced Law Lexicon, P Ramanatha Aiyar's the Law Lexicon and Stroud's Judicial Dictionary of Words and Phrases. After a careful reading of the meanings of 'technical engineering' which speaks of the art or source of making practical applications of the knowledge of pure science as physics, chemistry, etc. as in the construction of engines, bridges, buildings, mines, chemical plants and the like, he submits that the expression 'technology' by itself is very wide and also comprehends 'engineering'. The Institutes of Technology Act, 1961 envisages imparting of education in technology and Section 6(1) of the Act empowers it to provide instruction and research in such branches of engineering and technology, science and arts as the institute may

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think fit. Further, the National Institute of Technology Act, 2007 envisages certain institutions of national importance to provide for instructions and research in branches of engineering, technology, management, education, sciences and arts. He further contends that though one does not find a comma, between 'engineering' and 'technology' in Section 2(g) of the AICTE Act, the composition of the council envisaged by Section 3(4)(f)(iii) and (iv) and Section 13(1)(iii) and (iv) in relation to establishment of Board of Studies would clearly go to show that engineering and technology are two separate branches of study. Even if, 'engineering technology' is considered to be a single expression that will not reduce the width and scope of the subject, it will nevertheless indicate both the branches of study of engineering and technology and will cover both the subjects. Therefore, the existence or absence of comma between the two words is of no significance and the crucial issue is delineation of the scope of 'engineering technology'. Existence and absence of comma and its scope should be determined with reference to the entire object and purpose of the Act that is, the proper planning and coordinated development of the "technical education" system throughout the country. Therefore, the regulation and proper maintenance of norms and standards in the "technical education" system in the Preamble of AICTE Act is very important.

32. Further, strong reliance was placed by the learned senior counsel for the respondent upon **Parshvanath Charitable Trust case** (supra) wherein the

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course content of the three years MCA course with six semesters would clearly go to show that the course undertaken by the colleges affiliated to the Universities in the cases is very wide and covers the fundamentals of computer engineering including software engineering as well as the technology of computer system. Section 2(g) of the AICTE Act reads as under:-

> "Technical Education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;"

The expression "Engineering Technology" in Section 2(g) of AICTE Act would clearly comprehend within its scope, the MCA course offered by the appellant colleges. The contention on behalf of the appellants herein is that the colleges affiliated to the universities are outside the scope and purview of the AICTE Act in relation to obtaining approval from the AICTE for establishing technical institution or introducing new course or programme as required under Section 10(k) read with Section 2(h) of the Act. Since the definition of "technical institution" makes no mention of colleges providing technical education which are affiliated to the universities thereby expressly excluding such colleges from the definition of "technical institution" under the AICTE Act as they are covered under the affiliated colleges of the universities, the contention made above is not tenable in law. Also, the said definition, based on the judgment of this Court in **Bharathidasan University's** case referred to

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supra and reliance placed upon Kothari Commission Report by the learned senior counsel on behalf of the appellant member colleges, is wholly untenable in law for the reasons mentioned in the said case. In the earlier judgments of this Court, namely, **Adhiyaman Education and Research Institute** (supra) and **Jaya Gokul Educational Trust** (supra) referred to in Paragraph 11 of the **Bharathidasan University case**, the powers of AICTE under the AICTE Act and Regulations framed thereunder, are lucidly explained and it is held that the provisions of the UGC Act enacted by the Parliament are also applicable to the university under State enactments in so far as technical education is concerned. Learned senior counsel submits that in **Bharathidasan University's** case the earlier judgments in **Adhiyaman Education and Research Institute** and **Jaya Gokul Educational Trust** were noted but their correctness was not considered. Also, the **Bharathidasan University** case did not make any observation about their actual accuracy and in the said case this Court did not go into the question as to whether the AICTE Act would prevail over the UGC Act or the effect of competing entries in the three lists of VII Schedule of the Constitution. On the other hand, a bare perusal of **Adhiyaman Education and Research Institute** and **Jaya Gokul Educational Trust** cases would clearly show that this Court was considering the applicability of AICTE Act to the engineering colleges affiliated to universities and whose courses included programmes of Engineering and Computer Sciences. Also, in both the cases, the two Judge Bench examined the competing entries in the List 1 and List III in the VIIth

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Schedule of the Constitution and held that the State enactment-UGC Act would not prevail over the AICTE Act and rather to the extent of repugnancy the enactment of the UGC Act would be impliedly repealed. It was held in those cases that power of universities to affiliate such colleges would depend on compliance of norms and standards fixed by the AICTE and the approval granted by the AICTE and also that if AICTE grants approval to such colleges then they need not obtain the approval of the State Government and the universities should not insist upon obtaining the approvals from the State Government. Heavy reliance has been placed on the two judgments of this Court in **Adhiyaman Education and Research Institute** case (supra) and **Jaya Gokul Education Trust** case (supra).

The relevant portions of the **Adhiyaman Education and Research Institute** case are extracted hereunder:

> **"12.** The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from

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laying down standards above the said minimum standards. We will deal with this argument at its proper place.

27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for introduction of new courses or programmes, taking steps to prevent commercialisation of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the constitution of the Council and its Executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the Central Act. What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court.

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

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(*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 or 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

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disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

Also, the relevant paragraphs of the **Jaya Gokul Education Trust** case are extracted hereunder:

"**16. ……** It was held that the AICTE Act was referable to Entry 66 List I of the Constitution of India, relating to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". After the constitutional amendment (Forty-second Amendment Act, 1976) Entry 25 of List III in the Concurrent List read:

"Education, included *technical education*, medical education and universities, *subject to the provisions* of Entries 63, 64, 65 and *66* of List I; vocational and technical training of labour."

Thus, the State law under Entry 23 of List III would be repugnant to any law made by Parliament under Entry 66 of List I, to the extent of inconsistency. The Tamil Nadu Act was of 1976 and the University Act was of 1923 and were laws referable to List III. Whether they were pre-constitutional or post-constitutional laws, they would be repugnant to the AICTE Act passed by Parliament under Entry 66 of List I. In the above case this Court referred to the various provisions of the AICTE Act and on the question of repugnancy held (see SCC p. 120) as follows: (SCC para 22)

"Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the

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basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution."

17. ……. It was held (see SCC p. 126) that Section 10 of the Central Act dealt with various matters (including *granting approval for starting* new technical institutions), and that so far as these matters were concerned

"it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable". (SCC pp. 126-27, para 30)

Thus, in the two passages set out above, this Court clearly held that because of Section 10(k) of the Central Act which vested the powers of granting approval in the Council, the T.N. Act of 1976 and the University Act, 1923 could not deal with any questions of "approval" for establishment of technical institutions. All that was necessary was that under the Regulations, the AICTE Council had to consult them.

19. …… In our opinion, even if there was a State law in the State of Kerala which required the approval of the State Government for establishing technical institutions, such a law would have been repugnant to the AICTE Act and void to that extent, as held in *T.N. case.*

22. ….. If, indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in *T.N. case* there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities concerned. The State-Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in *T.N. case* it was held that the University could not impose any conditions

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> inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.
>
> **30.** Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations."

33. The learned senior counsel further submits that the question of law which was being considered was whether the universities created in the Bharathidasan University Act, 1981 should seek prior approval of the AICTE to start a department or imparting a course or a programme in technical education or technical institution as an adjunct to the university itself to conduct technical courses of its choice. In that case, this Court was not concerned with the question of starting of a college/technical institution by private persons which were merely affiliated to the university for the purposes of pursuing courses of study and participating in examinations for degree/diploma.

34. By perusal of the observations made in **Bharathidasan University's** case supra upon which strong reliance was placed by the learned senior counsel for the appellant, would show that this Court referred to Section 2(h) of the AICTE Act where the definition of 'technical institution' excludes university from its scope. In the said judgment, this court has observed that the AICTE Act

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maintains a complete dichotomy between a 'University' and a 'Technical Institution'. It was further submitted that the expression 'constituent institutions' as used in paragraphs 12 and 15 of the **Bharathidasan University's** judgment refers to technical institutions which are started by the university itself or as an adjunct to the university or affiliated colleges or are not started, managed and governed by the university itself, whereas constituent institutions are started, managed and governed by the university itself under powers given by the university enactment. In view of the aforesaid factual position he submits that issues in relation to coverage of affiliated colleges imparting technical education under Section 10(k) of AICTE Act stand decided and concluded by the judgments in **Adhiyaman Education and Research Institute** and **Jaya Gokul Educational Trust** cases whereas the **Bharathidasan University's** case deals with the department and constituent institutions and units of the university itself. It was further submitted that the contention of the appellant colleges that they do not require prior approval from the AICTE since they are not covered by Section 10(k) read with Section 2(g) & (h) of the Act, is not tenable in law. This Court took care to make observations that universities have to maintain the norms and standards fixed by the AICTE, even though they do not need prior approval for starting a department or constituent institutions and units. Further, strong reliance was placed by the learned senior counsel upon the provisions of Sections 10, 11 and 22 of the AICTE Act. A careful analysis of the said provision would go to show the role

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of inspection conferred upon the AICTE vis-à-vis Universities which is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system in the country so as to conform to the standards laid down by it. Therefore, learned senior counsel for the respondent AICTE submits that the contention urged by Dr. Dhavan, with respect to the member colleges of the appellant and learned counsel Mr.Prashant Bhushan in connected appeals that the AICTE, except bringing to the notice of UGC regarding standards to be maintained by the colleges affiliated to the universities in relation to technical education, has no role to play or it has no power to regulate or control such colleges, is wholly untenable in law and therefore the submissions made in this regard cannot be accepted.

35. On the basis of the factual and rival legal contentions urged on behalf of the parties the following points would arise for consideration of this Court in these civil appeals:--

(1) Whether the colleges affiliated to a university comes within the purview of exclusion of the definition of "Technical Institution" as defined under Section 2(h) of the AICTE Act, 1987?

(2) Whether the AICTE has got the control and supervision upon the affiliated colleges of the respective universities of the member colleges of the appellant in C.A.No.1145/2004 and the appellants in connected appeals?

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(3) Whether the MCA course be construed as technical education in terms of definition under section 2(g) of the AICTE Act?

(4) Whether the Regulation 8(c) and 8(iv) by way of amendment in the year 2000 inserting the words 'MBA and MCA' before Architecture and Hotel Management courses is applicable to the concerned colleges of the appellants?

(5) Whether non placement of the amended Regulations before Houses of the Parliament as required under Section 24 of the AICTE Act is vitiated in law?

(6) Whether the law laid down by this Court in **Bharathidasan University's case**, **Adhiyaman Education and Research Institute case** and **Jaya Gokul Educational Trust** case is applicable to the fact situation of the concerned colleges of the appellants?

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Answer to the points framed above

36. Point Nos. 1 and 2 are answered in favour of the appellants by assigning the following reasons:-

For this purpose, it would be very much necessary to extract the definition of 'technical institution', 'university' and 'technical education' in Sections 2(h), 2(i) and 2(g) respectively read with Section 10(k) of the AICTE

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Act and also the definition of 2(f) of the UGC Act read with Sections 12, 12A, 12B, 12(2) (c) of the UGC Act.

Section 2 (f), (g), (h) and (i) of the AICTE Act read as:

"2. **Definitions.**

……..

(f) "*Regulations*" means regulations made under this Act.

(g) "*Technical education*" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(h) "*Technical institution*" means an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions:

(i) "*University*" means a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956) and includes an institution deemed to be a University under section 3 of that Act.

10. **Functions of the Council**.- It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and management and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

……

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned:"

Further, the relevant sections of University Grants Commission Act, 1956 read as under:

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"2.**Definitions**.

……..

(f) "*University*" means a University established or incorporated by 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.

12. **Functions of the Commission**- It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may-

(a) inquire into the financial needs of Universities;

(b) allocate and disburse, out of the Fund of the Commission, grants to Universities established or incorporated by or under a Central Act for the maintenance and development of such Universities or for any other general or specified purpose:

(c) allocate and disburse, out of the Fund of the Commission, such grants to other Universities as it may deem 1[necessary or appropriate for the development of such Universities or for the maintenance, or development, or both, of any specified activities of such Universities] or for any other general or specified purpose: Provided that in making any grant to any such University, the Commission shall give due consideration to the development of the University concerned, its financial needs, the standard attained by it and the national purposes which it may serve, 2[(cc) allocate and disburse out of the Fund of the Commission, such grants to institution deemed to be Universities in pursuance of a declaration made by the Central Government under section 3, as it may deem necessary, for one or more of the following purposes, namely:-

(i) for maintenance in special cases,
(ii) for development,
(iii) for any other general or specified purpose;]

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1[“(ccc) establish, in accordance with the regulations made under this Act, institutions for providing common facilities, services and programmes for a group of universities or for the universities in general and maintain such institutions or provide
for their maintenance by allocating and, disbursing out of the Fund of the Commission such grants as the Commission may deem necessary”.]

(d) recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

(e) advise the Central Government or any State Government on the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the
Consolidated Fund of the State, as the case may be;

(f) advise any authority, if such advice is asked for, on the establishment of a new University or on proposals connected with the expansion of the activities of any University;

(g) advise the Central Government or any State Government or University on any question which may be referred to the Commission by the Central Government or the State Government or the University, as the case may be;

(h) collect information on all such matters relating to University education in India and other countries as it thinks fit and make the same available to any University;

(i) require a University to furnish it with such information as may be needed relating to the financial position of the University or the studies in the various branches of learning undertaken in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;

(j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

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12A. **Regulation of fees and prohibition of donations in certain cases-**

(1) In this section-

(a) "affiliation", together with its grammatical variation, includes, in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of, a university;

(b) "college" means any institution, whether known as such or by any other name which provides for a course of study for obtaining any qualification from a university and which, in accordance with the rules and regulations of such university, is recognized as competent to provide for such course of study and present students undergoing such course of study for the examination for the award of such qualification.

(c) "prosecution" in relation to a course of study, includes promotion from one part or stage of the course of study to another part or stage of the course of study.

(d) "qualification" means a degree or any other qualification awarded by a university.

(e) "regulations" means regulations made under this Act.

(f) "specified course of study" means a course of study in respect of which regulation of the nature mentioned in sub-section (2) have been made.

(g) "student" includes a person seeking admission as a student;

(h) "university" means a university or institution referred to in sub-section (1) of Section 22.

(2) Without prejudice to the generality of the provisions of section 12 if, having regard to-

…….

(c) the minimum standards which a person possessing such qualification should be able to maintain in his work relating to such activities and the consequent need for ensuring, so far as may be, that no candidate secures admission to such course of study by reason of

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economic power and thereby prevents a more meritorious candidate from securing admission to such course of study; and

(d) all other relevant factors, the commission is satisfied that it is necessary so to do in the public interest, it may, after consultation with the university or universities concerned, specify by regulations the matters in respect of which fees may be charged and the scale of fees in accordance with which fees shall be charged in respect of those matters on and from such date as may be specified in the regulation in this behalf, by any college providing for such course of study from, or in relation to, any student in connection with his admission to, and prosecution of, such course of study;……..

13. **Inspection**.- (1) For the purpose of ascertaining the financial needs of a University or its standards of teaching, examination and research, the Commission may, after consultation with the University, cause an inspection of any department or departments thereof to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Commission shall communicate to the University the date on which any inspection under sub-section (1) is to be made and the University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Commission shall communicate to the University its views in regard to the results of any such inspection and may, after ascertaining the opinion of the University, recommend to the University the action to be taken as a result of such inspection.

(4) All communications to a University under this section shall be made to the executive authority thereof and the executive authority of the University shall report to the Commission the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in sub-section (3).

14. **Consequences of failure of Universities to comply with recommendations of the Commission**- If any University [grants affiliation in respect of any course of study to any college referred to in sub-section (5) of section 12-A in contravention of the provisions of that sub-section or] fails within a reasonable time to com-

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> ply with any recommendation made by the Commission under section 12 or section 13 [or contravenes the provisions of any rule made under clause (f) or clause (g) of sub-section (2) of section 25, or of any regulation made under clause (e) or clause (f) or clause (g) of section 26,] the Commission, after taking into consideration the cause, if any, shown by the university [for Such failure or contraventions] may withhold from the University the grants proposed to be made out of the Fund of the Commission."

37. In **Bharathidasan University's** case, the question which fell for consideration is referred to in the first paragraph of the judgment upon which strong reliance is placed by the learned senior counsel for the respondent Mr. Rakesh Dwivedi to substantiate his submission that the ratio laid down in **Bharathidasan University's** case (supra) is in relation to the question raised regarding the university created under the Bharathidasan Universities Act to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the university itself for conducting technical courses of its choice and selection. Therefore, the ratio laid down in the said case has no application to the fact situation of these education institutions/colleges which are run by the appellants herein though they are affiliated to their respective universities. Therefore, he placed strong reliance upon the ratio laid down by this Court in **Adhiyaman Education and Research Institute** and **Jaya Gokul Educational Trust's** cases wherein this Court has clearly enunciated the law after elaborately adverting to the legislative entries in List I Entry 66 and List III Entry 25 regarding the respective legislative competence of the Parliament and the State Legislature. To substantiate his

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contention, he claimed that the AICTE Act is enacted by the Parliament under Entry 66 of List I and the Universities are established under the provisions of Bharathidasan University Act which was enacted by the State Legislature from Entry 25 of List III. The Bharathidasan University Act, fell for consideration of this Court in the above said judgments. Therefore, in those cases this Court had clearly held that the AICTE Act is relatable to Entry 66 and must prevail over the State Enactments covered in those cases. Therefore, the said decisions are applicable to the fact situation of this case. This contention is rightly rebutted by the learned senior counsel Dr. Rajiv Dhavan and Mr. Prashant Bhushan, the learned counsel appearing on behalf of the appellants in both set of appeals inviting our attention to the various provisions of the AICTE Act and UGC Act with reference to the principles laid down in **Bharathidasan University's case.** Also, the relevant paragraphs from the decision rendered in **T.M.A. Pai Foundation** (supra) will be referred to in this judgment. With reference to the above said rival legal contentions, it will be worthwhile to refer to the principle laid down in **Bharathidasan University** and **Parashavananth Charitable Trust** cases (supra). The relevant paragraphs of **Bharathidasan University** case (supra) read as under:

> "**8.** We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when

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the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law. In the Statement of Objects and Reasons for the AICTE Act, it is specifically stated that AICTE was originally set up by a government resolution as a national expert body to advise the Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, "[h]owever, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE" and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act.

9. Section 2(*h*) defines "technical institution" for the purposes of the Act, as follows:

"2. (*h*) 'technical institution' means an institution, not being a university, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;"

10. Since it is intended to be other than a university, the Act defines in Section 2(*i*) "university" to mean a university defined under clause (*f*) of Section 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a university under Section 3 of the said Act. Section 10 of the Act enumerates the various powers and functions of AICTE as also its

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duties and obligations to take steps towards fulfilment of the same. One such as envisaged in Section 10(1)(*k*) is to "grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned". Section 23, which empowers the Council to make regulations in the manner ordained therein emphatically and specifically, mandates the making of such Regulations only "not inconsistent with the provisions of this Act and the Rules". The Act, for all purposes and throughout maintains the distinct identity and existence of "technical institutions" and "universities" and it is in keeping tune with the said dichotomy that wherever the university or the activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical institutions and wherever the university is to be left out and not to be roped in merely refers to the technical institution only in Sections 10, 11 and 22(2)(*b*). It is necessary and would be useful to advert to Sections 10(1)(*c*), (*g*), (*o*) which would go to show that universities are mentioned alongside the "technical institutions" and clauses (*k*), (*m*), (*p*), (*q*), (*s*) and (*u*) wherein there is conspicuous omission of reference to universities, reference being made to technical institutions alone. It is equally important to see that when AICTE is empowered to inspect or cause to inspect any technical institution in clause (*p*) of sub-section (1) of Section 10 without any reservation whatsoever, when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Section 11 of the Act. Clause (*t*) of sub-section (1) of Section 10 envisages AICTE to only advise UGC for declaring any institution imparting technical education as a deemed university and not do any such thing by itself. Likewise, clause (*u*) of the same provision which envisages the setting up of a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme. All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its

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departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-à-vis universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited attention and consideration in their proper and correct perspective. The ultra-activist view articulated in *M. Sambasiva Rao case* on the basis of supposed intention and imagined purpose of AICTE or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and universities irrelevant or even as non-entities by making AICTE a superpower with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them."

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38. Paragraphs 19 and 20 of **Parashavananth Charitable Trust's** case (supra) read as hereunder:

"19. Section 10 of the AICTE Act enumerates various powers and functions of AICTE as also its duties and obligations to take steps towards fulfillment of the same. One such power as envisaged in Section 10(1)(k) is to "grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned". It is important to see that the AICTE is empowered to inspect or cause to inspect any technical institution in clause (p) of sub-section (1) of Section 10 without any reservation whatsoever. <u>However, when it comes to the question of</u>

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universities, it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or caused to be made of any department or departments only and that too, in such a manner as may be prescribed, as envisaged in Section 11 of the AICTE Act.

20. All these vitally important aspects go to show that the Council (AICTE) created under the AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting teaching in technical education or programmes in any of their departments or units. A careful scanning of the provisions of the AICTE Act and the provisions of the University Grants Commission Act, 1956 in juxtaposition will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and one of providing guidance, thereby subserving the cause of maintaining appropriate standards and qualitative norms and not as authority empowered to issue and enforce any sanction by itself. Reference can be made to the judgments of this Court in the case of *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* [(2012) 2 SCC 425], *State of Tamil Nadu v. Adhiyaman Educational & Research Institute* [(1995) 4 SCC 104] and *Bharathidasan Univesity v. All India Council for Technical Education* [(2001) 8 SCC 676]"

(emphasis supplied)

The underlined portions from the said decision referred to supra would make it clear that the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies which they are assigned to perform. Further, the AICTE Act does not intend to be an authority either superior or to supervise or control the universities and thereby superimpose itself upon the said universities merely for the reason that it is laying down certain teaching standards in technical education or programmes formulated in any of the department or units. It is evident that while enacting

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the AICTE Act, the Parliament was fully alive to the existence of the provisions of UGC Act, 1956 particularly, the said provisions extracted above. Therefore, the definition in Section 2(h) technical institution in AICTE Act which authorizes the AICTE to do certain things, special care has consciously and deliberately been taken to make specific mention of university, wherever and whenever the AICTE alone was expected to interact with university and its departments as well as constituent institutions and units. It was held after analyzing the provision of Sections 10, 11 and 12 of the AICTE Act that the role of the inspection conferred upon the AICTE vis-à-vis universities is limited to the purpose of ensuring proper maintenance of norms and standards in the technical education system so as to conform to the standard laid down by it with no further or direct control over such universities or scope for any direct action except bringing it to the notice of UGC. In that background, this Court in **Bharathidasan University** case made it very clear by making the observation that it has examined the scope of the enactment as to whether the AICTE Act prevails over the UGC Act or the fact of competent entries fall in Entry 66 List I vis-à-vis Entry 25 of List III of the VII Schedule of the Constitution. A cumulative reading of the aforesaid paragraphs of **Bharathidasan University's case** which are extracted above makes it very clear that this Court has exempted universities, its colleges, constituent institutions and units from seeking prior approval from the AICTE. Also, from the reading of paragraphs 19 and 20 of **Parashvanath Chartitable Trust** case it is made clear after careful scanning of

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the provisions of the AICTE Act and the University Grants Commission Act, 1956 that the role of AICTE vis-à-vis universities is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself. It is rightly pointed out from the affidavit filed by UGC as directed by this Court in these cases on the question of affiliated colleges to the university, that the affidavit is very mechanical and it has simply and gratuitously without foundation, added as technical institutions including affiliated colleges without any legal foundation. In paragraphs 13, 14, 15 and 19 of the Affidavit filed by the UGC and the assertion made in paragraph 23 is without any factual foundation, which reads as under:

> "That it is further submitted that affiliated colleges are distinct and different than the constituent colleges. Thus, it cannot be said that constituent colleges also include affiliated colleges."

Further, the assertion of UGC as rightly pointed out by Dr. Dhavan in the written submission filed on behalf of the appellant in CA No. 1145 of 2004 that the claim that UGC does not have any provision to grant approval of technical institution, is facile as it has already been laid down by this Court that the AICTE norms can be applied to the affiliated colleges through UGC. It can only advise the UGC for formulating the standard of education and other aspects to the UGC. In view of the law laid down in **Bharathidasan University** and **Parashvanath Charitable Trust** cases (supra), the learned senior counsel Dr. Dhavan has rightly submitted for rejection of the affidavit of

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the UGC, which we have to accept as the same is without any factual foundation and also contrary to the intent and object of the Act.

39. It is also relevant to refer to the exclusion of university from the definition of 'technical institution' as defined under section 2(h) of the AICTE Act. The Institution means an institution not being university, the applicability of bringing the university as defined under clause 2 (f) of UGC Act includes the institution deemed to be a university under Section 3 of the said Act and therefore the affiliated colleges are excluded from the purview of technical institution definition of the AICTE Act. The submission made on behalf of the colleges which are affiliated to the respective universities which are being run by the appellants in the connected appeals will also come within the purview of the university referred to in the above definition of technical institution. The above interpretation sought to be made by the learned senior counsel and another counsel is supported by the provisions of the UGC Act. Section 12A of the UGC Act clearly speaks of regulation of fees and provisions of donation in certain cases which refers to the phrase affiliation together with its grammatical variation included in relation to a college, recognition of such college by, association of such college with, and admission of such college to the privileges of universities. A careful reading of sub-sections (2)(c), (3), (4) and (5) of Section 12A of the UGC Act makes it abundantly clear about colleges which are required to be affiliated to run the courses for which

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sanction/approval will be accorded by the university or under the control and supervision of such universities. Therefore, affiliated colleges to the university/universities are part of them and the exclusion of university in the definition of technical institution as defined in Section 2(h) of the AICTE Act must be extended to the affiliated colleges to the university also, otherwise, the object and purpose of the UGC Act enacted by the Parliament will be defeated. The enactment of UGC Act is also traceable to Entry 66 of List I. The aforesaid provisions of the UGC Act have been examined by this Court with reference to the provisions of AICTE Act in **Bharathidasan University's case**. Therefore, it has clearly laid down the principle that the role of the AICTE Act is only advisory in nature and is confined to submitting report or giving suggestions to the UGC for the purpose of implementing its suggestions to maintain good standards in technical education in terms of definition under Section 2(h) of the AICTE Act and to see that there shall be uniform education standard throughout the country to be maintained which is the laudable object of the AICTE Act for which it is enacted by the Parliament. The provisions of the AICTE Act shall be implemented through the UGC as the universities and its affiliated colleges are all governed by the provisions of the said Act under Section 12A of the UGC Act read with Rules Regulations that will be framed by the UGC in exercise of its power under Sections 25 and 26 of the said Act. Therefore, the conclusions arrived at in **Bharathidasan University** case is supported by the eleven Judge Constitution Bench decision in **T.M.A. Pai** case (supra) wherein this Court has

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overruled the directions given in **Unni Krishnan J.P. & Ors. v. State of Andhra Pradesh & Ors.**[6] to the Central Government and others regarding the reservations and schemes. The relevant paragraphs of **T.M.A. Pai** case read as under:-

> **"37.** *Unni Krishnan* judgment has created certain problems, and raised thorny issues. In its anxiety to check the commercialization of education, a scheme of "free" and "payment" seats was evolved on the assumption that the economic capacity of the first 50% of admitted students would be greater than the remaining 50%, whereas the converse has proved to be the reality. In this scheme, the "payment seat" student would not only pay for his own seat, but also finance the cost of a "free seat" classmate. *When one considers the Constitution Bench's earlier statement that higher education is not a fundamental right, it seems unreasonable to compel a citizen to pay for the education of another, more so in the unrealistic world of competitive examinations which assess the merit for the purpose of admission solely on the basis of the marks obtained, where the urban students always have an edge over the rural students. In practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well-exposed urban student.*
>
> **38.** The scheme in *Unni Krishnan case* has the effect of nationalizing education in respect of important features viz. the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair nor reasonable. Even in the decision in *Unni Krishnan case* it has been observed by Jeevan Reddy, J., at p. 749, para 194, as follows:
>
> "*194*. The hard reality that emerges is that private educational institutions are a necessity in the present-day context. It is not possible to do without them because the governments are in no position to meet the demand — particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly

[6] 1993 (1) SCC 645

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therein. Private educational institutions — including minority educational institutions — too have a role to play."

It has been clearly held that the decision in **Unni Krishnan's** case in so far as it framed the scheme relating to the grant of admission and the existing of fee, is not correct and the consequent directions given to UGC, AICTE and Medical Council of India, Central Government and the State Government etc. are overruled. It is worthwhile to mention paragraphs 29 and 31 of the UGC Report of the University Education Commission headed by late Dr. S. Radhakrishnan as its Chairman and nine other renowned educationists as its members. The report which is extracted at paragraph 51 in the said **T.M.A. Pai** case reads thus:

> "**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

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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 of 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 reason, is the aim of education."

Para 71 of the said decision, which deals with the rights of the private aided non-minority professional institutions, is extracted hereunder:

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"Private aided professional institutions (non-minority)

71. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the university or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Govern-

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ment or the university to provide that consideration should be shown to the weaker sections of the society."

At paragraph 72 in the said judgment, it has been held that once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. It is stated as under:

> "**72.** ....The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since *In Re, Kerala Education Bill, 1957* this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent

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of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management."

40. A reading of the aforesaid paragraphs extracted from **TMA Pai's** case makes it very clear that in view of decision of the eleven Judges Constitution Bench of this Court, the scheme framed under the **Unni Krishnan's** case has been overruled. Therefore, the autonomy of the university is recognized in the said case and the object and intendment of the Parliament in excluding the universities from the definition of technical institution as defined under Section 2(h) of the AICTE Act makes is explicitly clear, after scanning the definition of education institution with reference to the exclusion of universities and Sections 10, 11, 12 and 13 of the AICTE Act. The object of the statutory enactment made by the Parliament has been succinctly examined by this Court in **Bharathidasan University** and **Parshvanath Charitable Trust** cases referred to supra therefore they have rightly made observations that the role of the AICTE Act in view of the UGC Act and the powers and functions conferred by the UGC for controlling and regulating the universities and its affiliated colleges has been explicitly conferred upon the UGC. Hence, they have been given the power to regulate such universities and regulations in relation to granting sanctions/approvals and also maintaining educational

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standards and over-seeing the prescription of the fee structure including the admission of students in various courses and programmes that will be conducted by the university and its institutions, constituent colleges, units and the affiliated colleges. Therefore, we have to hold that the **Bharathidasan University** case (supra) on all fours be applicable to the fact situation of these appeals and we have to apply the said principle in the cases in hand whereas in the decisions of **Adhiyaman Education and Research Institute** case and **Jaya Gokul Education Trust's case** (supra) this Court has not examined the cases from the aforesaid perspective. Therefore, the same cannot be applied to the fact situation. The reliance placed upon those judgments by the learned senior counsel on behalf of the AICTE is misplaced.

Accordingly, point nos.1 and 2 are answered in favour of the appellants.

Answer to Point No.3

41. Learned senior counsel for AICTE, Mr. Rakesh Dwivedi, with reference to the definition of technical education under the provisions of the AICTE Act, urged that the definition of engineering and technology has to be construed and interpreted to bring MCA course under its fold in view of the meaning assigned to those words occurred in the definition clause by placing reliance on the different dictionaries, which are extracted as hereunder:

As per the Webster's Comprehensive Dictionary, 'Technology' means:

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"(1) Theoretical knowledge of industry and the industrial arts.
(2) The application of science to the arts.
(3) That branch of ethnology which treats of the development of the arts".

Wharton's Law Lexicon defines 'Technology' as:

"any information (including information embodied in software) other than information in the public domain, that is capable of being used in- (i) the development, production or use of any goods or software; (ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind. *Explanation*, when technology is described wholly or partly by reference to the uses to which it (or the goods to which it relates) may be put, it shall include services which are provided or used, or which are capable of being used, in the development, production or use of such technology or goods. [Weapons of Mass Destruction and their delivery system…]. Means a branch of knowledge; the knowledge and means used to produce the material necessities of a society…."

Further, Encyclopedia Law Lexicon presents 'Technology' as:

"any information (including information embodied in software) other than information in the public domain, that is capable of being used in- (i) the development production or use of any goods or software; (ii) the development of, or the carrying out of, an industrial or commercial activity or the provision of a service of any kind. [Section 4(1), The Weapons of Mass Destruction and their delivery system (Prohibition of Unlawful Activities Act, 2005]."

The New Shorter Oxford English dictionary defines 'Technology' as:

"1(a) The branch of knowledge that deals with the mechanical arts of applied sciences; a discourse or treaties on (one of) these subjects, orig. on an art or arts. (b). The terminology of a particular subject; technical nomenclature. 2(a). The mechanical arts or applied sciences collectively; the application of (any of) these. (b). A particular mechanical art or applied science."

Further, 'Technology', in Advanced Law Lexicon is defined as

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"any special or technical knowledge or any special service required for any purpose whosoever by an industrial concern under any foreign collaboration, and includes designs, drawings, publication and technical personnel."

and 'knowledge' is defined in the same dictionary as

"the means and methods of producing goods and services, or the application of science to production or distribution, resulting in the creation of new products, new manufacturing processes, or more efficient methods of distribution. (*WTO*)."

The meaning of Engineering as given in Dictionaries are read as under:

Webster's Comprehensive Dictionary - Engineering – Enginering in the broader sense, is that branch of human endeavour by which the forces of nature are brought under human control and the properties of matter made useful in structures and machines"

Advanced Law Lexicon – The activity or the functions of an Engineer; the science by which the properties of matter and the sources of energy in nature are made useful to man in structures, machines and products; relating to engineering.

The New Shorter Oxford English Dictionary – The work done by or the occupation of, an engineer, the application of the science for directly useful purposes as, construction, propulsion, communication or manufacture. The action of working artfully to bring something about. A field of study or activity concerned with deliberate alteration or modification in some particular area.

Law Lexicon – The activity or the functions of an engineer; the science by which the properties of matter and the sources of energy in nature are made useful to man in structures, machines and products."

42. The above meanings of the words 'technology' and 'engineering' as per the dictionaries referred to supra would clearly go to show that MCA also comes within the definition of technology. Therefore, the contention that

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technical education includes MCA as raised by the learned senior counsel on behalf of the AICTE stand to its reasoning and logic in view of the nature of MCA course which is being imparted to the students at post graduation level which is being conducted by the institutions, constituent colleges and affiliated colleges to the universities. The same is a technical education and therefore, it comes within the definition of technical education but for its proper conduct of courses and regulation the role of AICTE must be advisory and for the same, a note shall be given to the UGC for its implementation by it but not the AICTE. Accordingly, point no.3 is answered in favour of respondent AICTE.

43. As per definition of 'technical education' under Section 2(g) of the AICTE Act and non production of any material by the AICTE to show that MBA course is a technical education, we hold that MBA course is not a technical course within the definition of the AICTE Act and in so far as reasons assigned for MCA course being 'technical education', the same does not hold for MBA course. Therefore, for the reasons assigned while answering the points which are framed in so far as the MCA course is concerned, the approval from the AICTE is not required for obtaining permission and running MBA course by the appellant colleges.

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44. So far as point nos.4 and 5 are concerned, the amended Regulation Nos. 8(c) and 8(iv) of 2000 were introduced by the AICTE in exercise of its power under section 10(k) of AICTE Act by adding the MBA and MCA courses within the purview of the provisions of AICTE as it is included in the Regulation as a technical education. It is the case made out by learned counsel for the appellant Mr. Prashant Bhushan that the amended Regulation has not been placed before the Parliament which is mandatory as per the provisions of Section 24 of the AICTE Act, the said contention has not been disputed by the AICTE in these cases. The provision of Section 24 reads thus:

> "**24. Rules and regulations to be laid before Parliament**:- Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and it before the expiry of the session immediately following the session or the successive sessions, aforesaid, both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

The position of law is well settled by this Court that if the Statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In the case of **Babu Verghese v. Bar Council of Kerala**[7], after referring to this Court's earlier decisions and **Privy Council** and **Chancellor's Court**, it was held as under:

[7] 1999 (3) SCC 422

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> **"31.** It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor* v. *Taylor* which was followed by Lord Roche in *Nazir Ahmad* v. *King Emperor*-who stated as under:
>
> **32.** This rule has since been approved by this Court in *Rao Shiv Bahadur Singh* v. *State of V.P.* and again in *Deep Chand* v. *State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P.* v. *Singhara Singh* and the rule laid down in *Nazir Ahmad case* was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

In view of the above said decision, not placing the amended Regulations on the floor of the Houses of Parliament as required under Section 24 of the AICTE Act vitiates the amended Regulations in law and hence the submissions made on behalf of the appellants in this regard deserve to be accepted. Accordingly, point Nos. 4 and 5 are answered in favour of the appellants.

45. In so far as point no.6 is concerned, the law laid down in **Bharathidasan University** case, for the reasons recorded by us while answering point nos.1 and 2 in favour of the appellants, the said decision on all fours be applicable. We have distinguished **Adhiyaman Education and Research Institute** and **Jaya Gokul Educational Trust** cases from **Bharathidasan University** case in the reasoning portion while answering point nos.1 and 2. Therefore, the said two cases need not be applied to the present case.

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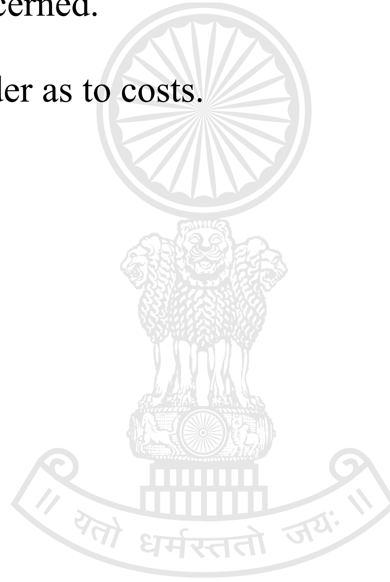
46. For the foregoing reasons, the common impugned judgment and order passed in W.A. 2652 of 2001, W.A. No. 3090 of 2001, WA 2835 of 2001, WA 3087 of 2001, WA 2836 of 2001, WA 3091 of 2001, WA 3092 of 2001, WA 2837 of 2001, WA 3088 of 2001, WA 2838 of 2001 and WA 3089 of 2001 is hereby set aside. The civil appeals are allowed. The relief sought for in the Writ Petitions is granted in so far as not to seek approval from the AICTE for MBA and MCA courses are concerned.

There will be no order as to costs.



SUPREME COURT OF INDIA

………………………..J.
[Dr. B.S. CHAUHAN]

………………………..J.
[V. GOPALA GOWDA]

New Delhi,
April 25, 2013.

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