

Govt. Of A.P. & Anr vs J.B. Educational Society & Anr., Etc on 23 February, 2005

Equivalent citations: AIR 2005 SUPREME COURT 2014, 2005 AIR SCW 1138, (2005) 3 CTC 555 (SC), 2005 (3) CTC 555, 2005 (2) SLT 639, (2005) 2 JT 521 (SC), 2005 (3) SRJ 423, 2005 (2) SCALE 337, 2005 (3) SCC 212, (2005) 28 ALLINDCAS 430 (SC), 2005 (28) ALLINDCAS 430, (2005) 2 SCT 102, (2005) 2 SCJ 281, (2005) 2 SERVLR 823, (2005) 2 ANDHLD 69, (2005) 2 SUPREME 210, (2005) 2 SCALE 337, (2005) 2 ESC 184, (2005) 2 KER LT 154, (2005) 3 MAD LW 1

Author: K.G. Balakrishnan

Bench: K.G. Balakrishnan, B.N. Srikrishna

CASE NO.:

Appeal (civil) 976-978 of 1999

PETITIONER:

Govt. of A.P. & Anr.

RESPONDENT:

J.B. Educational Society & Anr., etc.

DATE OF JUDGMENT: 23/02/2005

BENCH:

K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:

JUDGMENT With CIVIL APPEAL No. 3026 OF 1999 K.G. BALAKRISHNAN, J.

These appeals are filed by the State of Andhra Pradesh challenging the decision of the Division Bench of the High Court of Andhra Pradesh in Writ Appeal Nos. 1571 of 1997; 84 of 1998; and 85 of 1998. By the impugned Judgment, the Division Bench partly confirmed the judgment of the learned Single Judge and held that Section 20(3)(a)(i) of the Andhra Pradesh Education Act, 1982 (in short "the A.P. Act") is void and inoperative and the State Government had no legislative competence to pass such a legislation as the State provision was in the field already occupied by the enactment made by the Parliament, namely, All India Council of Technical Education Act, 1987 (hereinafter being referred to "AICTE Act"). It was held that in view of Section 10 of the AICTE Act with regard to establishment of technical institutions in general, the said special enactment legislated by the Parliament would prevail over the A.P. Act to the extent of its repugnancy.

The Writ Petitioners are the private educational institutions. They wanted to establish engineering colleges in the State of Andhra Pradesh. They applied to the authorities under the AICTE Act and approval was granted to them for the academic year 1997-98 by the AICTE Council. These Writ Petitioners made applications under Section 20 of the Act for permission to establish the institution. The permission was rejected on the ground that the Writ Petitioners had been seeking permission to establish colleges in the places where already there were number of colleges and that the State Government was not satisfied about the educational needs of that locality. In that view of the matter, permission was declined. Aggrieved by the same, the Writ Petitions were filed.

A.P. Act is a consolidating and amending Act made by the State Legislature with the object of reforming, organising and developing educational system in the State and to provide for matters connected therewith or incidental thereto. This legislation had received the assent of the President. Under Section 19 of the A.P. Act, educational institutions are classified into three categories, namely, State institutions, local Authority institutions and Private institutions and granting of permission for the establishment of educational institutions is governed by Section 20. This Section was amended by Act No. 27 of 1987 wherein it was provided that no educational institutions shall be established except in accordance with the provisions of the Act. The State Government is authorised to appoint by notification a competent authority for such area as may be specified in the notification. Sub- Section (1) of Section 20 provides that the competent authority appointed by the State Government shall from time to time, conduct a survey for the purpose of identifying the educational needs of the locality under its jurisdiction and thereafter it shall issue notification through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. Educational agency means any body of persons including that of religious or linguistic minority entrusted with the establishment and maintenance of a private educational institution of a minority educational institution, as the case may be. Any educational agency applying for such permission shall satisfy the concerned authority that there is need for providing educational facilities to the people in the locality. There are some other requirements mentioned in sub-Section (3) of Section 20 and those conditions have to be fulfilled by the educational agency for applying of permission for establishing an educational institution. Section 20 of the A.P. Act reads as follows:-

"PERMISSION FOR ESTABLISHMENT OF EDUCATIONAL INSTITUTIONS:

(1) The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through local news papers calling for applications from the educational agencies desirous of establishing educational institutions.

(2) (a) In pursuance of the notification under sub-section (1) any educational agency including local authority or registered body or persons intending to

(a) establish an institution imparting education;

(b) xxxxxxxxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxxxxxxxx

(d) xxxxxxxxxxxxxxxxxxxx (3) Any educational agency applying for permission under sub-section (2) shall

(a) before the permission is granted, satisfy the authority concerned, -

(i) that there is need for providing educational facilities to the people in the locality;

(ii) & (iii) (b) & (c) xxxxxxxxxxxxxxxxxxxx (4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 no educational institution shall be established except in accordance with the provisions of the Act."

The source of legislation of the A.P. Act is traced to Entry 25 of the Concurrent List which is to the following effect:-

"Education, including 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."

AICTE Act was enacted by the Parliament by virtue of the powers under Entry 66 of the Union List wherein exclusive power is vested with the Central Government with regard to technical education. AICTE Act was enacted with the object of regulating and coordinating the development of technical education throughout the country and also for establishment of proper and uniform norms and standard of technical education in India. Under Section 3, the Central Government shall appoint a Council called All India Council of Technical Education and under Section 10 of the Act, the Council has the following powers and functions:-

"10 (1) it shall be the duty of the Council to take all such steps as it may think fit ensuring coordinated and integrated development of technical education and maintenance of standards and for the purpose of performing its functions under this Act, the council may

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) coordinate the development of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to i. technical institutions and ii. universities imparting technical education in coordination with the commission;

- (d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes.
- (e) create schemes for promoting technical education for women, handicapped and weaker sections of the society.
- (f) promote an effective link between technical education system and other relevant systems including research and development organizations industry and the community;
- (g) evolve suitable performance appraisal systems for technical institutions and universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;
- (h) formulate schemes for the initial and in service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;
- (i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;
- (j) fix norms and guidelines for charging tuitions and other fees;
- (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;
- (l) advice the central government in respect of grant of character to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;
- (m) lay down norms for granting autonomy to technical institutions;
- (n) take all necessary steps to prevent commercialisation of technical education;
- (o) provide guidelines for admission of students to technical institutions and universities imparting education;
- (p) inspect or cause to inspect any technical institutions;
- (q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fails to comply with the directions given by the council

within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the council;

(r) take steps to strengthen the existing organizations, and to set up new organizations to ensure effective discharge of the council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering course in technical education fit to receive grants;

(t) advise the commission for declaring any institution imparting technical education as a deemed university;

(u) set up a Nations Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the council or to the commission or to other bodies regarding recognition or de-recognition of the institution or the programme;

(v) perform such other functions as may be prescribed.

From the provisions of the Act, it is clear that the purpose of the enactment was proper planning and coordinated development of technical education system throughout the country and promotion of qualitative improvement of such education and other allied matters. In *Unni Krishnan Vs. State of AP* 1993(1) SCC 645, this Court emphasized the importance of such a central Council for the promotion of qualitative improvement of technical education. By virtue of Section 23 of the AICTE Act, the Council is competent to frame regulations and the regulations are called "All India Council for Technical Education (Grant of Approval) for starting new technical institutions, introduction of courses or programmes, approval of intake capacity of seats for the courses or programme Regulations, 1994." Under Regulation 9, several committees are formed, namely, Expert Committee, State Level Committee, Central Task Force, etc. While the Expert Committee is constituted by the Council in consultation with the Chairman of the Regional Committee and consists of other representatives of the State Level Committee, the State Level Committee constituted under sub-regulation 4 of Regulation 9 considers the recommendations of the State Government and others mentioned in Sub-Regulation 4 and submits its recommendations to the Central Task force, constituted under sub-regulation 5 of Regulation 9. If there is any disagreement between the recommendations made by the State Government, University or Regional Committee, the Central Task Force shall invite representatives of the respective agencies for further consultations before making final recommendations.

The petitioners in the Writ Petitions contended that in view of Section 10 of the AICTE Act, no permission of the State Government under Section 20 of the Act was required as the field is completely covered by the AICTE Act. It was argued that once the approval was granted by the

Council, the State Government cannot refuse permission on the ground that the proposed educational institution may not subserve the educational needs of the locality. The learned Counsel for the State, on the other hand, contended that Section 20 of the AP Act and Section 10 of the AICTE Act operate in different fields, there is no conflict between these provisions and that they are not repugnant to each other and the decision of the Division Bench is erroneous. It was also contended by the appellant's Counsel that the State Legislature has legislative competence to pass the enactment and that, in view of Entry 25 of the Concurrent List, the State alone would be competent to say whether an institution should be established in an area to serve the educational needs of that locality.

The legislative powers of the Parliament and the State Legislatures are governed by Article 246 to 255 of Part II of the Constitution. Article 246 reads as follows:-

"Subject-matter of laws made by Parliament and by the Legislature of States. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any state also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List. "

The Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non-obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State legislature with respect to a matter enumerated in List II of the Seventh Schedule.

There is no doubt that both Parliament and the State legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by the Parliament and the State legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non-obstante clause in Clause (1) of Article 246, the Parliamentary legislation would prevail notwithstanding the exclusive power of the State legislature to make a law with respect to a matter enumerated in the State List.

With respect to matters enumerated in the List III (Concurrent List), both the Parliament and the State legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

Thus, the question of repugnancy between the Parliamentary legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in Concurrent List and there is a conflict. In both the situations, Parliamentary legislation will predominate, in the first, by virtue of the non-obstante clause in Article 246(1), in the second, by reason of Article 245(1). Clause (2) of Article 245 deals with a situation where the State legislation having been reserved and having obtained President's assent prevails in that State; this again is subject to the proviso that the Parliament can again bring a legislation to override even such State legislation.

It is in this background that the provisions contained in the two legislative enactments have to be scrutinised. The provisions of the AICTE Act are intended to improve the technical education and the various authorities under the Act have been given exclusive responsibility to coordinate and determine the standards of higher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such a coordinate action in higher education with proper standard is of paramount importance to national progress. Section 20 of the AP Act does not in any way encroach upon the powers of the authorities under the Central Act. Section 20 says that the competent authority shall, from time to time, conduct a survey to identify the educational needs of the locality under its jurisdiction notified through the local newspapers calling for applications from the educational agencies. Section 20(3)(a)(i) says that before permission is granted, the authority concerned must be satisfied that there is need for providing educational facilities to the people in the locality. The State authorities alone can decide about the educational facilities and needs of the locality. If there are more colleges in a particular area, the State would not be justified in granting permission to one more college in that locality. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including technical education. Of course, this is subject to the provisions of Entry 63, 64, 65 and 66 of List I. Entry 66 of List I to which the legislative source is traced for the AICTE Act deals with the general power of the Parliament for coordination, determination of standards in institutions for higher education or research and scientific and technical educational institutions and Entry 65 deals with the union agencies and institutions for professional, vocational and technical training, including the training of police officers, etc. The State has certainly the legislative competence to pass the legislation in respect of education including technical education and Section 20 of the Act is intended for general welfare of the citizens of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution.

The general survey in various fields of technical education contemplated under Section 10(1)(a) of the AICTE Act is not pertaining to the educational needs of any particular area in a State. It is a general supervisory survey to be conducted by the AICTE Council, for example, if any IIT is to be

established in a particular region, a general survey could be conducted and the Council can very much conduct a survey regarding the location of that institution and collect data of all related matters. But as regards whether a particular educational institution is to be established in a particular area in a State, the State alone would be competent to say as to where that institution should be established. Section 20 of the AP Act and Section 10 of the Central Act operate in different fields and we do not see any repugnancy between the two provisions.

This Court in *M. Karunanidhi v. Union of India*, (1979) 3 SCC 431 at page 499 held thus:

"It is well settled that the presumption is always in favour of the constitutionality of a Statute and the onus lies on the person assailing the Act to prove that it is unconstitutional *Prima facie*, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.
2. That such and inconsistency is absolutely irreconcilable.
3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

This Court also referred to the earlier decisions including *Deep Chand Vs. State of U.P.* (1959 Supp (2) SCR 8, at p. 43), wherein various tests to ascertain the question of repugnancy between the two statutes were indicated and, *inter alia*, it was held that repugnancy between two statutes may be ascertained by considering, whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature. Reference was made to *Megh Raj Vs. Allah Rakhia* AIR 1942 FC 27, wherein it was observed that if the paramount legislation does not purport to be exhaustive or unqualified, there is no inconsistency and it cannot be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law. This court also referred to *T.S. Baliah Vs. T.S. Rangachari* (1969) 3 SCR 65 wherein it was, *inter alia*, observed that before coming to the conclusion that there is a repeal by implication, the court must be satisfied that the two enactments are so inconsistent that it becomes impossible for them to stand together.

In *Kanaka Gruha Nirmana Sahakar Sangha Vs. Narayanamma*, (2003) 1 SCC 228, this court after quoting Article 254 held:

"The language of the aforesaid article is crystal clear and it *inter alia* provides [subject to the provisions of clause (2)] that

9. (a) if any provisions of law made by the legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, then the law made by Parliament whether passed before or after the law made by the legislature of the State shall, to the extent of repugnancy, be void; or

(b) if any provision of a law made by the legislature of a state is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, be void."

10. "There cannot be any doubt that the article gives supremacy to the law made by the Parliament, which Parliament is competent to enact, but for application of this article, firstly, there must be repugnancy between the State law and the law made by Parliament. Secondly, if there is repugnancy, the State legislation would be void only to the extent of repugnancy. If there is no repugnancy between the two laws, there is no question of application of Article 254 (1) and both Acts would prevail."

In T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481, Justice Khare, as he then was, on the question of transposition of subject "Education" from List II to List III and its effects, held :

"It may be remembered that various entries in three lists of the Seventh Schedule are not powers of legislation but field of legislation. These entries are mere legislative heads and demarcate the area over which the appropriate legislatures are empowered to enact law. The power to legislate is given to the appropriate legislatures by Article 246 and other articles. . Thus the function of entries in three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but does not confer power either on Parliament or the State Legislatures to enact laws. It may be remembered, by transfer of the entries, the character of the entries is not lost or destroyed."

Justice B.N. Kirpal, the then Chief Justice of India, on the question of admissions in private unaided professional colleges held that:

" . It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counseling by State agency. This will incidentally take care of poorer and backward

sections of the society. The prescription of percentage of this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority aided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutions."

In *Islamic Academy of Education Vs. State of Karnataka* (2003) 6 SCC 697 at 770 , it was held as under:

"Local Needs would vary from State to State. Even development of a backward area may be a local need. The absence of a good educational institution in a particular area may be a local need. State may, in pursuit of its policy for the development of the people, consider it expedient to encourage entrepreneurs for establishing educational institutions in remote and backward areas for the benefit of the local people. Local needs, therefore, cannot be defined only with reference to the State as a unit. For good reasons the State may not like to establish professional colleges or institutions only in their capitals."

In *Jaya Gokul Educational Trust vs. Commissioner-cum- Secretary Higher Education & Ors* (2000) 5 SCC 231, and in *Government of A.P. & Anr. Vs. Medwin Educational Society & Ors.* (2004) 1 SCC 86, similar views were expressed by this Court.

The educational needs of the locality are to be ascertained and determined by the State. Having regard to the regulations framed under the AICTE Act, the representatives of the State have to be included in the ultimate decision making process and having regard to the provisions of the Act, the Writ Petitioners would not in any way be prejudiced by such provisions in the A.P. Act. Moreover, the decision, if any, taken by the State authorities under Section 20(3)(a)(i) would be subject to judicial review and we do not think that the State could make any irrational decision about granting permission. Hence, we hold that Section 20(3)(a)(i) is not in any way repugnant to Section 10 of AICTE Act and it is constitutionally valid.

In the result, we set aside the judgment of the Division Bench and the appeals are allowed accordingly. There will be no order as to costs.