The Jawaharlal Nehru Technological ... vs Sangam Laxmi Bai Vidyapeet on 29 October, 2018

Equivalent citations: AIRONLINE 2018 SC 663

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Bench: Indira Banerjee, Arun Mishra

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REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. of 2018
(@ SPECIAL LEAVE PETITION [C] NO.9718 OF 2018)

THE JAWAHARLAL NEHRU TECHNOLOGICAL
UNIVERSITY REGISTRAR … APPELLANT(

VERSUS

SANGAM LAXMI BAI VIDYAPEET & ORS. … RESPONDENTS

J U D G M E N T

ARUN MISHRA, J.

1. The question involved in the appeal is whether a University is bound to give 'No Objection Certificate' (NOC) for opening an educational institution or for a new course irrespective of educational needs of the locality under its jurisdiction. In other words, is the University bound to give NOC in a local area irrespective of whether institutions are required in the area and thereby promote the mushroom growth of institutions?

2. Respondent no.1 – Sangam Laxmibai Vidyapeeth, is a registered society which has sponsored and manages Bojjam Narasimhulu Pharmacy College for Women, being Respondent No.2, set up at Hyderabad. On 27.7.2017, Respondent No.2 applied to the Jawaharlal Nehru Technological University (for short, "the University") for grant of No Objection Certificate (NOC) to start the D.Pharma course in their college during the academic

year 2018–2019. On 19.8.2017, the University declined NOC on the ground that as per the Government's policy and perspective plan, NOC was not to be granted for new institutions and new courses.

3. Respondent No.2 on 26.8.2017 filed an application before the Pharmacy Council of India (for short, 'the PCI') for grant of approval for starting D. Pharma course for the academic year 2018–2019. The PCI insisted on the production of NOC certificate from the University.

4. Challenging the communication dated 19.8.2017 of the University declining NOC and also challenging regulations 5.1, 5.2 and 6 of the Jawaharlal Nehru Affiliation Procedure and Regulations, 2017 (hereinafter referred to as "the 2017 Regulations"), the respondent filed a writ petition before the High Court.

5. In its counter affidavit filed in the High Court, the University contended that under the provisions of Section 20 of the Telangana Education Act, 1982 (hereinafter referred to as "the Act of 1982"), obtaining of NOC as per the All India Council of Technical Education Regulations (for short, 'the AICTE Regulations') and the 2017 Regulations, was necessary for starting new courses.

6. The validity of Section 20 of the erstwhile Andhra Pradesh Education Act, which is in pari materia with Section 20 of the Act of 1982, has been upheld in Government of Andhra Pradesh v. J.B. Educational Society, (2005) 3 SCC 212. The said Act stands adopted in the State of Telangana.

7. The Government of Telangana also filed a counter-affidavit pointing out that Government has taken a policy decision and requested the AICTE by a letter dated 29.11.2016 to declare a holiday on the establishment of new technical institutions for the academic year 2017–2018 onwards. The policy decision was based upon the detailed study of a large number of technical institutions running in the State and in particular Hyderabad, wherein even the available seats were lying vacant, and the addition of more seats and more colleges was bound to adversely impact the quality of education and would make them financially unviable. Ultimately, the fall in the standards of education may result in the low employability of the students. The Government had prepared a perspective plan for technical education in the State and communicated the same to the AICTE. The Perspective Plan had been prepared in consonance with the provisions contained in Section 20 of the Act of 1982.

8. The High Court by the impugned judgment and order had allowed the writ application. It has observed that grant of NOC will not enable an institution to start a course. They have several other hurdles to be cleared for starting D. Pharma. The High Court has held that Regulations 5.2, 5.3 and 6 of the 2017 Regulations are valid. The vires of the regulations has

been upheld. However, the High Court held that policy decision taken by the Government not to allow new courses to be started is not in terms of section 20 of the Act of 1982 as the provision does not vest power upon the Government to declare a holiday on the ground that a lot of seats are going vacant. The High Court has observed that in case the seats are going vacant educational institutions will automatically shut down courses for which there is no demand. Unless starting of a course or running of an existing course is economically viable, no educational agency would take up the venture. That is the concern of the educational agency and not of the Government or of the University. The High Court has further observed that uneducated unemployed may find a course where their energies can be channelized and it is better to have educated unemployed rather than to have a breed of uneducated unemployed. The perspective plan prepared by the Government has also been considered. It has been observed that seats remaining vacant cannot be the sole criterion for refusal of NOC. The enrolment of students in Pharma□ D has registered a marginal increase over the years. The University has been directed to grant NOC. Thereafter, it will be open to the AICTE and PCI to examine the application of the petitioner for D. Pharma course and thereafter it will be open to the University to examine with reference to its own Statutes as to whether petitioner may be granted affiliation or not. Aggrieved by the same, the appeal has been preferred.

9. It was submitted by the learned senior counsel appearing on behalf of the appellant□ University that there are thirty institutions which are running pharmacy courses in the city of Hyderabad. The number of institutions is more and it is not possible to cater to the needs of all colleges as students are not enough. The seats remain vacant in spite of the reduction in the number of seats. There is a paucity of the teachers as well. The Government of Telangana after a detailed study has prepared a perspective plan and has forwarded it to the AICTE requesting it not to open new technical courses as there is a mushroom growth of the institutions in the city of Hyderabad. Considering the perspective plan, the decision has been taken not to grant NOC by the University in terms of the provisions contained in section 20 of the Act of 1982 and the Regulations of the University. The High Court has erred in law in interfering with the policy decision of the State Government on legally impermissible grounds.

10. Per contra, learned senior counsel on behalf of the respondent contended that it was not open to the Government to frame such a policy of declaring a holiday. It is for the AICTE or the PCI to take into consideration the requirements of the area whether institutions have to be permitted to start a new course. Mainly by the fact that some

seats have remained vacant in the course of Pharmacy, the NOC could not have been declined. As it was for the PCI as well as the AICTE to take into consideration the various aspects after the issuance of the NOC. Thus, University, as well as the State Government, have exceeded their powers. The statistics submitted are not of D. Pharma course but relates to the other courses of pharmacy. The imposition of the moratorium for the academic year 2018–2019 is bad in law as it would be open to the University, after approval is granted by the AICTE and PCI, to examine whether the institution fulfills its requirements for the purpose of grant of affiliation. In the perspective plan, it is pointed out that there is need to start pharmacy course as imbalance has been created by the establishment of other technical institutions such as engineering etc. which may not be good for the country's growth.

11. The pivotal point for consideration is whether the State Government and the University have the power to frame a policy and to refuse the grant of NOC to start a course in Pharmacy in the city of Hyderabad and the decision of the State Government imposing the moratorium for the year 2018–19 is without jurisdiction, irrational or arbitrary.

12. Section 20 of the Act of 1982 deals with permission for the establishment of educational institutions. Section 20(1) provides that a competent authority shall conduct a survey as to identify the educational needs of the locality under its jurisdiction. Section 20(3) provides that any educational agency applying for permission under section 20(2) shall before the permission is granted, satisfy the authority concerned that there is a need for providing educational facilities to the people in the locality. Section 20 is extracted hereunder:

> "[20. 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 the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions.
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> (2) In pursuance of the notification under sub-section (1), any educational agency including a local authority or registered body of persons intending to —
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> (a) establish an institution imparting education;
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> (b) open higher classes in an institution imparting primary education;
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> (c) upgrade any such institution into a high school; or

(d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.) may make an application, within such period in such manner and to such authority as may be notified for the grant of permission therefor.

(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 a need for providing educational facilities to the people in the locality ;

(ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority ;

(iii) that the institution is proposed to be located in sanitary and healthy surroundings ;

(b) enclose to the application, -

(i) title deeds relating to the site for building, playground, and garden proposed to be provided ;

(ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefor; and

(iii) documents evidencing availability of the finances needed for constructing the proposed buildings; and

(c) within the period specified by the authority concerned in the order granting permission, -

(i) appoint teaching staff qualified according to the rules made by the Government in this behalf ;

(ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(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 this Act and any person who contravenes the provisions of this section or

who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees :

Provided further that the Court convicting a person under this section shall also order the closure of the institution with respect to which the offense is committed."

(emphasis supplied) A bare reading of the aforesaid provisions of section 20(1) makes it clear that the survey is conducted so as to identify the educational needs of the locality would definitely include within its ken how many institutions are operating in the area and whether there is any further requirement of opening educational institutions/new courses in existing colleges, and it is also imperative under section 20(3)(a)(i) that educational agency has to satisfy the authority that there is a need for providing educational facilities to the people in the locality. In case there are already a large number of institutions imparting education in the area the competent authority may be justified not to grant the NOC, for permitting an institution to come up in the area.

13. The provisions contained in section 20 are wholesome and intend not only to cater to the educational needs of the area but also prevent the mushroom growth of the institutions/courses. In case institutions are permitted to run each and every course that may affect the very standard of education and may ultimately result in sub□standard education. There is already a paucity of well□qualified teachers in a large number of institutions and the available seats in Pharmacy course in the Hyderabad city are remaining vacant every year in spite of the reduction in a number of seats. It had not been possible to fill up the available vacancies due to non□availability of students. Thus, it is apparent that when 30 institutions in Hyderabad city are already running Pharmacy course, the refusal to grant NOC by the University was wholly justified.

14. Apart from the provisions contained in section 20, when we consider Regulations 5.2 and 5.3 which clearly provide that a new college proposing to offer technical education with the University affiliation shall first seek a NOC from the University before applying to AICTE/PCI/any other statutory body. Regulation 5.3 provides that the permission for starting of new programmes in the existing colleges shall be considered by the University as per the priority/policy of the State Government if any. Regulations 5.2 and 5.3 are extracted hereunder:

> "5.2 – A new college proposing to offer technical education with the University affiliation shall first seek a No Objection Certificate (NOC) from the University before applying to AICTE/PCI/other Statutory Body.
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> 5.3 – The permission for establishing Colleges and starting of new programs in the existing Colleges shall be considered by the University as per the priority/policy of the state government if any."

15. In Government of A.P. & Anr. v. J.B. Educational Society & Anr. (supra), the Court considered the validity of section 20 of the Act of 1982 vis□a□ vis section 10 of AICTE Act of 1987 and observed that the two provisions are not repugnant to each other and they operate in different fields. The object and purpose of two enactments had been considered by this Court and it observed that if there are more colleges in a particular area, the State would be justified in not granting permission to one more college in that area. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including technical education. The AICTE Act deals with the general power of Parliament for coordination, determination of standards in institutions for higher education or research and scientific and technical educational institutions and Entry 65 of List I deals with the union agencies and institutions. The State has the competence to pass such legislation and Section 20 of the Act of 1982 is for the welfare of the State. The Court observed:

> "13. It is in this background that the provisions contained in the two legislative enactments have to be scrutinized. 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, harmonize and secure proper relationship to any project of national importance. Such a coordinate action in higher education with a 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 a 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 the general welfare of the citizens of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution.

14. 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.

21. 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 the AICTE Act and it is constitutionally valid."

16. In view of the aforesaid decision, the High Court has erred in law in holding that it was not permissible for the State Government to frame such a policy and the University was bound to issue NOC. The

decision of the High Court runs to the contrary, ignores and overlooks the law laid down in the said decision.

17. The Government of Telangana vide its communication dated 29.11.2016 to the AICTE had communicated the views of the State Government regarding AICTE approval for the establishment of educational institutions for the session 2017–18. After discussing the matter by the Director of Technical Education, Vice–Chancellor of the University and State Council of Higher Education the State Government had expressed serious concern at the proliferation and establishment of technical institutions and the unprecedented expansion in the intake in all the courses offered by all the technical institutions coming within the purview of AICTE. Data was given in the tabular form including that of the Pharmacy. It was pointed out that in the year 2015–16 sanctioned intake in Pharmacy was 11490, seats remained vacant were 4035, in academic session 2016–17 sanctioned intake was 9226, seats vacant were 1892.

18. The AICTE Act, 1987 defines technical education in section 2(g) to mean programmes of education inter alia in Pharmacy also. There is no provision in the said Act to the contrary to curtail the power of the State as well as of University. The AICTE has framed the Regulations under the Act of 1987 in the exercise of the power conferred under section 23(1) read with sections 10 and 11 of the Act of 1987 called the All India Council for Technical Education (Grant of approvals for the Technical Institutions) Regulations, 2016. The technical institution is required to seek prior approval of the Council as provided in Regulation 4.2. Regulation 4.18 provides that the State Government/UT Administration and the Affiliating University/Board, as the case may be, shall forward their views along with the perspective plan of the State and then the application shall be processed for grant of approval. Regulation 4.18 is extracted hereunder:

> "4.18 The State Government/UT Administration and the Affiliating University/Board shall forward their views on the applications received under Clause 4.1 as applicable, with valid reasons along with the perspective plan of the State, within a period of 21 days from the date of receipt of applications which shall be taken into account by the Regional Committee for further processing for grant of approval. If the application is not processed further, the processing fee after a deduction of 50000/– (Rupees Fifty thousand only) shall be refunded to the applicant.

If the views of the State Government/UT Administration and the Affiliating University/Board are not received within a prescribed time schedule as mentioned in the Approval Process Handbook, it shall be presumed that they do not have any objection and the Council shall

proceed further for processing of applications. However, the Council shall consider the previous communications, if any, received from the State Government/UT administration, the Affiliating University/Board against any Institutions." (emphasis supplied)

19. Regulation 4.18 cannot be said to be repugnant to Regulations 5.2 and 5.3 of the University, and there is no repugnancy in AICTE Act and section 20 of the Act of 1982 as observed by this Court in Government of A.P. & Anr. v. J.B. Educational Society & Anr. (supra). The perspective plan had been prepared by the State of Telangana for 2018–19. In the perspective plan the State Government has pointed out the abstract of courses and seats in the existing engineering colleges for the academic year 2017–18 and it was mentioned that there was an imbalance of seats. Following is the extract relied upon by the respondents:

> "A perusal of the above Table reveals the fact that the four programmes viz. Information Technology, Computer Science and Engineering, Electronics and Communication Engineering and Electrical and Electronics Engineering together account for 83,290 seats of the total Intake of 1,26,855 seats. This accounts for nearly 66% of the seats and rests account for about 43,565 seats, which is 34% of the total intake. This lopsided priority will, in the long run, have an adverse effect on the growth of infrastructure in the country with its attendant consequences.
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> This imbalance needs to be corrected on a priority basis so that the manufacturing and other sectors do not suffer. The courses on demand related to latest Technologies and needs of the Industry such as Mining, Textile, Pharmacy, Automobile, Aviation Civil Engineering, and Construction Technology and hence their enhancement in Intake may be considered in the State, while keeping in view of the 14 Thrust Areas as mentioned in Para 5, Page 14 of this Plan. This is also keeping in view that the Pharma city, Textile hub, Fabcity, ITIR, IT Hubs, etc. are emerging in Telangana State." At the same time in the conclusions and recommendations made by the Government in perspective plan, it has been pointed out that AICTE may declare a holiday on the establishment of new technical institutions for the academic year 2018–19. This holiday applies not only to the establishment of new engineering colleges but may also be extended inter alia to B–Pharmacy institutions. It was also pointed out that in case the Pharmacy Council of India has not accorded the approval, AICTE should not grant approval to the Pharmacy colleges. It was inter alia mentioned in the recommendations that new programmes may be sanctioned in Mining, Granite, Textile, Pharmacy, Automobile etc. based on "new technologies". However, it was not the case, that course would be based on new technology. Following is the relevant extract of the conclusions and recommendations made by the State:

"6. CONCLUSIONS & RECOMMENDATIONS Thus, the various concerns that arise from all the above data are summarized below for the consideration of the All India Council of Technical Education:□Issue Recommendation The AICTE has been The AICTE may thus declare a sanctioning the Colleges holiday on the establishment of routinely every year without New Technical Institutions from actually assessing the 'Need' of the Academic Year 2018□19. The the State. With a massive holiday applies not only with number of such Colleges regard to the establishment of established in the State, there New Engineering Colleges in the is a severe shortage of qualified State but may also be extended Teaching faculty, which is to B.Pharmacy, MBA/MCA seriously affecting the Quality Institutions." of Education offered by many of these institutions. Moreover, it is observed that a large number of seats are falling vacant every year as the total number of seats available is far more than the takers. During the year 2016□ 17 for instance, there are about 32784 seats and during 2017□ 18, there are 29367 seats that remained vacant in the Engineering course (based on the affiliations). With poor admissions, the 'financial viability' in running several colleges is becoming a problem and thus making Colleges to offer poor Quality of Education, which is totally undesirable. In fact, in several Colleges, the admissions during last year and this year in Engineering and MCA programmes are just single digits. This situation has led to an unhealthy competition among the Colleges for admissions by wooing the students with all sorts of false promises. This is highly harmful to the Professional Educational System in the State.

"OTHER RECOMMENDATIONS In view of all the above and to improve the Quality of Education in Private, Unaided Colleges in the State of Telangana, it is recommended that:

New Programmes may be sanctioned such as Mining, Granite, Textile, Pharmacy, Automobile, Civil Eng. Construction Technology based on New Technologies and the needs of the Industry keeping in view the 14 Thrust Areas mentioned in Para 5 of Page 14 of this Plan."

20. Admittedly it is not a case of new technology to be adopted for the proposed course of D□ Pharma by the college in question. Thus, the State had put up a moratorium for Pharmacy courses also. It is significant to note that in the conclusions and recommendations, it was observed that AICTE had permitted imbalanced growth of the institutions in the area which could be avoided. In fact, we see that such an expert body often ignores such relevant factors which makes action arbitrary.

21. The decision taken by the State Government to impose a moratorium as apparent from facts reflected in perspective plan is based on a survey and supported by the data. Considering the fact that seats are going abegging. Even in 2017□18 in the Pharmacy

course, data has been given in the SLP that among 56 colleges affiliated to the University, 30 were in the city of Hyderabad and out of total 1630 seats, 173 had remained vacant. Thus, it is apparent that a large number of seats remained vacant. Not more than 30 seats can be allotted to one institution. In the circumstances, the observation of the High Court that it was for the institution to worry and consider the viability and it was not for the University or State Government to take same into consideration, is completely a flimsy and impermissible reason employed. The mushroom growth of educational institutions cannot be permitted. The observation made by the High Court that unfit institution will automatically shut down the courses is not the judicious approach warranted in such matters. It is not only that the requirement of the locality should exist but it has to be ensured that only the standard educational institutions should come up and once they come up, they should be able to survive. A large number of Institutions are not to be opened up to die an unnatural death on the principle of survival of the fittest and due to non□availability of teachers/students. Standard of education cannot be compromised and sacrificed by permitting institutions to come up in a reckless manner without there being any requirement for them at a particular place. There is a need to strengthen the existing system of education not to make it weak by further complicating the issues by wholly unwarranted approach as the one adopted by the High Court. It cannot be left at the choice of the institution to open the course whenever or wherever they desire. The High Court has also erred in observing that the seats remaining vacant could not be the relevant criteria for refusal of NOC.

22. Mr. V. Giri, learned senior counsel appearing for the respondents as referred to the decision in State of T.N v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104, to contend that once the field is occupied by the AICTE Act enacted under Entry 66 List I, the State Legislation falling under Entry 25 List III to the extent it is in conflict with the Central Legislation, would be void. In case of repugnancy between legislation made by Parliament and that made by the State Legislation on a subject covered under List III, the Central Legislation shall prevail and to that extent, the State Legislation shall be void unless it is saved by Article 254(2) of the Constitution. The expression coordination used in Entry 66 has been considered by the Court to mean harmonization with a view to forging a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It is further observed that whether the State law is repugnant to the Central Act under Entry 25 will depend upon the facts of each case. Under the AICTE Act, the Council has been established for coordinated and integrated development of the technical education system at all levels throughout the country. It is required to ensure proper maintenance of norms and standards in the technical education system. The norms and standards to be prescribed for the technical education intend to ensure the growth of technical education in all parts of the country. The norms and standards have to be reasonable, adaptable,

attainable and maintainable by institutions throughout the country. When it comes to such a matter, the provisions of the State Act which impinge upon the provisions of the Central Act are void and therefore unenforceable. So far as the matters which fall under Section 10 of the AICTE Act is concerned, in case of an institute imparting technical education, the Central Act has to prevail.

At the same time, this Court in the aforesaid decision has observed that provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions for affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of the matter entrusted to it under Section 10 of the AICTE/Central Act. The Court further observed that so far as technical institutions are concerned, the norms and the standards and the requirements for their recognition and affiliation which may be laid down by the State Government and the University should not be in conflict and inconsistent with those laid down by the Council under the Central Act.

23. In Adhiyaman Educational & Research Institute case (supra), the power of the State Government to grant permission to start a technical institute that is an Engineering College in the State of Tamil Nadu came up for consideration. College was functioning and a report was received from the Director of Technical Education after inspection regarding lack of infrastructural facilities. The High Power Committee in its report stated that conditions imposed by the Government were not fulfilled. The Director, Technical Education issued a show cause notice asking the College to explain why the permission granted by the Government to start the college should not be withdrawn. The High Power Committee also resolved to reject the request of the Trust regarding provisional affiliation for 1989-90. Questioning the same a writ petition was filed. It was held that the State Government had no power to cancel the permission granted to the Trust to start the College. It was required to be canceled under the AICTE Act. It was observed that duty was imposed on the Council for recognizing or de-recognizing any technical institution in the country.

24. In Adhiyaman Educational & Research Institute case (supra), question arose as to the power of the State Government and the University respectively to de-recognize and disaffiliate an Engineering College. Considering Entry 66 of List I and Entry 25 of List III, this Court observed that 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. Considering the constitution of Council under the AICTE Act, it was a representative body of various States and Union Territories and the Council functions are enjoined under Section 10 of the AICTE Act.

This Court opined that Council has been established to promote the qualitative improvement of education in relation to planned quantitative growth. Norms and standards are set by the Council so as to prevent lopsided or an isolated development of technical education in the country. Unnecessarily high norms or standards, say for admission to the technical institution or to pass the examination may not only deprive a vast majority of the people the benefit of the education and the qualification but would also result in concentrating technical education in the hands of the affluent and elite group and ultimately result in depriving the country of a large number of otherwise deserving technical personnel. This Court has considered the provisions of the State Act and the provisions of the Central Act in various areas and in particular allocation and disbursal of grants. This Court observed:

> "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 the 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." The Court has observed that the State Act which impinges upon the provisions of the Central Act has to be held to be void. In the case, the issue was of derecognition. The power of the recognition of institution is squarely reserved under the Central Act i.e., AICTE Act.

Thus, it would have power to derecognition also and for the purpose, the procedure has been given in the AICTE Act. Thus, in Adhiyaman Educational & Research Institute, the factual situation was totally different. In that context, the discussion has been made about the provisions of Section 10 and the provisions of the State Act of Tamil Nadu. The provisions in State Act of 1982 are not repugnant to AICTE Act. The vires of provisions and validity of Act of 1982 has not been questioned and otherwise, also there is no room to accept the submission that the provisions of Section 20 of the Act, 1982 are inoperative.

25. In Jaya Gokul Education Trust v. Commissioner & Secretary to Government of Higher Education Department, Thiruvananthapuram, Kerala, (2000) 5 SCC 231, relied on by the respondents, question arose for consideration whether under Clause 9(7) of the Kerala University First Statute, which provided that Syndicate has the right to decide about the affiliation to be granted or not after considering the views of the Government. The provisions .which came up for consideration have been referred to :

"20. The only provision relied on before us by the State Government which according to its learned senior counsel, amounted to a salutary requirement of 'approval' of the State Government, was the one contained in Clause 9(7) of the Kerala University First Statute. It reads as follows:

(9) Grant of affiliation: □(1)□(6)...

(7) After considering the report of the Commission and the report of the local inquiry, if any, and after making such further inquiry as it may deem necessary, the Syndicate shall decide, after ascertaining the view of the Government also, whether the affiliation be granted or refused, either in whole or part. In case affiliation is granted, the fact shall be reported to the Senate at its next meeting:

> It will be noticed that Clause 9(7) of the statute required that before the University took a decision on "affiliation", it had to ascertain the "views " of the State Government." (emphasis supplied) As the provisions of Clause 9(7) of the Statute merely required the University to obtain the views of the State Government, that could not be characterized as requiring the approval of the State Government. This Court also opined that the question of affiliation was a different matter and was not covered by the Central Act. On considering the provisions under Clause 9(7) of Kerala University First Statute, this Court held that there was no statutory requirement for obtaining the approval of the State Government even if there was one, it would be repugnant to the AICTE Act. The decision is based on the provisions of Clause 9(7).

26. The provisions contained in Section 20 of the Act of 1982 involved in the instant case are different and its validity vis□à□vis to AICTE Act has already been upheld by this Court. Apart from that, it has not been pointed out that in the exercise of powers under Section 10 of Central Act, norms have been fixed by the AICTE as to how many colleges should function at a particular city/place. Definitely the State Government and the University, in the absence of any such norms/rules having been framed by the AICTE can always have their say as per applicable statutory provisions or policy. In the instant case, Section 20 of Act of 1982, enables Universities to grant no objection certificate after considering the local requirement and as no guidelines in this regard have been framed by the AICTE, it cannot be said to be an exercise of power against the norms fixed by AICTE. Consequently, no repugnancy arises. The mushroom growth of the institutions cannot be permitted, was rightly pointed out in the perspective plan. A large number of institutions have already been permitted to function in the State by the Central Bodies. It is painful to note that at several places mushroom growth of the institutions had been permitted by such bodies in an illegal manner. In case there is no check or balance and the power is exercised in an unbridled reckless manner, the sufferer is going to be the standard of education. At the same time, there is a necessity of good institutions with new technology, but at the same time mushroom growth of the substandard institutions cannot be permitted. There has to be a requirement of educational institutions in the locality and that is one of the main considerations.

27. The counsel appearing for the respondents were not able to point out any of the provisions in the AICTE Act and rules for adjudging requirement of the locality have been framed by the Council. In the absence of guidelines or norms framed to check the mushroom growth of the institutions, the university cannot be deprived of considering the said aspect. The State Government had also sent a communication to AICTE regarding the

alarming increase in the number of technical educational institutions in the area in question and imbalanced growth. The decision of State has been taken in an objective manner and the same is based on the consideration of data and could not be said to be irrational or arbitrary in any manner whatsoever. The policy decision of the State Government cannot be said to be illegal and on that basis, the University has taken the decision in terms of Section 20 of the Act of 1982.

28. In State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1, question arose for consideration as to the power of the Government of Maharashtra as it refused to issue no objection certificate for starting new BEd college for the academic year 2005–06 in view of the provisions of National Council for Teacher Education Act (NCTE Act). Though the permission was granted by the Council under Section 14 of the NCTE Act to start the college. This Court held that university was bound to implement a decision of the NCTE Act and grant affiliation in accordance therewith irrespective of the bar under Section 83 of the Maharashtra Universities Act, 1994. This Court also observed that it does not imply that under Sections 82 and 83 of the Maharashtra Universities Act, 1994 were null and void. They would not apply to the case but in other appropriate courses. This Court observed that:

> "61. Interpreting the statutory provisions, this Court held that by enacting Section 10A, Parliament had made "a complete and exhaustive provision covering the entire field for the establishment of a new medical college in the country". No further scope is left for the operation of the State Legislation in the said field which was fully covered by the law made by Parliament. The Court, therefore, held that the proviso to Sub-section (5) of Section 5 of the State Act which required prior permission of the State Government for establishing a medical college was repugnant to Section 10A of the Central Act and to the extent of repugnancy, the State Act would not operate. The Court noted that in the scheme that had been prepared under the Regulations for the establishment of new medical colleges, one of the conditions for the qualifying criteria laid down was 'essentiality certificate' regarding the desirability and of having the proposed college at the proposed location which should be obtained from the State Government. The proviso to Sub-section (5) of Section 5 of the Act, therefore, must be construed only as regards "proposed location". The 'essentiality certificate', however, could not be withheld by the State Government on any 'policy consideration' inasmuch as the policy and the matter of establishment of new medical college rested with the Central Government alone.

62. From the above decisions, in our judgment, the law appears to be very well settled. So far as co-ordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as State Legislatures and appropriate Act can be by the State Legislature subject to limitations and restrictions under the Constitution."

29. In Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya (supra) Court further observed that proviso to sub-section 5 of Section 5 must be construed with respect to "proposed location". The essentiality certificate could not be dealt with by the State Government on any policy consideration inasmuch as the policy and the matter of establishment of new medical college rested with the Central Government alone. In the instant case, it is mainly with respect to local area i.e., the city of Hyderabad which power has been saved by this Court even in the aforesaid dictum.

30. In Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education & Charitable Trust v. State of Tamil Nadu, (1996) 3 SCC 15, the provisions of Tamil Nadu Medical University Act, 1987 came up for consideration. The provisions of the Act are different. For the establishment of a Medical College, State Essentiality Certificate and affiliation from University is required. In the instant case, the matter is about the proposed location and affiliation out of 36 Pharmacy colleges in the State of Telangana and 30 are located in Hyderabad city alone which are more than adequate in number. Thus, rightly decision has been taken not to start another new course at the proposed location at Hyderabad city. Thus, the said decision is no avail to espouse the cause of the respondents.

31. The respondents have also referred to the decision in Rungta Engineering College, Bhilai v. Chhattisgarh Swami Vivekananda Technical University, (2015) 11 SCC 291, wherein question came up for consideration with respect to the power of examining authority i.e., University and State Government, to withdraw provisional affiliation or to decline grant of affiliation. The decision was taken to disapprove provisional affiliation granted to the college. This Court observed that the objections on the basis of which action was taken squarely fall within the sweep of one or the other areas which only AICTE has exclusive jurisdiction to deal with. These shortcomings ought to have been brought to the notice of AICTE to take appropriate action against the college. On facts of

the instant case, the decision cannot be applied as it is not the case of shortcomings.

32. Resultantly, the appeal deserves to be allowed, same is hereby allowed. We quash the impugned judgment and order. No costs.

.....J. (Arun Mishra) .....J. (Indira Banerjee) October 29, 2018 New Delhi.