

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4016 OF 2020

(@ Special Leave Petition (Civil) No.11482 OF 2020)

APJ ABDUL KALAM TECHNOLOGICAL
UNIVERSITY & ANR.

....APPELLANT(S)

VERSUS

JAI BHARATH COLLEGE OF MANAGEMENT
AND ENGINEERING TECHNOLOGY & ORS.

....RESPONDENT(S)

J U D G M E N T

V. RAMASUBRAMANIAN, J.

1. Leave granted.
2. Aggrieved by the order passed by the Division Bench of the Kerala High Court directing the Vice Chancellor of the University

to reconsider the application for affiliation of a new B.Tech course, submitted by the first respondent, which is a self-financing Engineering College, solely on the basis of the extension of approval granted by the All India Council for Technical Education (*hereinafter referred to as "AICTE"*), the APJ Abdul Kalam Technological University, which is a State University and its Vice Chancellor have come up with this appeal.

3. We have heard Mr. Chander Uday Singh, learned Senior Counsel appearing for the appellant-University, Mr. S. Krishnamoorthy, learned Counsel appearing for the first respondent-College, Ms. Priyanka Prakash, learned Counsel appearing for the second respondent-State and Mr. Anil Soni, learned Counsel appearing for the third respondent-AICTE. We have also heard Mr. C. Arayama Sundaram, Mr. Gopal Sankaranarayanan and Mr. P.S. Narasimha, learned Senior Counsel appearing for the applicants seeking intervention/impleadment and vacation of stay.

4. It appears that despite the mushroom growth of the self-financing Engineering Institutions in the neighbouring States, the

State of Kerala had only 15 Engineering Colleges with an annual intake of only 4844 students till the year 1997. But in the past more than two decades, there was a spurt in the growth of self-financing Engineering Institutions in the State. The position as on date is that there are 149 Engineering Colleges in the State of Kerala with a total annual permitted intake of 47,420 seats.

5. In addition, there are also six Central Government Engineering Institutions in the State.

6. Therefore, with a view to regulate technical education in the State, the State of Kerala enacted the APJ Abdul Kalam Technological University Act, 2015 (hereinafter referred to as “the University Act”). Some of the Objects of the University as indicated in Section 5 of the Act are as follows:-

“xxxx

(b) to improve the academic standards of the graduate, postgraduate and research programmes in engineering sciences, technology and management.

(c) to ensure the academic standards of all colleges and institutions affiliated to the University.

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(k) to substantially increase enrolment in Postgraduate education and research programmes in the colleges and

institutions with the aim of promoting engineering research, development and innovation;

(l) to support the establishment of Centres of excellence for multidisciplinary applied research in specific thematic areas;

(m) to improve the learning skills of the students by constantly and continuously improving and upgrading the academic quality and standards of faculty;

(n) to introduce and sustain innovative systematic quality improvement programmes in the field of technical education.”

7. The powers and functions of the University enlisted in

Section 8 include the following:

“xxxxxxx

(iii) to lay down the norms and standards for the establishment, maintenance, administration, supervision and recognition of colleges and centres maintained by the University.

(iv) to affiliate to itself institutions as constituent colleges or autonomous colleges or regular colleges or colleges with academic autonomy in accordance with the provisions of this Act and the Statutes, Ordinances and Regulations and to withdraw affiliation of colleges obtained in violation of Statutes of the University.;

(v) to confer academic autonomy to affiliated colleges, institutions or a department of the affiliated colleges or institutions or a department maintained by the University.

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(vii) to hold examinations and to confer degrees, postgraduate degrees, diplomas, certificates and other academic distinctions to persons who, -

(a) shall have pursued a prescribed course of study in the University or any college or institutions thereunder and shall have passed the prescribed examinations of the University unless exempted therefrom in the manner prescribed; or

(b) shall have carried on research satisfactorily under conditions as may be prescribed and which has been duly evaluated;

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(xiv) to provide for the inspection of affiliated colleges and to issue such directions as the University may deem fit;

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(xviii) to recommend to the Government to take over, in the public interest, the management of colleges or institutions where irregularities or dereliction of criminal nature by the management of such college or institution are *prima facie* evident to the committee of enquiry appointed by the University.”

8. Sections 60 to 66 provide for affiliation and recognition, procedure for permission, continuation of affiliation, withdrawal of affiliation etc. Section 60 of the Act, which prescribes the conditions subject to which affiliation can be granted by the University, reads as follows:

60. Affiliation and recognition.- (1) The University can affiliate any of the Engineering Colleges or Institutions imparting education in technology owned by Government of Kerala or Government controlled societies, Private aided and Private unaided self-financing educational agencies, which, before the date of commencement of this Act remained affiliated to the different Universities, except Deemed Universities in the State of Kerala, **provided they meet the criteria prescribed under this Act, Ordinances and**

Statutes for affiliation, including but not confined to availability of faculty, administrative machinery, infrastructure (buildings, laboratories etc.) which will be laid down by the University from time to time under the provisions of this Act. Such colleges meeting the specified criteria can be affiliated to the University as (i) regular colleges or (ii) autonomous colleges (iii) colleges with academic autonomy or (iv) institutions. The affiliation of such institutions to other Universities in the State except Deemed Universities, shall stand transferred to the University on and from the date of commencement of this Act, subject to the conditions that the affiliation of these colleges or institutions in respect of the students admitted to Engineering courses shall continue till those batches of students complete their courses, the examinations of all such students shall be conducted by the Universities to which they were attached, degrees, postgraduate degrees or diplomas or other distinctions shall be awarded by such Universities:

Provided that the institutions in the technological branch maintained by other Universities of the State as their departments or their respective constituent colleges or the engineering colleges or teaching institutions under the deemed universities and the National Institutes established by the Central Government shall not come under the jurisdiction of the University.

(2) The Educational Agency applying for affiliation or recognition and whose college or institution has been granted affiliation or recognition, shall give and comply with the following undertaking:-

(i) that the provisions of this Act, or any other Acts passed by the State Legislature related to Engineering field in the State, rules made thereunder and Statutes, Ordinances, Regulations, standing orders and directions of the University shall be observed;

(ii) that there shall be a separate Governing Body or Managing Council for an affiliated college or group of colleges receiving financial assistance from the Government or the University;

(iii) that the number of students admitted for courses of study shall not exceed the limits prescribed from

time to time, by the University, the Government, Central or State Councils or authorities in the concerned discipline as the case may be;

(iv) that there shall be suitable and adequate physical facilities such as building, laboratories, libraries, equipments required for teaching and research, hostel and other infrastructure facilities as the case may be, prescribed by Statutes, Ordinances and Regulations;

(v) that the financial resources of the college or institution shall be such as to make due provision for its continued maintenance and working;

(vi) that the strength and qualifications of teaching and non-teaching staff of the affiliated colleges and the emoluments and the terms and conditions of service of the staff of affiliated colleges shall be such as may be prescribed by the University and which shall be sufficient to make due provision for courses of study, teaching or training or research, efficiently;

(vii) that the services of all teaching and non-teaching employees and the facilities of the college to be affiliated shall be made available for conducting examinations and for promoting other activities of the University;

(viii) that the directions and orders issued by the Chancellor, Vice-Chancellor and other officers of the University in exercise of the powers conferred on them under the provisions of this Act, Statutes, Ordinances and Regulations or any other Acts passed by the State Legislature in this regard, shall be complied with;

(ix) that, there shall be no transfer of the management or ownership of the college without previous sanction of the University;

(x) that the college or institution shall not be closed without previous sanction of the University;

(xi) that in the event of disaffiliation or de-recognition or closure of the college or institution, all the assets of

the college or institution including building and equipment which have been constructed or created out of the amount paid as a grant-in-aid by the Government or the University Grants Commission shall vest in the Government.

9. While section 60 extracted above, lays down in detail, the criteria for and the conditions subject to which, affiliation can be granted to an institution, Section 63 of the University Act indicates the procedure for continuation of affiliation. It reads as follows:

63. Continuation of affiliation. - (1) The affiliated college or recognised institution may apply for continuation of affiliation or recognition for the courses of study for which affiliation or recognition was granted ordinarily six months prior to the date of expiry of such affiliation or recognition. The University shall follow the procedure prescribed in Statutes, for grant of continuation of affiliation.

(2) The affiliated college or recognised institution may apply for affiliation or recognition for additional courses of study and the same shall be considered by the University following the procedures or rules prescribed in this regard in the Statutes.

(3) An affiliated college with at least six years standing as an affiliated college may apply for permanent affiliation in the manner as may be prescribed in the Statutes and the University shall consider such applications in such manner as may be prescribed.

10. The first respondent is a self-financing Institution which was earlier offering B.Tech courses in five disciplines with an annual permitted intake of 60 students in each of the disciplines.

After closing the course in one particular discipline, the first respondent applied in February/March-2020 seeking approval of the AICTE for starting a new course in “*Artificial Intelligence and Data Science*” with a permitted annual intake of 60 students, from the Academic Year 2020-21. The application was in accordance with the AICTE Approval Process Handbook 2020-21, issued in terms of the AICTE (Grant of Approvals for Technical Institutions) Regulations, 2020.

11. On 13.06.2020, AICTE granted approval to the first respondent, for starting the newly proposed course, even while granting extension of approval for the existing courses.

12. Simultaneously with the submission of the application to the AICTE, the first respondent also submitted an application for affiliation to the appellant-University, in February/March 2020. The first respondent also paid the Inspection Fee/Affiliation Fee.

13. But even before the first respondent took a decision to start a new course, something happened in the State of Kerala. A study conducted by a group of academic experts seems to have revealed that there was a steady decline in the actual intake of students in

self-financing engineering colleges. As against the permitted intake of 58,165 students for the academic year 2015-16, only 37,007 students got admitted leaving 19,468 seats vacant. The number of vacant seats rose to 20,038 in the academic year 2016-17 and to 22,819 in the academic year 2017-18.

14. Therefore, based on the study conducted by the group of academic experts, the Government issued an order in G.O. (Rt) No.1039/2019/HEDN dated 22.06.2019. It was directed by this Order that permission for starting new courses in Engineering shall be granted only if three conditions are satisfied namely: **(i)** that the college should have NBA accreditation; **(ii)** that the admission of students in the previous academic years should have been more than 50% of the sanctioned intake; and **(iii)** that the new course should be innovative.

15. Following the said Government order, the Syndicate of the appellant-University resolved in its meeting held on 04.02.2020 to fix the following norms for the grant of affiliation to new programs based on the recommendation of the Academic Council: **(i)** that at

least one of the existing programs should have NBA accreditation; **(ii)** that the average annual intake of the institution for the previous three years should be more than 50% of the sanctioned intake; **(iii)** that the proposed programme should have AICTE approval and NOC from State Government; and **(iv)** that the proposed programme should have industry demand/employment potential.

16. Thereafter, a sub-committee was constituted for the purpose of recommending affiliation for new courses or programmes for the affiliated colleges who have submitted applications for starting new programmes. This sub-committee resolved in its meeting held on 20.03.2020 to suggest the following criteria for the consideration of the Syndicate of the University:-

1. The sub-committee examined all the 50 proposals received till 19-03-2020 from various colleges for granting affiliation to new programs/additional intakes. Upon scrutiny of each application in line with the criteria suggested by the Syndicate as cited above, 21 institutions are found to be eligible. The details of these 21 institutions and programs/courses applied are attached as Annexure 1. Accordingly, the sub-committee recommends that the proposals from these 21 institutions for starting new

programs/additional intake be favourably considered by the Syndicate for issuing NOC for granting affiliation.

2. The sub-committee recommends that the applications for BVoC courses be considered by the Syndicate for appropriate policy decisions.

3. The sub-committee recommends that the applications for BVoC courses be considered by the Syndicate/refer the matter to the Director of Technical Education for appropriate policy decisions.

4. The sub-committee identified two case wherein the institutions are having NBA accreditation but with percentage intake less than 50. These two cases are referred to the Syndicate for appropriate decisions.

5. The sub-committee recommends that for the courses listed in Annexure 1 detailed syllabus and curriculum are to be framed in a time bound manner well before the commencement of the courses.

17. Finding that the Government Order G.O. (Rt) No.1039, dated 22.06.2019 and the resolution of the Syndicate dated 04.02.2020 has led to an unfavourable climate with the sub-committee not recommending the grant of affiliation for their proposed new course, the first respondent-College filed a writ petition in Writ Petition (C) No.12709 of 2020 before the High Court of Kerala. It appears that the writ petition was filed on 23.06.2020, seeking the following reliefs namely: **(i)** to set aside the Government Order dated 22.06.2019; **(ii)** to direct the

University to grant affiliation for the newly proposed course for the academic year 2020-21; **(iii)** to quash the resolution of the Syndicate dated 04.02.2020, as communicated by the Order of the Registrar of the University dated 10.06.2020; **(iv)** to direct the University to consider the application for affiliation of the proposed course, without insisting on NBA accreditation and without insisting on NOC from State Government; and **(v)** to grant affiliation for the newly proposed course without insisting on any criteria based upon the report of the sub-committee.

18. By sheer coincidence, the 13th meeting of the Syndicate of the appellant-University was held on 24.06.2020, the day following the date on which the first respondent College filed the writ petition before the High Court. This Syndicate meeting was chaired by the Vice Chancellor of the University. It was attended by a total of nine persons, of which one was the Principal Secretary, Higher Education Department of the Government of Kerala, and another was the Director of Technical Education. The rest were academicians. In this meeting, the Syndicate examined the list of colleges which had applied for new

courses/programmes, without any NBA accreditation. Finding that even colleges which did not have NBA accreditation had been granted approval by AICTE, the Syndicate resolved in its meeting held on 24.06.2020 that affiliation can be granted even to colleges without NBA accreditation, subject to the satisfaction of the following criteria: **(i)** that the Institution should have more than 50% pass for the outgoing students at the time of application for affiliation; **(ii)** that the Institution should have most recent academic audit overall score of “Good”; and **(iii)** that the Institution should have three years average intake of more than 50% of the sanctioned intake.

19. Though the first respondent filed the writ petition on 23.06.2020 challenging the order of the University dated 10.06.2020 and though the earlier Syndicate Resolution dated 04.02.2020 (on which the order of the Registrar dated 10.06.2020 was based) stood modified by the next Syndicate Resolution dated 24.06.2020, the first respondent did not seek any amendment of the prayer. The net result was that one of the orders (of the University) impugned in the writ petition stood

amended, by the time the writ petition was heard, but the amendment was not under challenge.

20. The writ petition filed by the first respondent challenging the denial of affiliation for starting a new B.Tech course in Artificial Intelligence and Data Science, was taken up along with similar writ petitions filed by other colleges (including those filed by the Colleges, which have now come up with applications for intervention/impleadment and for vacation of interim order) and all of them were disposed of by a learned Judge of the High Court by a Judgment dated 06.08.2020. By the said Judgment, the learned Judge held: **(i)** that in view of the requirements of Section 14 of the University Act read with Section 30(2)(xiv), the Syndicate cannot be said to be lacking in authority for fixing the norms for affiliation; **(ii)** that the norms fixed by the Syndicate in its resolution dated 04.02.2020 as communicated by the Order of the Registrar dated 10.06.2020 would be applicable to both programmes and courses; **(iii)** that in view of the resolution of the Syndicate dated 24.06.2020, NOC from the State Government

and NBA accreditation are no longer necessary; **(iv)** that as a consequence, the State Government Order dated 22.06.2019 was liable to be set aside; and **(v)** that the University may have to reconsider one portion of its decision dated 24.06.2020, after taking note of the recommendation contained in Annexure 1 and Clause 7 of Annexure 14 of the Approval Process Handbook and a clarification issued by AICTE. Annexure 1 of the Approval Process Handbook contained a recommendation to discourage the creation of additional seats in traditional disciplines, but to encourage conversion of current capacity in traditional disciplines to emerging new technologies. Clause 7 of Annexure 14 made accreditation mandatory for increase in intake/starting new courses.

21. Not satisfied with the partial relief granted and the directions issued by the learned Judge, the first respondent filed a writ appeal in Writ Appeal No.1073 of 2020 before the Division Bench of the High Court. The other Colleges who were writ petitioners, also filed separate writ appeals.

22. By the common Judgment dated 08.09.2020 impugned in this appeal, the Division Bench partially allowed the writ appeals, holding: **(i)** that the Syndicate did not have the power to take the decisions dated 04.02.2020 (as communicated on 10.06.2020) and 24.06.2020, as there was no University Statute in force on that date and that in the absence of the Statute, the Vice-Chancellor alone had the power under section 14(6) of the Act to make any recommendation to the Board of Governors in the matter of affiliation; and **(ii)** that the University cannot go beyond AICTE Regulations.

23. Aggrieved by the said judgment of the Division Bench of the Kerala High Court, the University has come up with the above appeal. It is stated across the Bar that the appellant-University has filed similar appeals against the very same impugned Judgment and those appeals are yet to be numbered.

24. Though the learned Single Judge dealt with several issues, the focus of the Division Bench was mainly on two issues namely: **(i)** the power of the Syndicate to lay down norms for the grant of

affiliation; and **(ii)** the very power of the University to go beyond the AICTE Regulations.

25. On the first issue revolving around the power of the Syndicate, the High Court held that under Section 63(2) of the State University Act, an application for affiliation or recognition for additional courses of study made by a College which already holds affiliation, should be considered by the University following the procedure prescribed in the Statutes. Admittedly the first University Statute was issued only on 07.08.2020. Therefore the Division Bench of the High Court held that on the date on which the applications for affiliation for additional courses of study were made by the Colleges and processed by the University, there was no Statute of the University. Hence the Division Bench concluded that the only option available in such circumstances where there was no Statute, was for the Vice Chancellor to take recourse to the power available under Section 14(6) of the University Act. But this power, in the opinion of the High Court, has to be exercised by the Vice Chancellor with the approval of the Board of Governors. As this was not done, the Division Bench remanded

the matter back to the Vice Chancellor to follow the course of action available under Section 14(6).

26. It is relevant to note at this stage that the power of the Syndicate to lay down norms and standards for affiliation, which it did as per its Resolutions, was upheld by the learned Single Judge, on a reading of Section 30(2)(xiv) of the Act. The Judgment of the learned Single Judge was delivered on 06.08.2020, upholding the power of the Syndicate, even in the absence of the Statutes of the University, to lay down norms for affiliation for additional courses. However, on the very next day namely 07.08.2020, the First Statutes of the University were also issued.

27. Therefore, when the colleges filed writ appeals and argued about the procedure to be followed under Section 14(6) in the absence of the Statutes, the appellant-University relied upon the Statutes issued on 07.08.2020 and the power of ratification. Statute No.93 was brought to the notice of the Division Bench to show that all matters relating to affiliation fell within the scope of the powers of the Syndicate. But the Division Bench not only rejected the argument of ratification, but also rejected the reliance

placed upon Statute No.93 on the ground that the power under Statute No.93 may relate only to the grant of affiliation of a teaching course or any subject in a teaching course, conducted in any of the colleges which are not affiliated.

28. But we do not think that the view taken by the Division Bench both with regard to the prescription contained in Section 63(2) and with regard to the powers of the Vice Chancellor under Section 14(6), is in sync with the scheme of the University Act. Section 63(2) which we have already extracted in paragraph 9 above, actually deals with the grant of affiliation or recognition for additional courses to an affiliated college or recognized institution. This provision does not deal with the laying down of norms and standards. The Division Bench overlooked the fact that what was in issue before the Court was a Resolution passed by the Syndicate, first on 04.02.2020 as communicated by the Order of the Registrar dated 10.06.2020 and then on 24.06.2020. In other words what was in question in the writ petitions filed by the Colleges, was not merely the individual act of grant or denial

of affiliation for additional courses. The challenge was to the norms fixed by the Syndicate in its meetings dated 04.02.2020 and 24.06.2020 for the grant of affiliation for additional courses. Section 63(2) does not deal with the issue of laying down norms and standards, but deals only with the grant of affiliation for additional courses in accordance with the procedure prescribed in the Statutes.

29. The manner in which the Division Bench of the High Court construed Section 14(6), is also not correct. It will be useful to extract Sub-sections (5), (6) and (14) of Section 14. They read as follows:

“14. Powers of the Vice-Chancellor

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(5) If there are reasonable grounds for the Vice-Chancellor to believe that there is an emergency which requires immediate action to be taken, he shall, take such action as he thinks necessary, and shall, submit for approval in the next meeting, the grounds for the emergency and the action taken by him, to such authority or body which, in the ordinary course, would have dealt with the matter. In the event of a difference arising between the Vice-Chancellor and the authority, on the issue of existence of such an emergency, or on the authority, on the issue of existence of such an emergency, or on the action taken or on both, the matter shall be referred to the Chancellor whose decision shall be final.

(6) Where any matter is required to be regulated by Statutes or Regulations but no Statutes or Regulations have been made in that behalf, the Vice-Chancellor shall for the time being, regulate the matter by issuing such directions as the Vice-Chancellor thinks necessary, and shall, as soon as may be, submit them before the Board of Governors or other authority or body concerned for approval.

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(14) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be conferred upon the Vice-Chancellor by or under this Act and Statutes.”

30. On a reading of Section 14(6), the High court came to the conclusion that the Vice Chancellor, in the absence of Statutes, may be entitled to issue directions for regulating certain matters, but if he does so, he has to take the approval of the Board of Governors. But the High Court overlooked several facts. First is that Sub-section (5) of Section 14 confers emergency powers on the Vice Chancellor and Sub-section (14) recognises the residuary powers of the Vice Chancellor. Second is that even sub-section (6) uses the words “**Board of Governors or other authority or body concerned for approval**”. Therefore, it is not necessary that the Vice-Chancellor, after issuing directions, should take the approval of the Board of Governors alone. He was entitled to take the approval of “the other authority or body concerned”.

31. In the case on hand, the Syndicate of the University comprised of nine persons, including the Vice Chancellor, the Principal Secretary to the Higher Education Department of the Government of Kerala, the Director of Technical Education and a few academicians. All that the Syndicate wanted from the Colleges seeking affiliation for additional courses, was the fulfillment of just three simple criteria namely **(i)** more than 50% pass for the outgoing students at the time of application for affiliation; **(ii)** most recent academic audit overall score of “Good”; and **(iii)** three years average intake of more than 50% of the sanctioned intake.

32. As we have seen earlier, the power to lay down norms and standards and the power to affiliate to itself the Colleges, flow out of clause (iii) and (iv) of Section 8. This power is exercisable by University in accordance with the provisions of the Act, the Statutes, Ordinances and Regulations. It is the very same Section 8 which confers power upon the University to make Statutes, Ordinances and Regulations, under clause (xxvi).

33. Section 22 speaks of different authorities of the University. Under Section 22, as it was originally drafted, the University shall have a Board of Governors, an Executive Committee, the Academic Committee, the Research Council and such other bodies as may be designated by the Statutes, to be the authorities of the University. The University Act 17 of 2015 was amended by A.P.J. Abdul Kalam Technological University (Amendment) Act, 2018. The Amendment Act, though notified in the Kerala Gazette on 03.07.2018, came into effect from 08.12.2017. Through this Amendment Act, the nomenclature of the 'Academic Committee' was changed to 'Academic Council' and the nomenclature of 'Executive Committee' was changed to 'Syndicate'. Therefore, wherever there was a reference in the Act, to the 'Executive Committee', it had to be construed as a reference to the 'Syndicate'.

34. **Section 30(1) vests upon the Syndicate, the executive powers of the University**, including the general superintendence and control over the institutions of the University. Sub-section (2)

of Section 30 lists out the powers available to the Syndicate, subject to the provisions of the Act and the Statutes. The power under Clause (iii) of Sub-section (2) of Section 30 is of relevance and it reads as follows:-

“(2) Subject to the provisions of this Act and the Statutes, the Syndicate shall have the following powers, namely:-

(i)

(ii)

(iii) **to propose norms and standards for affiliating colleges** as regular colleges or autonomous colleges or constituent colleges of the University.”

Thus, ***the source of power for the Syndicate to prescribe norms and standards for affiliation, is Section 30(2)***. Section 30(2) begins with the words “subject to the provisions of the Act and the Statutes”. So, if there is something in the Act or the Statutes which regulates or controls the power of the Syndicate, then the Syndicate may be bound by such prescription. But if there is nothing in the Act/Statutes or if there are no Statutes at all, then it cannot be said that the power itself is unavailable. What is important to observe is that ***the power of the Syndicate to propose norms and standards flows out of the Act and not out of the University Statutes***. Therefore, the absence of

Statutes, till they were made for the first time on 07.08.2020, did not mean that the power under Section 30(2) could not have been exercised. The High Court erred in thinking that in the absence of the Statutes, recourse was available only to the Vice Chancellor under Section 14(6), overlooking for a moment that the power under Section 30(2)(iii) would not become otiose due to the absence of the Statutes.

35. Section 42 of the Act which speaks about the issue of Statutes and the matters for which provisions may be made in the Statutes, makes it clear that “*the conditions and procedures for affiliation of Colleges and for withdrawing the affiliation of colleges*”, is one of the matters that could be provided for in the Statutes. This is under Clause (xi) of Section 42. Therefore, it is clear that the Statutes can provide for the conditions and procedure for affiliation. The absence of the Statutes (till 07.08.2020) would only mean the absence of Statute-stipulated conditions and procedure for affiliation, but not the absence of the very power of the Syndicate flowing out of Section 30(2)(iii). Therefore, it was not necessary for the Vice Chancellor to fall

back upon Section 14(6) on the ground that there were no Statutes at that time.

36. Even assuming for a moment that the absence of the Statutes would take one automatically to Section 14(6), the inference drawn therefrom by the High Court may not be correct. Section 14(6) says that in the absence of a Statute, it is the Vice Chancellor who has the power to regulate any matter which is required to be regulated by Statutes or Regulations. It cannot be interpreted to mean that the Syndicate itself will be powerless in the absence of the Statutes and that the Vice Chancellor will have the power. In any case, the language of Section 14(6) is such that the Vice Chancellor may first regulate the matter by issuing directions and thereafter submit the same **“as soon as may be”** for the approval of the Board of Governors or other authority or body concerned. By virtue of Section 30(2)(iii), the Syndicate can be taken to be the “other authority” referred to in Section 14(6). If we do so, it can be seen that it was the Syndicate, chaired by the Vice Chancellor which took the impugned decisions in its meetings held on 04.02.2020 and 24.06.2020 and hence the

prescription of norms by the Syndicate, chaired by the Vice Chancellor cannot be said to be *ultra vires* the Act.

37. In any case, once the Statutes were issued on 07.08.2020, the vacuum sought to be filled up by Section 14(6) also disappeared. Under Section 43(1) of the Act, the State Government has the power to issue the first Statutes of the University. Accordingly, the Government issued the first Statutes on 07.08.2020. There is nothing in the Statutes that appears to curtail the power of the Syndicate to lay down norms and standards. Under Clause (xi) of Section 42, the Statutes may provide for the conditions and the procedure for affiliation. But the Statutes do not appear to lay down any conditions. Statute No.93 relied upon by the University seems to have left it to the Syndicate to prescribe the conditions. Statute No.93 reads as follows:

“Statute 93 Clause (xlix)

To grant exemption or reduction in the following matters and also other matters not specified here below, subject to the provisions of the University Act:

a)xxxxx

b)xxxxx

c)xxxxx

d)xxxxx

e)xxxxx

f)xxxxxx

g) Matters relating to granting of affiliation for a course of study or any subject in a course of study not already affiliated to the University, conducted in any of the colleges.”

38. When the Statutes have not prescribed any conditions for affiliation but have left it to the Syndicate to take care of matters relating to affiliation, the function of the Syndicate to lay down norms and standards by virtue of the powers conferred by Section 30(2), is made free of any fetters.

39. Therefore, the norms prescribed by the Syndicate in its meeting held on 24.06.2020 under the Chairmanship of the Vice Chancellor could not have been taken exception to. After all, the norms which the Colleges have objected to, merely seek to ensure that at least 50% of the outgoing students had passed their respective courses and that the Institution should have the most recent academic audit overall score of “Good”, apart from having an actual intake of more than 50% of the sanctioned intake in the preceding three years on an average. We fail to understand how colleges can demand affiliation for creating additional courses, when the pass percentage of outgoing students is less than 50%

and the Colleges could not even have an average intake of more than 50% of the sanctioned intake in the preceding three years.

40. Therefore, we are of the view that the High Court was in error in holding on the first issue that the resolutions passed by the Syndicate prescribing norms and standards for the grant of affiliation for additional courses, are *ultra vires* the Act.

41. Let us now take up the second issue revolving around the role of the appellant-University *vis-a-vis* AICTE. A little elaboration may be necessary as this issue keeps recurring very often.

42. The AICTE, was actually set up in 1945 as a National Expert Body to advice the Central and State Governments for ensuring the Coordinated Development of Technical Education in accordance with approved standards. After the mushroom growth of private Engineering Colleges and Polytechnics and the growing erosion of standards, the Council felt it necessary that it should be vested with statutory powers to regulate and maintain standards of Technical Education in the country. Therefore, a National Working Group was set up in November, 1985. On the

basis of the recommendations made by the National Working Group, the AICTE Act, 1987 was enacted. Section 23(1) of the AICTE Act empowers the Council to make regulations not inconsistent with the provisions of the Act and the Rules, generally to carry out the purposes of the Act. Section 10(1) of the Act enjoins upon the Council, the duty to take all such steps as may be necessary for ensuring coordinated and integrated development of Technical and Management Education and maintenance of standards. Clause (i) of sub-section (1) of Section 10 empowers the Council to lay down norms and standards for courses, curricula, physical and instrumental facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations. Clause(o) empowers the Council to provide guidelines for admission of students to Technical Institutions and Universities imparting technical education. Clause(k) of Sub-section (1) of Section 10 empowers the Council to grant approval for starting new Technical Institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

43. It will be of interest to note that Sub-section (2) of Section 23, which enlists the matters that could be provided for in the Regulations framed by the AICTE, does not include any of the powers indicated in Section 10(1). Clauses (a) to (e) of Sub-section (2) of Section 23 deal with the manner in which the meetings of the Council are to be regulated, the procedure for conducting business at the meetings of the Council, the terms and conditions of service of officers and employees of the Council, the constitution and powers of the Board of Studies etc. But Sub-section (2) of Section 23 makes it clear that the items listed therein are without prejudice to the generality of the powers to make Regulations under Sub-section (1), for carrying out the purposes of the Act. This is why all Regulations are issued by AICTE in exercise of the powers conferred by Section 23(1) read with the relevant clauses of Sub-section (1) of Section 10.

44. The AICTE Act is to be traced to Entry 66 of List-I of the Seventh Schedule to the Constitution. The A.P.J. Abdul Kalam Technological University Act issued by the Kerala State Legislature can be traced to Entry 25 of List-III.

45. In **R. Chitralkha vs. State of Mysore and Others**¹, the Constitution Bench of this Court pointed out that the question regarding the impact of Entry 66 of List-I on Entry-25 of List-III must be determined by a reading of the Central Act and the State Act conjointly. The Court pointed out **that a State Law providing for such standards, having regard to Entry 66 of List-I, would be struck down as unconstitutional only if the same is found to be so heavy or devastating as to wipe out or appreciably abridge the Central field and not otherwise.** The Court also pointed out that if a State law prescribes higher percentage of marks for extra-curricular activities in the matter of admissions to colleges, it cannot be said that it would be encroaching on the field covered by Entry 66 of List-I.

46. The decision of the Supreme Court in **R. Chitralkha** (supra) was followed in several cases including the one in **State of A.P. vs. K. Purushotham Reddy and others**². The decision in **K. Purushotham Reddy** (supra) arose under very peculiar

¹ AIR 1964 SC 1823

² (2003) 9 SCC 564

circumstances. The State of Andhra Pradesh enacted in the year 1986, an Act known as Andhra Pradesh Commissionerate of Higher Education Act, 1986. The constitutional validity of the said Act was questioned on the ground of lack of legislative competence, in view of the University Grants Commission Act, 1956. Though a Full Bench of the High Court rejected the challenge, the Supreme Court declared the Act as unconstitutional, by its judgment in **Osmania University Teachers' Association vs. State of Andhra Pradesh and Another**³. Thereafter, the Government of Andhra Pradesh enacted the Andhra Pradesh State Council of Higher Education Act, 1988. This Act was declared as unconstitutional by the High Court, on the same premise on which the 1986 Act was declared by this Court as unconstitutional. Therefore, the matter was carried to this Court. A Two Member Bench of this Court doubted the correctness of the decision in **Osmania University Teachers' Association** (supra), and hence, the matter was referred to a three-member Bench. The three-member Bench rejected the

³ (1987) 4 SCC 671

challenge to the State Act, by following the decision in **R. Chitralkha** (supra) and pointed out that when a State Act is in aid of the Parliamentary Act, the same would not entrench upon the latter.

47. The law is now fairly well settled that while it is not open to the Universities to dilute the norms and standards prescribed by AICTE, it is always open to the Universities to prescribe enhanced norms. As regards the role of the Universities *vis-à-vis* the AICTE, this Court held in **Bharathidasan University and Another** vs. **All India Council for Technical Education and Others**⁴, that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them. This view was followed in **Association of Management of Private Colleges** vs. **All India Council for Technical Education and Others**⁵.

48. That even the State Government can prescribe higher standards than those prescribed by AICTE was recognized by a 3-

⁴ (2001) 8 SCC 676

⁵ (2013) 8 SCC 271

member Bench of this court in **State of T.N. and Another** vs. **S.V. Bratheep (Minor) and Others**⁶. This principle was later applied in the case of Universities in **Visveswaraiah Technological University and Another** vs. **Krishnendu Halder and Others**⁷ where this Court considered the previous decisions and summarised the legal position emerging therefrom as follows:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term “adversely affect the standards” refers to lowering of the norms laid down by Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the state authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing

⁶ (2004) 4 SCC 513

⁷ (2011) 4 SCC 606

eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the state and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations.

49. **Visveswaraiah** (supra) principles were reiterated in **Mahatma Gandhi University and Another vs. Jikku Paul and Others**⁸. The legal position summarised in paragraph 14 of the report in **Visveswaraiah** (supra) (extracted above) were quoted with approval by the Constitution Bench in **Modern Dental College & Research Centre and Others vs. State of Madhya Pradesh and Others**⁹. In **Modern Dental College** (supra), issue No. IV framed for consideration by the Constitution Bench (as reflected in the opinion of the majority) was as to “**whether the legislation in question was beyond the legislative**

⁸ (2011) 15 SCC 242

⁹ (2016) 7 SCC 353

competence of the State of Madhya Pradesh". While answering this issue, the opinion of the majority was to the effect (i) that the decision in **Dr. Preeti Srivastava and Another vs. State of M.P. and Others**¹⁰ did not exclude the role of the States altogether from admissions; and (ii) that the observations in **Bharati Vidyapeeth (deemed university) and Others vs. State of Maharashtra and Another**¹¹ as though the entire gamut of admissions was covered by Entry 66 of List-I, has to be overruled. In the concurring and supplementing opinion rendered by R. Banumathi, J., in **Modern Dental College** (supra), the legal position enunciated in **Visveswaraiah** (supra) were extracted and followed.

50. But the High court placed reliance upon the decisions in (i) **Jaya Gokul Educational Trust vs. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another**¹², (ii) **Mata**

¹⁰ (1999) 7 SCC 120

¹¹ (2004) 11 SCC 755

¹² (2000) 5 SCC 231

Gujri Memorial Medical College vs. State of Bihar and Others¹³ and (iii) **Rungta Engineering College, Bhilai and Another vs .Chattisgarh Swami Vivekanand Technical University and Another**¹⁴, to hold in paragraphs 33 to 35 of the impugned judgment that the University did not have the power to incorporate any additional conditions for affiliation and that the AICTE Regulations and the Approval Process Handbook constitute a complete code having a superior force.

51. But the High Court ought to have noticed that all the above 3 decisions are distinguishable. In **Jaya Gokul Educational Trust** (supra), the question whether the State Government, as a matter of policy, can decline to grant approval for the establishment of a new Engineering College, in view of the perception of the State Government that the opening of a new college will not be in the interest of the students and employment, was answered in favour of the Institution.

13 (2009) 16 SCC 309

14 (2015) 11 SCC 291

52. Thereafter, in **Bharathidasan University** (supra), the Supreme Court noted **Jaya Gokul Educational Trust** (supra) and came to the conclusion that a careful scanning of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition will show that the role of the AICTE *vis-à-vis* the Universities is only advisory, recommendatory and a guiding factor. Therefore, on the issue on hand, **Jaya Gokul** is of no assistance to the first respondent. **Mata Gujri Memorial Medical College** followed **Jaya Gokul**, without reference to **Bharathidasan University**. In any case, as on date **Visveswaraiah, Mahatma Gandhi University and Modern Dental College** hold the field, but apparently, they were not brought to the notice of the High Court.

53. In **Rungta Engineering College** (supra), on which the High Court placed heavy reliance, this Court relied upon the decisions in **State of T.N. and Another vs. Adhiyaman Educational and Research Institute and Others**¹⁵ and **Jaya**

¹⁵ (1995) 4 SCC 104

Gokul. In **Adhiyaman**, this Court held that in the case of institutes imparting technical education, it is not the University Act and the University but the Central Act and the Council created under it that will have jurisdiction.

54. **Rungta Engineering College** did not take note of **Bharathidasan University, B.V. Bratheep, Visveswaraiiah and Mahatma Gandhi University**. Therefore, it cannot be said to reflect the correct position in law.

55. Quite unfortunately the AICTE has filed a counter affidavit before this Court supporting the case of the first Respondent College and branding the fixation of additional norms and conditions by the University as unwarranted. Such a stand on the part of the AICTE has compelled us to take note of certain developments that have taken place after 2012 on the AICTE front.

56. After the advent of AICTE Regulations, 2012, the applications for extension of approvals are processed by AICTE only online, merely on the basis of the self-disclosure made by the

colleges in their online applications. If all infrastructural facilities as prescribed by AICTE are found to be available on paper (whether available at site or not), the AICTE grants extension of approval.

57. The position ever since 2012 has been that all applications for approval/extension of approval are processed by AICTE only online. The AICTE Regulations, 2020, also require under Regulation 5.6.a. that existing institutions should submit applications using their unique User ID. Regulation 6.3.a. states that the applications submitted by the existing institutions will be processed after confirming that the applicant had fulfilled all the norms and standards through the procedure as prescribed in the Approval Process Handbook. Chapter II of the Approval Process Handbook for 2020-21 makes it clear that the extension of approval will be based on self-disclosure. Paragraph 13 of the counter affidavit of the AICTE contains an extract of Clause 2.15.4(b) of APH 2020-21, which confirms that the assessment is based on self-disclosure on AICTE web portal.

58. Though AICTE has reserved to itself the power to conduct inspections and take penal action against colleges for false declarations, such penal action does not mean anything and does not serve any purpose for the students who get admitted to colleges which have necessary infrastructure only on paper and not on site. The Regulations of the AICTE are silent as to how the students will get compensated, when penal action is taken against colleges which host false information online in their applications to AICTE. Ultimately, it is the universities which are obliged to issue degrees and whose reputation is inextricably intertwined with the fate and performance of the students, that may have to face the music and hence their role cannot be belittled. Today, even the universities are being ranked according to the quality of standards maintained by them. The Ministry of Human Resources Development of the Government of India launched an initiative in September 2015, known as National Institutional Ranking Framework (NIRF), for ranking institutions including universities in India. The ranking is based on certain parameters such as: **(i)** Teaching, Learning and Resources; **(ii)**

Research and Professional Practice; **(iii)** Graduation Outcomes; **(iv)** Outreach and Inclusivity; and (v) Peer Perception. No State run university can afford to have a laid-back attitude today, when their own performance is being measured by international standards. Therefore, the power of the universities to prescribe enhanced norms and standards, cannot be doubted.

59. In such circumstances, we are of the considered view that the view taken by the Kerala High Court in paragraphs 33 to 35 of the impugned judgment on issue no.2, is unsustainable. At the cost of repetition, we point out that while universities cannot dilute the standards prescribed by AICTE, they certainly have the power to stipulate enhanced norms and standards.

60. Accordingly, the appeal is allowed and the impugned judgment of the High Court is set aside. The resolution passed by the Syndicate on 24.06.2020 in modification of the earlier resolution dated 04.02.2020 is upheld. As a corollary, the consequential actions, if any, of the University as regards the first respondent-College are also upheld. The applications for

impleadment/intervention are dismissed and the other pending applications, if any, shall stand disposed of. There will be no order as to costs.

.....CJI.
(S. A. Bobde)

.....J.
(A. S. Bopanna)

.....J.
V. Ramasubramanian)

New Delhi
December 10, 2020