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JAYA GOKUL EDUCATIONAL TRUST

v.

THE COMMISSIONER AND SECRETARY TO GOVERNMENT HIGHER  
EDUCATION DEPARTMENT, THIRUVANANTHAPURAM, KERALA  
STATE AND ANR.

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APRIL 11, 2000

[M. JAGANNADHA RAO AND M.B. SHAH, JJ.]

*Education :*

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*All India Council for Technical Education Act, 1987 (AICTE Act)—  
Section 10(k)—Grant of approval for establishment of technical institutions  
under the Act—Grant of affiliation by University—Role of State Govern-  
ment—Held, State Government is required to give its ‘views’ on establishment  
and affiliation and not ‘approval’—Kerala University First Statute : Clause  
9(7)—AICTE Regulations : 8(4).*

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*Constitution of India—Article 246—AICTE Act, 1987 and Kerala Uni-  
versity First Statute—Held, provisions of State Act cannot be inconsistent with  
Central Act—Seventh Schedule—List I : Entry 66 and List III : Entry 25.*

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**Appellant-trust sought permission from University and All India  
Council for Technical Education (AICTE) to establish a self-financing  
Engineering College. A team of professors of the University inspected the  
facilities provided by the Trust and made a recommendation for granting  
permission. The AICTE granted conditional approval subject to fulfilment  
of certain conditions by the Trust. The Trust under the impression that  
State Government’s approval is also required, sought permission from it in  
this connection. Meanwhile, the University forwarded to the State Govern-  
ment a list of colleges and courses for affiliation during academic year  
1995-96 which included the college of the Trust. The State Government  
refused permission to the Trust to establish the college. The Trust filed a  
Writ Petition before High Court challenging the decision of the State  
Government. Single Judge allowed the writ petition and directed the Uni-  
versity to consider Trust’s application for permanent affiliation ignoring  
the State Government’s decision and pass appropriate orders. The State  
Government was also directed to reconsider its decision. The Division  
Bench allowed the writ appeal of the State Government and dismissed the**

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**Writ Petition of the Trust.**

In appeal to the Court, the Trust contended that after coming into force of the AICTE Act, 1987, a Central Act, the Kerala University First Statute conferring a power on the State Government or University for granting approval is inconsistent with the Central Act and is void; that the State Government and the University do not have any independent role to play in respect of institutions and technical education; that AICTE granted approval after consulting the State Government and the University as per its regulations; that the University is required to obtain views and not approval from the State Government and that the Trust need not take permission from the State Government to establish a college.

The State Government contended that it has taken a policy decision to stop approval for establishment of new Engineering Colleges as there are more Engineering Colleges in the State, both aided and un-aided, and to avoid commercialisation of education.

Allowing the appeals, the Court

**HELD :** 1. Section 10(K) of the AICTE Act, 1987 occupied the field relating the 'grant of approvals' for establishing technical institutions and the provisions of the Act alone were to be complied with. The provisions of the University Act or its statutes required the University to obtain the 'views' of the State Government. That could not be characterised as requiring the 'approval' of the State Government. If the University Statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of section 10(K) of the AICTE Act, 1987 and would be void. There are enough provisions in the AICTE Act for consultation by the Council of the AICTE with various agencies, including the State Government and the University concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, the AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. The University could not impose any conditions inconsistent with the AICTE Act or its Regulations or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions, which could be imposed by the University, could not be inconsistent with the provisions of the AICTE Act. The

A University could not in any event have sought for 'approval' of the State Government. There was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University could not in any event have sought for 'approval' of the State Government. There was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University statute merely required that the 'views' of the State Government be obtained before granting affiliation and this did not amount to obtaining 'approval'. If the University statute required 'approval', it would have been repugnant to the AICTE Act. [1248-F-H; 1249-A-C]

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2. Regulation 8(4) of AICTE only required calling for the "comments/recommendations" of the State Government and of the University. In case, there was difference between the State Government, University or the Regional Committee, the Central Task Force was to make a final recommendation under Regulation 8(4). The letter of approval of the AICTE showed that the Central Task Force had given its approval. The approval was based on the inspection by the Expert Committee of the AICTE also. Hence the State Government could not have relied upon any contrary opinion of the Director of Technical Education. If the State Government had any valid objection, its only remedy was to place its objections before the AICTE council under the AICTE Act or before the Committees, e.g. State Level Committee etc. [1251-C-D]

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3. The so-called policy of the State was not a ground for refusing approval. The State could not have any policy outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once the procedure laid down in the AICTE Act and regulations had been followed and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. If thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission, required by the AICTE, were not complied with, then the State Government could always write to the AICTE, to enable the latter to take appropriate action. [1251-E-H]

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4.1. Obtaining the 'views' of the State Government as per the statute

9(7) did not amount to obtaining its 'approval'. Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act and the University could not seek approval of State Government. The University was also one of the agencies consulted by the Council of the AICTE under Regulation 8. Once that was over and approval was granted by the AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring these facts to the notice of AICTE so that the latter could take appropriate action. The University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations. [1252-D; F]

4.2. The approval of the AICTE was sufficient. It was not necessary for the Single Judge to direct the State Government to reconsider its decision. The Single Judge's order quashing the letter of the State Government is upheld. The direction to the University to consider the application of the appellant for final affiliation or the application or continuance of affiliation is confirmed and this is to be done on the basis of the approval granted by the AICTE or any other relevant factors in the University Act or its statutes, which are not inconsistent with the AICTE Act or its Regulations. [1252-H; 1253-A]

*State of Tamil Nadu & Anr. v. Adhiyaman Educational & Research Institute & Ors.*, [1995] 4 SCC 104; *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Education & Charitable Trust v. State of Tamil Nadu & Ors.*, [1996] 3 SCC 15, relied on.

*Unnikrishnan v. State of Andhra Pradesh*, [1993] 1 SCC 645, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2589 of 2000.

From the Judgment and Order dated 3.3.98 of the Kerala High Court in W.A. No. 1024 of 1997.

WITH

Special Leave Petition (C) No. 10485 of 1998 .

A From the Judgment and Order dated 3.3.98 of the Kerala High Court in W.A. No. 1024 of 1997.

Mukul Rohtagi, Additional Solicitor General, T.L. Viswanatha Iyer, Ms. Lily Isable Thomas, G. Prakash, A. Ranganadhan and A.V. Rangam for the appearing parties.

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The following Judgment/Order of the Court was delivered :

**M. JAGANNADHA RAO, J.** Leave granted.

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The appellant is a trust which wanted to establish a self-financing Engineering College and submitted an application during 1994-95 to the University of Kerala as well as to All India Council for Technical Education (hereinafter called the 'AICTE') There was an inspection by a team of Professors of the University and it recommended favourably when it stated that the facilities provided by the appellant would be sufficient for establishing an Engineering College. The AICTE sent a communication on 30.4.1995 stating that on the basis of the observations made by the Expert Committee and the recommendations made by the Central Regional Committee, State Level Committee and Central Task Force as per the provisions of the AICTE regulation dated 30.1.1994, the AICTE was granting conditional approval for establishing an Engineering and Technical College. The abovesaid approval was subject to the fulfilment of specific conditions mentioned in Annexure I and the general conditions mentioned in Annexure II to the said letter. In the event of contravention of the conditions, guidelines, norms and regulations of the AICTE, the AICTE could withdraw the approval at any time.

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Under the impression that the State Govt. was to grant permission, the appellant requested the State Government by letter dated 24.6.1995 for permission to start the college. Meanwhile, the Mahatama Gandhi University by their letter dated 31.5.1995 forwarded to the Government a list of Colleges and Courses for affiliation during the academic year 1995-96. The appellant's college was shown as one of the colleges among the affiliated colleges for the said period. The appellant sent a reminder to the Government on 26.8.1995 for permission for starting the college for the academic year 1995-96 and ultimately the Government refused permission by informing the appellant by a letter dated 16.8.1996 as follows :

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"In inviting your attention to the reference cited, I am to inform you that Government regret their inability to comply with your request."

Thereafter, the appellant filed writ petition O.P. No. 4612 of 1996 for quashing the said order and for a direction to sanction and establish an Engineering College. A

The learned Single Judge of the High Court by his judgment dated 14.1.1997 allowed the writ petition, quashed the above-said order of the government dated 16.8.1996 and directed the Mahatama Gandhi University to consider the appellant's application for permanent affiliation without reference to the above letter of the Government and pass appropriate order within 8 weeks from the date of the receipt of a copy of the judgment. The direction to pass a fresh order of affiliation was issued in view of the fact that the University contended before the learned Single Judge that unless the Government granted approval, permanent affiliation could not be granted. The Government was also directed to reconsider its decision. B C

Against the said judgment of the learned Single Judge the Commissioner and Secretary of the Government (Higher Education Department) filed Writ Appeal No. 1024 of 1997. The Division Bench of the High Court allowed the appeal and set aside the order of the Government and dismissed the writ petition. The Division Bench, however, observed that the appellant was at liberty to make a fresh application to the Government of Kerala for according sanction for setting up the Engineering College or to request the Government to consider the earlier application, for a future academic year. It is against the abovesaid judgment of the Division Bench that this appeal has been preferred. D E

Learned senior counsel for the appellant Sri T.L. Vishwanatha Iyer contended that the Division Bench erred in reversing the well considered judgment of the learned Single Judge and according to him after the coming into force of the AICTE Act, 1987, the statutes conferring power on the State or University to the extent they were inconsistent with the Central Act were void. In so far as institutions imparting technical education were concerned, the University or the State Government had no independent role to play except to the extent provided in the above said enactment. In the present case, the AICTE had made inspections and was satisfied that the necessary infrastructure was available and that the appellant would be able to conform to the required standards of the education. The AICTE had consulted the State of Kerala as well as the Mahatama Gandhi University. The University had granted conditional approval, as stated earlier. Therefore the AICTE constituted a Task Force and obtained its opinion and thereafter granted its approval F G H

A on 13.11.1995 subject to various conditions. According to the learned senior  
counsel it was indeed not necessary for the appellant to have applied to the  
State Government for any further sanction to establish the college. It might  
be that under the relevant statutes of the University, the University was  
required to obtain the “views” of the State Government but that did not  
amount to requiring any approval of the State Government and indeed if any  
such statute required the approval of the state Government, it would be void  
in view of what was stated by this Court in *State of Tamil Nadu & Another*  
B *v. Adhiyaman Educational & Research Institute & Others*, [1995] 4 SCC 104.

C Learned senior counsel for the appellant Sri T.L. Viswanatha Iyer also  
contended that though the State Government stated in its counter affidavit  
filed in the High Court that the “policy” of the Government was not to grant  
approval to self-financing engineering colleges to be established, such a  
policy could not come in the way of the appellant in view of what this Court  
has stated in similar circumstances in *Thirumuruga Kirupan & Variyar*  
D *Thavathiru Sundara Swamigal Medical Education & Charitable Trust v. State*  
*of Tamil Nadu & Others*, [1996] 3 SCC 15.

E On the other hand learned Additional Solicitor General Sri Mukul  
Rohtagi contended on behalf of the State of Kerala that the “Policy” of the  
State of Kerala at the relevant time was not to grant approval for establish-  
ment of more engineering colleges in the State. The Government had clarified  
in the counter affidavit filed in the High Court that the Government “was not  
in a position” to take a decision to start new engineering colleges, without  
properly assessing the necessity of more engineering graduates from the State  
and without exploring the possibility of employment opportunities in the  
country as a whole. Also there were four Engineering Colleges at Kannur,  
F Trichur, Kottayam and Thiruvananthapuram Districts and three Private (Aided)  
Engineering Colleges at Palakkad, Ernakulam (Kothamangalam) and Kollam  
Districts. The Model Engineering College, Ernakulam was a self-financing  
Engineering College and others were the colleges at Changannur and  
G Pathansamthitta and there was a self-financing engineering college at  
Kasargode. There were also two unaided Engineering Colleges at Mallappuram  
and Thiruvananthapuram. Even though the appellant trust was not seeking aid  
from the Government and even assuming that it was financially self-suffi-  
cient, it would not be in the interests of the students & employment, to permit  
new engineering colleges to be established. Thus the Government policy was  
H not to grant fresh approvals. If more approvals were granted, it might lead

to commercialisation of education.

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The following points arise for consideration :

(1) Whether in view of the judgment of this Court in *State of Tamil Nadu & Another v. Adhiyaman Educational & Research Institute & Others*, [1995] 4 SCC 104, the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority? Whether any statute in the State of Kerala if it required such approval, would be void?

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(2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of the AICTE permission?

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*Point 1 :*

This point is more or less covered by the judgment of this Court in *State of Tamil Nadu & Another v. Adhiyaman Educational & Research Institute & Others*, [1995] 4 SCC 104. But, in the context of section 10(K) regarding 'approval' for starting a technical institution, certain aspects of the judgment need to be highlighted.

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Before we refer to the abovesaid judgment, it will be necessary to refer to certain provisions of the AICTE Act and the relevant regulations.

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The abovesaid Act was an act to provide for the establishment of All India Council for Technical Education with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Under section 10 of the Act, it is stated that it is the duty of the Council constituted under the Act to take all steps as the said Council might think fit for ensuring coordinated and integrated development of technical education and maintenance of standards. For the purposes of performing its functions under the Act, the Council may (a) undertake survey in various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical

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- A education; (b) coordinate the development of technical education in the country at all levels; (c) allocate and disburse out of the Fund of the Council such grants on such terms and conditions as it may think fit to - (i) technical institutions, and (ii) Universities imparting technical education in coordination with the Commission; (d) promote innovations, research and development in established and new technologies, generation adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes; (e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society; (f) promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community; (g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability; (h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers; (i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations (j) fix norms and guidelines for charging tuition and other fees.

E The clause in Section 10(1) which is important in the present case is sub-clause (k) of section 10(1) and it provides that the Council might

“grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.”

- F Sub-clause (l) permits the Council to advice the Central Government in certain respects, sub-clause (m) lay down norms for granting autonomy, sub-clause (n) to take necessary steps to prevent commercialisation of technical education, clause (o) to provide guidelines for admission of students to technical institutions and Universities imparting technical education, clause G (p) to inspect or cause inspection to any technical institution, clause (q) to withhold or discontinue grant, clause (r) to strengthen the existing organisations etc., clause (s) to declare technical institutions as fit to receive grants, clause (t) to advice for declaring institutions to be deemed as universities, clause (u) to set up a National Board of Accreditation. Section 11 of the Act H deals with inspection.

Regulations have been framed on 31st October, 1994 by the AICTE in exercise of powers conferred on it by section 23(1) of the AICTE Act. Regulation 2 states that these regulations will be applicable to proposals relating to

“(a) grant of approval of the Council for establishment of new technical institutions including Universities or University departments and deemed Universities and for technical institutions functioning on the date of commencement of these regulations at Degree and Diploma levels;

(b) grant of approval of the Council for introduction of any course or programme in the technical institutions and technical departments or Universities or deemed Universities;

(c) grant of approval of the Council for existing intake capacity of seats and for increase in the annual intake capacity of seats in courses and programmes.”

Regulation 4 deals with the requirement of grant of approval and for the commencement of these regulations

“(a) .....

(b) no course or programme shall be introduced in any technical institutions, university or deemed university or university departments or college; or

(c) no technical institutions, Universities or deemed Universities or University Departments or colleges shall continue to admit students for degree or diploma courses or programmes;

(d) no approved intake capacity of seats shall be increased or varied :

except with the approval of the Council.

Reg. 4(2).....”

Regulation 5 deals with the Forms of the Applications and Regulation 6 deals with the conditions for grant of approval, Sub-clauses 1 of Regulation 6 deals with the financial position. Sub-clause 2 with the courses or pro-

A grammes and sub-clause 3 deals with the power of admissions and sub-clause 4 with tuition fees etc. and sub-clause 5 with the staff and sub-clause 6 with the Governing Body of the private institutions and sub-clause 7 with other matters. Regulation 8 deals with scrutiny of applications. There is a preliminary scrutiny of the applications by the Bureau RC of the Council. Sub-clause 4 of Regulation 8 reads as follows :

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“Reg. 8(4) The Bureau RC shall invite comments/recommendations on the applications referred to in sub-regulation (3) from the following, namely :

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(i) the State Government concerned ;

(ii) the affiliating University/State Board of Technical Education;

(iii) Bureaus MPCD;

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(iv) Bureau BOS;

(v) Bureau RA;

(vi) the Regional Office.”

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Sub-clause 5 of Regulation 8 requires the Regional Office to arrange visits by an Expert Committee constituted by the Council which is to forward its recommendations to the Council. Sub-clause 6 of Regulation 8 states that the State Level Committee constituted under Regulation 9(4) is to consider the recommendations of the State Government and others mentioned in regulation 8(4) and that it is to make its recommendations to the Central Task Force constituted under regulation 9(5) and consider the recommendations of the State Level Committee and send its recommendations to the Member Secretary of the Council.

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Sub-clauses 8 & 9 of Regulation 8 are important and read as follows :

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“Reg. 8(8) If there is a disagreement in the recommendations made by the State Government, University or the Regional Committee, the Central Task Force shall invite representatives of the respective agencies for further consultations before making final recommendation;

(9) On the recommendation of the Central Task Force, the Council shall decide the question of grant of approval as sought for in the application :

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Provided that the Council may, for reasons to be communicated to the applicant, allow the approval with such restrictions or modifications as it may deem necessary.”

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Sub-clause 10 of Regulation 8 states that the decision of the Council shall be communicated to the State Government concerned or the UGC, as the case may be, the concerned University or the State Board, the Regional Office and the applicant before 30th April in case the application was made before the preceding 31st December.

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*The Tamil Nadu case :*

As stated earlier, the above provisions of the AICTE Act, came up for consideration in *State of Tamil Nadu v. Adhiyaman Educational & Research Institute*, [1995] 4 SCC 104.

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In the above matter, the State of Tamil Nadu granted permission on 17.4.84 to all private managements to start private Engineering colleges without financial commitment to government but subject to conditions. At that time in 1984, the AICTE Act was not on the statute book. The Government of Tamil Nadu granted permission to the Trust for the academic year 1987-88 to start an Engineering college. The University also granted permission on 21.11.87 for the academic year 1987-88. Later on, these permissions were withdrawn by the State after issuing show cause on 16.7.89. So did the University on 26.7.89. But by that date, the AICTE Act, 1987 had come into force. The learned Single Judge and the Division Bench held in favour of the Trust and quashed and orders of the Government and the University. The said judgments were affirmed by this Court. It was held that the AICTE Act was referable to Entry 66, List I of the Constitution of India, relating to “co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions”. After the Constitutional Amendment (42 Amendment Act, 1976) Entry 25 of List III in the Concurrent List read : “Education, included *technical education*, medical institution and Universities, *subject to the provisions* of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour”. Thus, the State law under Entry 23 of List III would be repugnant to any law made

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

C “Hence on the subjects covered by the statute, the State could not  
 make a law under Entry 25 of List III after the Forty-Second  
 Amendment. If there was any such existing law immediately before  
 the commencement of the Constitution within the meaning of  
 Article 372 of the Constitution, as the Madras University Act 1923  
 on the enactment of the present Central Act, the provisions of the said  
 law if repugnant to the provisions of the Central Act would stand  
 impliedly repealed to the extent of repugnancy. Such repugnancy  
 would have to be adjudged on the basis of the tests which are applied  
 D for adjudging repugnancy under Article 254 of the Constitution”.

We shall now refer to the relevant paras of the above judgment dealing  
 with the question of ‘approval’ for establishing technical institutions under  
 section 10(K) of the AICTE Act. The Tamil Nadu Rules of 1976 made under  
 E the 1976 Act had no doubt excluded technical institutions from the purview  
 of the Rules but this Court pointed out that the Rules were capable of being  
 amended so as to extend to such technical institutions and that if they were  
 so extended, the State Act of 1976 and the Rules would require “approval”  
 by the State Government and that would be void. It was stated (see p. 124  
 F SCC) that inasmuch as the State Act,

“will overlap and will be in conflict with the provisions of the  
 Central Act in various areas ..... , *granting approval for starting  
 new technical institution*, ..... , inspection of technical institution  
 .....which are matters covered by the Central Act.”

G This Court then referred to the Madras University Act, 1923. It was held (see  
 p. 126 SCC) that section 10 of the Central Act dealt with various matters  
 (including *granting approval for starting new technical institutions*), and that  
 so far as these matters were concerned.

H “it is not the University Act and the University but it is the

Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into force of the Central Act, the provisions of the University Act will be deemed to have become unenforceable".

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

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*Statutory powers of the State of Kerala and the M.G. University :*

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The question is as to how far the judgment in the *Tamil Nadu* case is to be applied in the State of Kerala.

Learned Additional Solicitor General stated before us that there was no statute in the State of Kerala corresponding to the Tamil Nadu Act of 1976 nor any other law which specifically required the 'approval' of the State Government. It was however contended that the *Tamil Nadu* case was concerned only with the standards of education and as to who could fix them. We are not inclined to agree. We have already pointed out under Point 1 that in the *Tamil Nadu* case, section 10(k) of the AICTE Act was referred to and the power of 'approval' for establishing a technical institution was considered. In our opinion, even if there was a State law in the State of Kerala which required the approval of the State Government for establishing technical institutions, such a law would have been repugnant to the AICTE Act and void to that extent, as held in the *Tamil Nadu* case.

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The only provision relied on before us by the State Government which according to its learned senior counsel, amounted to a statutory 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 :*

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(1) .....

(3) .....

(7) After considering the report of the Commission and the report

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A 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.”.

B 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.

C The reference to the Commission in the above clause 9(7) is to the Commission of Inspection appointed by the University. Sub-clause (1) of clause (9) of the statute required “verification of the facilities that may exist for starting the new colleges/course”. The Commission was to inspect the site, verify the title deeds as regards the proprietary right of the management over the land (and buildings, if any) offered, building accommodation provided, if any, assets of the management, constitution of the registered body and all other relevant matters, Sub-clause (2) of clause (9) stated that the affiliation “shall depend upon the fulfilment by the management of all the conditions for the *satisfactory establishment and maintenance of the proposed institution/* courses of studies and on the reports of inspection by the Commission or

D Commissions which the University may appoint for the purpose”.

E As held in the *Tamil Nadu* case, the Central Act of 1987 and in particular, section 10(k) occupied the field relating the ‘grant of approvals’ for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular statute 9(7), they merely required the University to obtain the ‘views’ of the State Government. That could not be characterised as requiring the “*approval*” of the State Government. If, indeed, the University statute could be so interpreted, such a provision requiring *approval* of the State Government would be repugnant to the provisions of section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in the *Tamil Nadu* case there were enough provisions in the Central Act for consultation by the Council of the AICTE with various agencies, including the State Governments and the Universities concerned. The State Level Committee and the Central Regional Committees contained various experts and State representatives. In case of

F difference of opinion as between the various consultees, the AICTE would

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have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the Universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in the *Tamil Nadu* case, it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by the AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for 'approval' of the State Government.

Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University statute 9(7) merely required that the 'views' of the State Government be obtained before granting affiliation and this did not amount to obtaining 'approval'. If the University statute required 'approval', it would have been repugnant to the AICTE Act. Point 1 is decided accordingly.

*Point 2 :*

*Factual position and pleadings in this case :*

On facts, the position was that the AICTE had granted approval on 30.4.95 expressly stating that this was "on consideration of the observations made by the Expert Committee and the recommendations made by the Central Regional Committee, State Level Committee, Central Task Force as per the provisions of AICTE Regulations dated 31.10.94". The AICTE had granted condition approval and the conditions were specified in Annexure I to the order and the general conditions were enlisted in Annexure II. The State Government was directed by the AICTE to announce admission in accordance with Regulation notified on 20.5.94 and based on the judgment of the Supreme Court in *Unnikrishnan v. State of Andhra Pradesh*, [1993] 1 SCC 645. The Mahatma Gandhi University had included this appellant in the list of colleges and courses which were granted affiliation during 1995-96 and the University had written to the State Government on 31.5.95 that as per statute 9(7), the "views" of the government were to be sent before granting affiliation. The letter said that for that reason the proposals of the University were being submitted to the Government "for necessary action". The appellant had sent a reminder on 26.8.95. The State in its letter dated 16.8.96 to the appellant merely stated "that government regret their inability to comply with

A your request". No reasons were assigned in the said letter. But the State in its counter filed in the High Court tried to explain in para 3 that the Director of Technical Education had opined that during the year 1995-96, it might not be practicable to start the college for the Director could not ascertain the details of the facilities available. It was stated :

B "he could not ascertain the infrastructural facilities provided by the appellant as per the norms prescribed by the All India Council of Technical Education. The All India Council for Technical Education and the Mahatma Gandhi University have sought for the remarks of the State Government.

C Para 4 of the Counter affidavit had further stated that the Government was not

D "in a position to take a decision to start new Engineering college without properly assessing the necessity of more engineering graduates in the State and exploring the possibility of employment opportunity in the country to the extent possible".

E The State Government in its counter then gave the names of the existing colleges and their location. We have already referred to these details. It also observed that there was widespread student prospects against starting new colleges and it was necessary to be cautious in the matter of starting new engineering colleges. It was stated that Government could not initially take a decision on the appellant's affiliation because of elections and that matter being one of 'major policy' the Government had subsequently "taken a policy decision not to sanction any affiliation to such colleges either in the private sector or in the public sector for this year". These are stated to be the reasons for the government's rejection by letter dated 16.8.96.

F *State Government's refusal to grant permission is illegal and void on merits :*

G As already stated, in view of the judgment of this Court in *Tamil Nadu* case, it is obvious that there is no need to approach the State of Kerala for its approval for starting the Engineering colleges. There is no power vested in the State under any State Law to grant approval and even if it was so vested, it would have been void in view of *Tamil Nadu* case. This ground of repugnancy alone would be sufficient to quash the State Government's letter dated 16.8.1996 refusing to give their approval.

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Even on merits, the reasons given by the State Government in its counter are not tenable in law. The Director of Technical Education of the State was a member of the State Level Committee as per regulation 9(4) of the AICTE Regulations. The Secretary, Technical Education of the State of Kerala was also a member of that Committee. The AICTE's approval dated 30.4.95 showed that the approval had been given by the State Level Committee of which they were obviously members. It is, therefore, not understandable how the Director had given a contrary opinion to the State Government. Regulation 8(4) of AICTE only required calling for the "comments/recommendations" of the State Government and of the University. In case, there was difference between the State Government, University or the Regional Committee the Central Task Force was to make a final recommendation under Regulation 8(4). Here the letter of approval of the AICTE dated 30.4.95 showed that the Central Task Force had given its approval. The said approval was based also on the inspection by the Expert Committee of the AICTE. Hence the State Government in its counter, could not have relied upon any contrary opinion of the Director of Technical Education. If the State Government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act or before the Committees, e.g. State Level Committee etc.

The so called 'policy' of the State as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupan and Variyar Thavathiru Sundara Swamigal Medical Education & Charitable Trust v. State of Tamil Nadu & Others*, [1996] 3 SCC 15, which was a case relating to Medical Education and which also related to the effect of a Central Law upon a law made by the State under Entry 25 List III, it was held (see p. 35 para 34) that the "essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now vests with the Central Government alone". Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by

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A the AICTE to be complied with, were not complied with, then the State government could always write to the AICTE, to enable the latter to take appropriate action.

*Decision of University in not granting further or final affiliation wrong on merits :*

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D Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31.5.95 to the State Government. The only requirement as per the statute 9(7) was for the University to obtain the "views" of the State Government. Obtaining the 'views' of the State Government, as already stated, did not amount to obtaining its 'approval'. Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular section 10(k) of the Regulation, and the University could not seek approval of Government. The University was also one of the agencies consulted by the council of the AICTE under Regulation 8. Once that was over, and approval was granted by the AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of the AICTE so that the latter could take appropriate action.

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F Reliance for the respondent was placed upon the subsequent report of the Syndicate dated 7.8.97. This report no doubt pointed out that the appellant had not complied with certain conditions mentioned in the approval dated 30.4.95 granted by the AICTE. Assuming certain fresh facts had come to the notice of the University, it could only place the said facts before the AICTE.

G Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

H For the aforesaid reasons, we set aside the judgment of the Division Bench of the High Court and uphold the reasoning of the learned Single Judge in his judgment in OP - 4612/96 dated 14.1.1997. We hold that the approval of the AICTE was sufficient, we do not also think that it was necessary for the learned Single Judge to direct the State Government to reconsider its

decision. The learned Single Judge's order quashing the letter of the State Government dated 16.8.96 is upheld. The direction to the Mahatama Gandhi University to consider the application of the appellant for final affiliation or continuance of affiliation is confirmed and this is to be done on the basis of the approval granted by the AICTE dated 30.4.95, or any other relevant factors in the University Act or its statutes, which are not inconsistent with the AICTE Act or its Regulations.

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The appeal is allowed and disposed of as stated above. There will be no order as to costs.

**M. JAGANNADHA RAO, J.** The petitioner was not a party in the High Court of Kerala and this Special Leave Petition was filed with leave of this Court.

C

We find that the petitioner has already filed a Writ Petition in the Delhi High Court namely CWP No. 952 of 1998 and the same is pending. It will be for the petitioner to have the said matter disposed of by the High Court of Delhi. Therefore, this special leave petition is dismissed as premature.

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B.S.

Appeal allowed and Petition dismissed.