

The relevant portion of the judgement in Bharathidasan University vs. AICTE is below. This has been extracted from the full judgement given further below. The extracted para has been marked in bold in full text for reference.

The full Judgement has been taken from the Supreme Court of India's website. To view

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The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a 'University but only a 'technical institution.

CASE NO.:

Appeal (civil) 2056 of 1999

PETITIONER:

BHARATHIDASAN UNIVERSITY & ANR.

Vs.

RESPONDENT:

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION & ORS.

RESPONDENT: ALL INDIA COUNCIL FOR TECHNICAL EDUCATION & ORS.

BENCH:

S. Rajendra Babu & Doraiswamy Raju.

JUDGMENT:

Raju, J.

The only and important question of law that arises for consideration in this appeal is as to whether the appellant-University created under the Bharathidasan University Act, 1981 [hereinafter referred to as the University Act] having its area of operation over the Districts of Tiruchirappalli, Thanjavur and Pudukkottai in the State of Tamil Nadu, should seek prior approval of the All India Council for the Technical Education [hereinafter referred to as AICTE] to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection.

The Bharathidasan University Act, 1981 created the University in question to provide, among other things, for instruction and training in such branches of learning as it may determine; to provide for research and for the advancement and dissemination of knowledge; to institute degrees, titles, diplomas and other academic distinctions; to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on

persons who have pursued an approved course of study in a University college or laboratory or in an affiliated or approved college and have passed the prescribed examinations of the University; to confer honorary degrees or other academic distinction under conditions prescribed; and to institute, maintain and manage institutes of research, University colleges and laboratories, libraries, museums and other institutions necessary to carry out the objects of the University, etc. In other words, it is a full-fledged University recognized by the University Grants Commission also.

When the appellant-University commenced courses in technology such as Information Technology & Management, Bio- Engineering & Technology, Petrochemical Engineering & Technology; Pharmaceutical Engineering and Technology, etc., the AICTE filed a Writ Petition No. 14558 of 1998 before the Madras High Court seeking for a writ of mandamus to forebear the University authorities from running/conducting any courses and programmes in those technical courses. The sum and substance of the grievance as well as the objection put forward was that the University did not apply for and secure the prior approval for those courses before their commencement by the University as envisaged under the All India Council for Technical Education Act, 1987 [hereinafter referred to as the AICTE Act] and the statutory regulations made thereunder by the AICTE, particularly Regulation No.4, which obligated even an University to obtain such prior approval. The stand of the appellant- University was, as it is now before us, that the appellant-University will not fall under the definition of Technical Institution as defined under Section 2(h) of the AICTE Act and consequently, the regulations made for seeking prior approval of the AICTE even by the Universities to commence a course or programme in technical education or a new department for the purpose, were in excess of the regulation-making powers of the AICTE and consequently, are null and void and cannot be enforced against the appellant-University to the extent it obligates even Universities to seek and secure such prior approval from the AICTE.

The learned Single Judge has chosen to accept the stand of the AICTE by applying and following the ratio of the decision of a Full Bench of the Andhra Pradesh High Court reported in *M. Sambasiva Rao alias Sambaiah & Ors. Vs. Osmania University, Hyderabad* rep. By its Registrar & Ors. [1997(1) Andhra Law Times 629] and as a consequence thereof, ordered the cancellation of the admissions made by the University. When the matter was pursued before a Division Bench, the learned Judges in the Division Bench also felt convinced of the ratio laid down by the Full Bench of the Andhra Pradesh High Court and rejected the appeal, necessitating the appellant-University to come to this Court. Since the approach adopted by the learned Single Judge and the Division Bench are on the same lines as the one adopted by the Full Bench of the Andhra Pradesh High Court, which the Madras High Court has also purported to follow, it would be just and necessary to refer to the said decision and also consider the correctness or otherwise of the ratio in the said decision.

In *M. Sambasiva Rao (supra)*, while adverting to the relevant provisions of the University Grants Commission Act, 1956, the Andhra Pradesh State Council for Higher Education Act, the A.P. Universities Act, 1991, the AICTE Act and the All India Council for Technical Education (Grant of approval for starting new Technical Institutions,

introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994 [hereinafter referred to as 'the Regulations'], the High Court arrived at a conclusion that the AICTE Act being a special law on a particular category of education, overrides even the University Grants Commission Act, which, in the opinion of the High Court, was in the nature of a general law in regard to imparting of education by Universities in general in respect of common matters covered thereunder. In spite of both the Acts being those made by the Parliament within its legislative competence even as later law, the AICTE Act was held to be binding. As for the relative operation of the AICTE Act and the State Act dealt with therein, it was held that the AICTE Act occupied the field and that, therefore, the State Act has to yield and consequently statutory regulations made are not only valid and had the force of law as a subordinate legislation, but no question of repugnancy between the Regulations and AICTE Act or any alleged excess exercise of power in framing such regulations, arose on the facts of the case having regard to the creation of the AICTE for the proper planning and coordinated development of technical education system throughout the country. The Andhra Pradesh High Court was of the view that anybody or everyone of the authorities and institutions concerned with a technical education all over the country would fall within the meaning of Technical Institution as defined in Section 2(h) of the AICTE Act and, therefore, be bound by the authority of the AICTE under the AICTE Act and the Regulations made thereunder. In coming to such conclusions, the Full Bench tried to draw sustenance from the decisions of this Court reported in *Unni Krishnan J.P. Vs. State of A.P.* [1993(1) SCC 645] and *State of Tamil Nadu Vs. Adhiyaman Educational and Research Institute and Ors.* [1995(4) SCC 104].

Shri Shanti Bhushan, learned senior counsel appearing for the appellant-University, urged that a university like the appellant as defined under Section 2 (i) will not fall within the definition of a technical institution contained in Section 2 (h) of the AICTE Act and, therefore, equally stood outside the purview of Section 10 (1) (k) of the said Act and consequently not obliged to seek for and obtain the prior approval of the AICTE for starting a department or introducing new courses or programmes. The regulations framed by the AICTE for the same reason insofar as it obligates even universities to obtain such prior approval, cannot be held to be binding or enforceable against the appellant by the mere fact that the regulation specifically states so, notwithstanding the provisions contained in the Act stipulating to the contrary and any regulation so made will be void and unenforceable. It was also urged that the decision of the Full Bench of the Andhra Pradesh High Court does not lay down the correct position of law and the decisions of this Court relied upon in the said decision really do not lend any support to the principles ultimately laid down therein and, therefore, the Madras High Court ought to have considered the issues independently and not followed the ratio of the Full Bench in *M. Sambasiva Raos* case (supra). The strong grievance ventilated on behalf of the appellant is that both the Andhra Pradesh and Madras High Courts have failed to properly construe the relevant provisions of the Act, applying the correct principles of interpretation and also giving due consideration and weight to the various stipulations contained in Section 10 which made specific reference wherever the universities also have to adhere to the provisions of the AICTE Act, Rules and Regulations. It was also urged that no Rules or Regulations inconsistent with the provisions of the Act could have

been either made under the Act or sought to be enforced, legitimately. Strong reliance has also been placed on the decisions reported in *S.K. Singh & Others vs V.V. Giri & another* (AIR 1970 SC 2097); *D.K. Trivedi & Sons and others vs State of Gujarat and others* (AIR 1986 SC 1323) as also the very decision in *Unni Krishnan, J.P. and others vs State of Andhra Pradesh and others* [(1993) 1 SCC 645] and *State of T.N. and another vs Adhiyaman Educational & Research Institute and others* [(1995) 4 SCC 104] and *Medical Council of India vs State of Karnataka and others* [(1998) 6 SCC 131].

Dr. J.P. Verghese, learned counsel for the AICTE, while drawing sustenance from the reasoning of the judgment under challenge as well as the Andhra Pradesh case, urged that having regard to the overall functions and powers of the Council under the Act to ensure proper planning and coordinated development of the technical education system throughout the country, the qualitative improvement of such education and regulation and proper maintenance of norms and standards in the technical education system and matters connected therewith envisaged under Section 10 of the Act particularly Section 10 (1) (k) read with Section 20 (1) (b) of the ATE Act, the AICTE will have pervasive control over universities also and consequently, the prior approval of AICTE has to be obtained by even the universities like any other technical institution for starting any new department or institute or commencing a new course or programme in technical education. The totality of the purpose and scheme, claimed to be underlying the enactment is said to confer such sweeping powers over all functional activities relating to technical education and the universities cannot claim immunity from such obligation cast under the Act and the regulations made by the AICTE. The sheet anchor of support for the respondent seem to be the decision reported in *State of T.N. and another vs Adhiyaman Educational & Research Institute and others* (supra) and *Jaya Gokul Educational Trust vs Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another* [(2000) 5 SCC 231], in addition to the decision of the Andhra Pradesh High Court.

We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent is found specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or desirabilities, the Courts cannot adorn the mantle of legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the Courts must go by the guidance of the words used and not on certain pre-conceived notions of ideological structure and scheme underlying the law. In the statement of objects and reasons for the AICTE Act, it is specifically stated that the AICTE, was originally set up by a Government resolution as a National Expert Body to advise the

Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act.

Section 2(h) defines 'technical institution for the purposes of the Act, as follows:- technical institution means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions

Since it is intended to be other than a University, the Act defines in Section 2(i) 'University to mean a University defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a University under Section 3 of the said Act. Section 10 of the Act enumerates the various powers and functions of the AICTE as also its duties and obligations to take steps towards fulfillment of the same. One such as envisaged in Section 10(1)(k) is to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Section 23, which empowers the Council to make regulations in the manner ordained therein emphatically and specifically, mandates the making of such regulations only not inconsistent with the provisions of this Act and the rules. The Act, for all purposes and throughout maintain the distinct identity and existence of 'technical institutions and 'universities and it is in keeping tune with the said dichotomy that wherever the University or the activities of the University is also to be supervised or regulated and guided by the AICTE, specific mention has been made of the University alongside the technical institutions and wherever the University is to be left out and not to be roped in merely refers to the technical institution only in Sections 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Section 10(1)(c),(g),(o) which would go to show that Universities are mentioned alongside the 'technical institutions and clauses (k),(m),(p),(q),(s) and (u) wherein there is conspicuous omission of reference to Universities and reference being made to technical institutions alone. It is equally important to see that when the AICTE is empowered to inspect or cause to inspect any technical institutions in clause (p) of sub-section (1) of Section 10 without any reservation whatsoever, when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Section 11 of the Act. Clause (t) of sub-section (1) of Section 10 envisages the AICTE to only advise the UGC for declaring any institution imparting technical education as a deemed University and not do any such thing by itself. Likewise, clause (u) of the same provision which envisage the setting up of a National Board of