

(2006) 07 MAD CK 0197

Madras High Court

Case No: Writ Petition No"s. 38316 and 38317 of 2005 and 305, 1420, 1457, 2033, 3041, 4799, 5971, 6399, 6400, 6516, 6518, 8401, 9524, 9701, 101746, 103366, 107066, 10715 and 10716 of 2006

Sathyabama Institute of Science
and Technology

APPELLANT

Vs

Union of India (UOI), The All
India Council for Technical
Education and The University
Grants Commission

RESPONDENT

Date of Decision: July 13, 2006

Acts Referred:

- All India Council for Technical Education Act, 1987 - Section 10, 10(1), 11 11(1), 11(3), 11(4)
- All India Council for Technical Education Regulations - Regulation 3, 3, 4, 5
- Constitution of India, 1950 - Article 14
- University Grants Commission (Inspection of Universities) Rules, 2004 - Rule 3
- University Grants Commission Act, 1956 - Section 10, 11, 12, 13, 14

Citation: (2006) 3 LW 499 : (2006) 3 MLJ 870

Hon'ble Judges: A.P. Shah, C.J; Prabha Sridevan, J

Bench: Division Bench

Advocate: P. Subba Reddy, in W.P.2033/2006, Rajeev Dhawan, for V. Ayyadurai, in W.Ps. 38316/2005 and 6400/2006, R. Krishnamoorthy, for V. Ayyadurai, in W.Ps. 38316/2005, 6399 and 6400/2006, Nalini Chidambaram, for Gladys Daniel in W.P. 8401/2006 and R. Vaigai, in W.P. 8401/2006, R. Thiyagarajan, for R. Suresh Kumar, in W.P. 10706/2006 and P. Subba Reddy, in W.P. 2033/2006, for the Appellant; R. Vaigai, for R-11, Vijay Narayanan, for Sathish Parasaran, for R-6, R-77 and R-12 in W.P. 8401/2006, N.R. Chandran, for R. Natarajan in for R-9 in W.P.8401/2006 and R-20 in W.P. 8029/2006, Rajeev Dhawan, for R. Natarajan, for R-4 and R-21 in W.P. 8401/2006, Saraswathi for R-7 in W.P. 8029/2006, G. Rajagopalan, for G.R. Associates for R-19 in W.P. 8029/2006, R. Thiyagarajan, for R. Suresh Kumar in W.P.M.P. 10524/2006 in W.P.38317/2005 in W.P. 10706/2006 and K. Chandru, for S. Manikumar, SCGSC, K.M.Vijayan, for N. Murali Kumaran, SCGSC S. Udayakumar, SCGSC, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Prabha Sridevan, J.

The answer to the following questions will decide the lis between the parties in all these writ petitions:

(1) What are the parameters of power of the All India Council for Technical Education over Deemed to be Universities?

(2) How do the University Grants Commission and the All India Council for Technical Education achieve their objects for which they were created in a harmonious way?

2. The writ petitioners, who are the Deemed to be Universities, have prayed for writs of declaration seeking to declare Sections 10(o) and 11 of the All India Council for Technical Education Act, 1987, hereinafter referred to as the "AICTE Act" insofar as they relate to the power of the AICTE to prescribe guidelines for admission and to inspect the petitioners/deemed to be universities is concerned, and the consequential rules framed in Notification bearing S.O. No. 610(E) dated 10.8.1992 as framed by the Central Government as unconstitutional, arbitrary and ultra vires the provisions of the University Grants Commission Act, 1956, hereinafter referred to as the "UGC Act" and consequently forbear the AICTE from interfering with the affairs of the petitioners/deemed to be universities in any manner. A prayer is also made for quashing the Questionnaire Notice of the AICTE dated 17.10.2005; subsequently, petitions were filed for amendment, so as to include a prayer for quashing the AICTE Regulations dated 28.11.2005. Writ Petitions have been also filed seeking writs of certiorari mandamus calling for the records comprised in the public notice issued by the AICTE which was published in the website dated 16.2.2006 in proceedings Advt. No. AICTE/legal/2(3), quash Clauses (iii), (v) and the offending words such as "all institutions" as employed in the said public notice and consequently forbear the respondents from interfering with the affairs of the petitioners/deemed to be universities in any manner without authority of law. Another writ petition has been filed by the Students' Federation of India for a writ of mandamus commanding the Union of India to verify and publish for the benefit of the students, the legal status (recognition/approval) of the institutions and courses run by the respondents/deemed to be universities and cause publication of the mandatory disclosures cited in para 8 supra, besides initiation of appropriate action, for non-compliance of the regulations/rules on the subject of Technical and Medical/Para medical education. Yet another writ petition has been filed seeking to declare the definition clause, Section 2(i) of AICTE Act, 1987 defining "University" as including an Institution deemed to be university u/s 3 of the UGC Act as against public interest and unconstitutional and consequently direct the respondents to implement the public notice in Advt. No. AICTE/legal/2/3/2006 and inspect the deemed to be universities conducting technical courses and award recognition to

the technical courses conducted by such deemed to be universities after evaluating their merit. On behalf of the students as well as the deemed to be universities, writ petitions have been filed for quashing Notification No. F.2-1/2006/U-3(A) dated 5.4.2006, which was issued by the Central Government pending the writ petitions, as illegal and ultra vires the AICTE Act and the UGC Act.

3. Briefly stated, the background of the case is as follows:

The AICTE and the UGC, both have the statutory obligation to maintain the standards of excellence in institutions of higher education, and there is a grey area regarding the perception of their respective roles as regards the deemed to be universities. The University Grants Commission Act (UGC Act) was enacted in the year 1956 to make provisions for co-ordination and determination of standards in Universities and to establish a University Grants Commission. The relevant sections dealing with the power of the UGC will be dealt with later. The Commission has, inter alia, the power and jurisdiction to inspect any University or any Department thereof and also to impose penalties for violation of provisions of the Act. Institutions like the petitioners in W.P. Nos. 6399, 6400, 10715, 10716 of 2006 and 38316 and 38317 of 2005 are "Deemed to be Universities" as per Section 3 of the Act. The All India Council for Technical Education Act (the AICTE Act) was enacted in the year 1987. Originally, the All India Council for Technical Education was constituted as a national expert body for advising the Central and the State Governments, and with the rapid increase of private technical institutions, the legislature considered it necessary to enact the AICTE Act with a view for proper planning and co-ordinated development of technical education system throughout the country and to plan quantitative growth for proper maintenance of norms and standards in the technical education system. The definition of "University" in the AICTE Act is in accordance with the UGC Act. Section 10 of the AICTE Act, which will be dealt with in detail later, refers to the functions of the Council and Section 11 deals with the manner in which the inspection should be undertaken.

4. The management of the deemed to be universities attack AICTE's attitude as being contrary to the statute and the law laid down by the Supreme Court and claim that, "this is actually a turf war for power" and the AICTE is loathe to have its wings clipped in its attempts to bring all institutions under an "Inspection Raj". The law laid down in (2001) 8 S.C.C. 676 [Bharathidasan University v. All India Council for Technical Education] is relied on by both the parties in support of their respective cases.

5. A notice dated 8.12.2003 was issued by the AICTE, calling for information from the Managements/writ petitioners with regard to the details of the courses conducted, intake of admission etc. The notice indicated that an Expert Committee would visit the deemed to be university, relying upon Sections 10(g), 10(i) and 10(o) of the AICTE Act. On receipt of this notice, the writ petitioners/"deemed to be universities" rose as one man and approached this Court for quashing the said notice. In the affidavit

filed in support of those writ petitions, it was stated that the power granted under Sections 10(g), 10(i) and 10(o) of the AICTE Act would not clothe the Council with the power to lay down norms and standards, or to provide guidelines for admissions in respect of deemed to be universities or to evolve suitable performance appraisal system, when such powers have been vested with the UGC. Their grievance as seen from the grounds in those writ petitions was that the power under Sections 10(g), 10(i) and 10(o) of the AICTE Act cannot be exercised by the AICTE for issuing the notice of inspection referred to above.

6. A Division Bench of this Court, in Writ Appeal No. 1813 of 2005, held that the communication dated 8.12.2003 is innocuous, and "we cannot see what objection the petitioners have in giving the aforesaid information to the AICTE, which appears to be empowered to call for such information under Sections 10 and 11 of the AICTE Act read with Rule 4 of the Rules of Inspection of Technical Institutions and Universities issued by the notification dated 10.8.1992, published in the Gazette of India and also to inspect the petitioners/Institutes". The Division Bench, however, protected the right of the petitioners to take such legal and constitutional pleas if any adverse order affecting their rights is passed. This order remains unchallenged.

7. On 17.10.2005, another notice was issued by the AICTE, which was almost identical to the earlier notice, subject matter of the above judgment. It is at this stage that writ petitions were filed challenging the notice and the constitutional validity of Sections 10(o) and 11 of the AICTE Act, and the notices were stayed. On 28.11.2005, the AICTE notified fresh regulations in supersession of the earlier ones for starting new technical institutions, introduction of courses or programmes and increase of or variation of intake, capacity of seats in the courses or programmes and extension of the approval for the existing technical institutions in maintenance of norms and standards in Universities, including deemed to be universities and regulation of deemed to be universities. These Regulations are also challenged by way of amendment. These Regulations provided for conduct of inspection with or without prior notice and punitive action for any violation by the deemed to be university and publication in newspapers or on the website, information to the public regarding its findings cautioning the general public.

8. On 21.2.2006, a public notice was issued for the kind attention of students seeking admission in technical courses, to the effect that:

In order to fulfill the mandate given by the AICTE Act, the Council has notified regulations for grant of approval for establishment of new Technical Institutions, courses, intake etc. in accordance with these regulations -

(i) No new technical institutions of Government, Government Aided or Private (Self-financing) institution, whether affiliated or not affiliated to a University shall be started and no new courses or programmes shall be introduced and no increase and/or variation of intake in Technical Education shall be effected at all levels

without obtaining prior approval of the Council. The Council will take legal action against such defaulting Institution/Society/ Trust/Company/ Associated Individuals, as the case may be. (ii) No existing technical Institution of Government, Government Aided or Private (Self-financing) institution, whether affiliated or nor affiliated to a University shall conduct any technical course(s) without prior approval of the Council.

(iii) No University including deemed to be university shall conduct technical course(s)/programme(s) without ensuring maintenance of the norms and standards prescribed by the Council.

(iv) No University/Board or any other body shall affiliate course/ programme of technical education not approved by the Council.

(v) No admission authority/body/institutions shall admit students to a course/programme of technical education not approved by the Council.

Under the regulations, the defaulting Institutions / Society / Trust / Company / Associated Individuals, as the case may be, are liable for stringent legal action including action under the provisions of Indian Penal Code and other relevant Indian Laws for conducting courses/programmes without prior approval of AICTE in technical education as defined under AICTE Act.

The student community, on seeing this notification, became agitated and concerned about their future prospects. According to the affidavit filed by the Secretary of the Students' Federation of India, the students asked for clarification regarding the notice, for which no assurance was given by the deemed to be universities. The students went into a state of panic and there was violence in two of the petitioner/deemed to be universities, which resulted in extensive damage to valuable machineries and plants allegedly worth more than several crore rupees. It was alleged that this was the direct outcome of the public notice issued pursuant to the 2005 Regulations. Thereupon, writ petitions were filed challenging the said public notice.

9. In view of the urgency involved, all the writ petitions were taken up for hearing.

10. At this juncture, on 5.4.2006, the Central Government issued a notification stating that it was intended for clarification in the public interest, such clarification being a question of policy. This notification is the subject matter of challenge in the writ petitions filed by the Managements as well as the Students' Federation of India and they were also taken up for hearing.

11. On behalf of Sathyabama Institute of Science and Technology, Mr. Rajeev Dhawan, learned senior counsel submitted that the deemed to be universities are created by the UGC Act, 1956 and they have been placed under the effective supervision of the UGC, which has subjected the Universities to inspection and also obtained information feedback. There is nothing in the AICTE Act to show that by

the creation of the AICTE in the year 1987, the power of the UGC over the deemed to be universities was disturbed. By virtue of the law laid down in Bharathidasan's case, all Universities including deemed to be universities were brought under the control of UGC, which would ensure compliance with the provisions of the UGC Act and also the AICTE norms, if need be. In the year 2004, the UGC enacted new rules for inspection and information feedback. It is alleged that the AICTE tried again and again to wrest control over the deemed to be universities and exceeded the power created under the Act by issuing public notices, which resulted in disastrous consequences. It was submitted that the deemed to be universities have complied with the request of the UGC seeking information and are willing to accept inspection by the UGC, if necessary. It is also submitted that the autonomy of private professional and technical institutions has been recognised by the Supreme Court and it cannot be interfered with unnecessarily. The right of supervision or inspection of such institutions in order to prevent maladministration cannot be converted into one of continuous policing and surveillance. It is submitted that the statutory authority is entitled to oversee the institutions within the framework of the statute, according to the procedure laid down, in a reasonable and proportionate manner and without mala fides. The UGC Act provides for regulation, oversight and discipline and the Act is not restricted to grants. The deemed to be universities are equated to statutory Universities and are subject to UGC Rules and will not fall under the general regulatory control regime of the AICTE. The AICTE has no general power of inspection. Its advice is required for deciding whether a technical institution should be granted the status of a deemed to be universities or not, and it does not have a general power of inspection over deemed to be universities except insofar as it is provided for in Sections 10(b), 10(i), 11 of the AICTE Act, and Section 22 must be construed as not to conflict with the powers specifically granted to the AICTE u/s 10 of the Act and they do not vest the AICTE with independent over-riding powers of inspection of the Universities. The procedure for inspection is specifically laid down in Section 11 of the AICTE Act and the action indicated and threatened in the public notice, which was designed to create an apprehension in the mind of the public, is outside the power granted u/s 11 of the Act. On a combined reading of Section 10, only Sections 10(c)(ii), 10(g), 10(o) and 10(t) of the AICTE Act mention the Universities, and the power of inspection of the AICTE over Universities and deemed to be universities for the purpose of granting funds is specified in principle, and for advice with regard to grant of status, and if asked by the UGC, to assist them in the process of inspection in accordance with the UGC guidelines.

12. On behalf of the S.R.M. Institute of Science and Technology, it was submitted by Mr. R. Krishnamoorthy, learned senior counsel that AICTE has no independent power to inspect the University with the specific direction from the UGC. The scope of power u/s 11 of the AICTE Act is a restricted one and is circumscribed by Sections 12(iii) and 14 of the UGC Act. AICTE Regulations, 2005, insofar as they relate to deemed to be universities requiring mandatory disclosure, are wholly without

jurisdiction. We also heard Mr. N.R. Chandran, Mr. Vijay Narayan, learned senior counsel and all the other counsel supporting the submissions made on behalf of the Managements.

13. As against this, the case of the AICTE, as submitted by Mr. K.M. Vijayan, learned senior counsel, is that deemed to be universities cannot get the benefit of the judgment in Bharathidasan's case. Since the object and purpose of the AICTE Act is for the proper planning and co-ordinated development of technical education system throughout the country, promoting the qualitative improvement of such education and inter alia, for regulating the system and maintaining the norms and standards, it is clear that it is for the AICTE to regulate technical education, and the nomenclature of the institution which imparts such education - whether it is college, university or deemed to be university - is irrelevant. When an institution is conferred with the status of a deemed to be university, a fiction is created and it should not and cannot be extended beyond the purpose for which it is created. Even in Bharathidasan's case, the dichotomy maintained in the UGC Act between University and deemed to be university was recognised. The 2005 Regulations were passed in accordance with the judgment in Bharathidasan's case and not contrary to the same, and the statement of the Central Government dated 5.4.2006 is in the nature of an explanation or clarification of the inter se balance of power between the AICTE and the UGC and it is not a notification relating to the discharge of functions as per the AICTE policy. The role of AICTE cannot be said to be supportive and supplementary to UGC. Since it is a subsequent special legislation, the powers of the AICTE have been carved out of the powers granted to UGC under the said Act.

14. According to Mrs. Nalini Chidambaram, learned senior counsel appearing for the petitioner who filed the P.I.L., the definition Clause 2(i) in the AICTE Act suffers from the vice of over-inclusion and it is violative of Article 14 of the Constitution of India. The deemed to be universities cannot be elevated to the status of Universities because there are inherent differences between the two, in the manner in which they are created and administered and as regards their accountability to the public etc. Merely because the institutions have been granted the status of a deemed to be university, they cannot escape the jurisdiction of the AICTE, which alone will ensure that the standards and norms set by the AICTE for technical institutions are maintained by such Universities. The UGC Act and the AICTE Act have been enacted for totally different purposes and operate in different fields and while there may be overlapping between some of the provisions of the two Acts, they cannot be construed in a manner which prevents them from co-existing, so that the UGC Act curtails the object of the AICTE Act, upon the grant of the status of deemed to be university to a technical institution. It was also submitted that the definition "University" should be "read down" in a manner that advances the objects of the AICTE Act.

15. Ms. R. Vaigai, learned Counsel appearing for the Students' Federation of India submitted that the allegation that there is a turf war is not correct. Both the AICTE and the UGC are statutory bodies created by Central Acts and they may overlap each other, but they cannot work at cross purposes. This is borne out by the fact that the composition of the AICTE shows that the Chairman of the UGC is a Member of the Executive Committee of the Council and the Council also consists of a Government representative and the Chairman of the UGC as one of its Members. The guidelines of the UGC for declaration of the status of deemed to be university also recognise the relevance of the role of the AICTE regarding technical education with reference to deemed to be universities. Though the UGC had introduced the UGC (Returns of Information by Universities) Rules as well as the Inspection of Universities Rules, both of which have been replaced in the year 2004, the UGC never exercised its power and these checks have remained paper checks. Only in April 2005, for the first time, the UGC called for the information. Since the UGC was not exercising its power of inspection, the AICTE, as a statutory body, called for the information and took steps for inspection by issuing the notice dated 8.12.2003. The judgment in Bharathidasan's case is not an authority on the question of the power of AICTE over deemed to be universities. And to contend that the powers of AICTE to inspect are confined only to Section 10(c)(ii) of the AICTE Act and to grant approval for grant of status is to denude the effect of legislation. The deemed to be universities are not on par with Statutory Universities and even Section 23 of the UGC Act maintains this distinction. Statutory Universities are subject to statutory obligations, while deemed to be universities are not so subject and therefore, they ought to be placed under stricter scrutiny. The maintenance of norms and standards in technical institutions is one of the core functions of the AICTE as seen from the Preamble as well as Section 10 of the Act. Therefore, the mandate of the Parliament to the AICTE is to discharge its functions with reference to technical education, whether such education is taught in a technical institution or in a University. The AICTE has been given the power to inspect u/s 11 of the Act. Section 11 of the AICTE Act has to be read along with Section 10(v) aforesaid and u/s 22(ii)(b), the Central Government has been empowered to make rules to provide for the manner in which the Universities shall be inspected. Section 23 of the Act empowers the AICTE to make regulations to carry out the purposes of the Act and in accordance with the Act and the Rules. The power of inspection which has been given to the AICTE under the Act cannot be whittled, especially when Section 11 of the Act specifically mentions Universities. The statutory conception of the AICTE Act should be to further the purpose of the Act and to provide a meaningful role to AICTE rather than to restrict its role to one which gives advice only when sought for. It could not have been the intention of the Parliament to create the AICTE only to be a silent spectator, especially when technical education is being diluted and commercialized. The Act ought to be interpreted to serve public interest as opposed to the private interest of a deemed to be university. According to this petitioner, a deemed to be university must take prior approval for introducing fresh courses. This is clear from the Specifications of

the AICTE and its Circular of April, 2005. The inspection regime, both under the UGC Act and the AICTE Act can be harmoniously applied since the Rules/Regulations under the AICTE Act are only a statutory refinement of the UGC Rules.

16. Mr. K. Chandru, learned senior counsel appearing for the UGC submitted that it is the UGC which has been entrusted with the responsibilities of maintaining and co-ordinating the standards of teaching etc. in institutions of higher education, including deemed to be universities, and in order to ensure the maintenance of standards in such deemed to be universities, the UGC may cause an inspection by an expert committee, which may include a nominee or nominees of the AICTE and in fact, while granting the deemed to be university status, the Central Government specifies a condition that the guidelines and instructions issued by the UGC/AICTE from time to time shall be adhered to.

17. Mr. S. Udayakumar, learned Senior Central Government Standing Counsel appearing for the Ministry of Human Resource Development submitted that though the deemed to be universities need not obtain the approval of the AICTE to start any programme, it is expected that they ensure maintenance of the standards prescribed by the AICTE; and that the AICTE may inspect the relevant departments of the deemed to be universities offering courses that come under the AICTE Act so as to ensure that standards are maintained; and in general, reiterated the matters referred to in the Government of India Notification dated 5.4.2 006.

18. Broadly speaking, these are the submissions made by the parties, who have also filed their written submissions.

19. Now, let us look at the relevant legal provisions.

20. The University Grants Commission Act, 1956 (UGC Act) was enacted to provide for "the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission". Section 3 applies to deemed to be universities, which reads as follows:

3. Application of Act to institutions for higher studies other than Universities. - The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be Deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of Clause (f) of Section 2." Chapter III of the Act deals with the powers and functions of the Commission and Section 12 thereunder enumerates the functions of the Commission, declaring that:

It shall be the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities,

and for the purpose of performing its functions under this Act, the Commission may ...

and proceeds to list those functions....

Section 13 deals with the power of inspection and it reads thus:

13. Inspection. - (1) For the purpose of ascertaining the financial needs of a University or its standards of teaching, examination and research, the Commission may, after consultation with the University, cause an inspection of any department or departments thereof to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Commission shall communicate to the University the date on which any inspection under Sub-section (1) is to be made and the University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Commission shall communicate to the University its views in regard to the results of any such inspection and may, after ascertaining the opinion of the University, recommend to the University the action to be taken as a result of such inspection.

(4) All communications to a University under this section shall be made to the executive authority thereof and the executive authority of the University shall report to the Commission the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in Sub-section (3)."

Section 14 deals with the consequences of failure of Universities to comply with recommendation of the Commission and it reads as follows:

Failure of Universities to comply with the recommendation of the Commission and any contravention of the provisions may result in the UGC withholding from the University the grants proposed to be made out of the Fund of the Commission.

Section 22 reads as hereunder:

22. Right to confer degrees. - (1) The right of conferring or granting degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution Deemed to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

Section 23 reads thus:

23. Prohibition of the use of the word "University" in certain cases. - No institution, whether a corporate body or not, other than a University established or incorporated by or under a Central Act, a Provincial Act or a State Act shall be entitled to have the word " University" associated with its name in any manner whatsoever.

Provided that nothing in this section shall, for a period of two years from the commencement of this Act, apply to an institution which immediately before such commencement, had the word "University" associated with its name.

Section 24 reads thus:

24. Penalties. - Whoever contravenes the provisions of Section 22 or Section 23 shall be punishable with fine which may extend to one thousand rupees, and if the person contravening is an association or other body of individuals, every member of such association or other body who knowingly or wilfully authorises or permits the contravention shall be punishable with fine which may extend to one thousand rupees.

21. In the year 2004, the UGC (Inspection of Universities) Rules, 2004 and the UGC (Returns of Information by Universities) Rules, 2004 were framed. Under the UGC (Returns of Information by Universities) Rules, every University was bound to furnish to the UGC every year the information mentioned in the Rules.

The Explanation to the Rules makes it clear that "For the removal of doubts it is hereby declared that for the purpose of this rule, the term "University" means a University as defined in Clause (f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956) and includes an institution Deemed to be a University u/s 3 of the said Act.

Note : The University shall provide all the updated information as contained in the proforma prescribed by the Commission and also the information as detailed out in para 2 of these rules on its website.

Under the UGC (Inspection of Universities) Rules, 2004, the Commission is empowered to appoint a committee to examine and report the financial needs of a University or its standards of teaching, examination and research or both. For the purpose of inspection, Rule 3 categorizes the University as follows - (i) The Universities which have been established during last five years and have not got NAAC accreditation may be inspected by the UGC on annual basis.

(ii) The Universities which have been accredited by NAAC may not require further inspection by UGC till the date of accreditation is valid.

(iii) The Universities which are older than five years and are not accredited by NAAC may be inspected after two or three years.

Before the Commission inspects the University, it is bound to send a questionnaire to the University seeking information on all relevant matters.

22. The UGC has laid down guidelines for recognition of an institution as a university and the relevant provisions thereunder are extracted below:

4(a) For the purpose of recognition as a university, an institution should generally be

-

(i) Engaged in teaching programmes and research in chosen fields of specialization which are innovative and of very high academic standards at the Master's (or equivalent) and/or research levels. It should also have a greater interface with society through extra mural, extension and field action related programmes.

(ii) Making in its area of specialization, distinct contribution to the objectives of the University education system through innovative programmes and on being recognized as a university capable of further enriching the university system as well as strengthening teaching and research in the institution and particularly in its area of specialization.

(iii) Competent to undertake application oriented programmes in emerging areas which are relevant and useful to various development sectors and to the society in general.

(iv) Institutions should have the necessary viability and a management capable of contributing to the university ideals and traditions.

4(e) In case the institution is offering a degree/diploma in professional subject(s), the academic programme(s) should be recognised by the concerned statutory authority, e.g. AICTE, MCI, DCI, CCH, INC, etc. before it applies for a deemed to be university status u/s 3 of the UGC Act. This shall, however, not apply to de-novo institutions in the emerging areas with the promise of excellence, not yet fulfilling the prescribed guidelines of the UGC whose case will be considered for a provisional status for a deemed to be university.

13. Admissions shall be made on an All India basis to the identical courses in all the deemed to be universities through a common entrance test conducted either by the University Grants Commission or by an Institution/Agency identified and approved by the UGC. This shall apply also to those institutions which have already been given the deemed to be university status.

23. On 16.12.2004, the UGC had issued a communication to all the Universities/deemed to be universities which records as follows:

The Commission at its meeting held on 24.11.2003, has decided under - The Commission in principle, agreed that the University departments/constituent colleges should take approval of the UGC before starting any technical course. It was also decided that the concerned Council may visit the University department/constituent colleges and send their report to the UGC for its final approval.

The reference to the concerned Council indicates that it is open to the AICTE or the Medical Council or the Nursing Council, as the case may be, to visit the Universities.

But, the decision whether to approve or not to approve would not vest with the Council since the Universities are not obliged to get the prior approval of the Council, but yet, the Council, as advisory or regulatory body, may send the report to the UGC, which will take a decision on the final approval. The power of the UGC is not restricted to making grants and Section 13 empowers the UGC to ascertain the standards of teaching, examination and research and cause an inspection to be made in such manner as may be prescribed and "by such person or persons as it may direct". So, if UGC is of the opinion that the AICTE should be directed to conduct the inspection and file a report, Section 13 obviously gives it the power to do so.

24. The AICTE started as a National Expert Body and functioned quite effectively in the first three decades and in view of the phenomenal development of the technical education and the lack of record for maintenance of educational standards in many institution resulting in erosion of the same. The AICTE Act was introduced with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements 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. Section 2(h) of the Act reads thus:

Technical institution" is 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.

Section 2(i) of the Act reads thus:

University" is a University defined under Clause (f) of Section 2 of the University Grants Commission Act, 1956 (3 of 1956), and includes an institution Deemed to be a University u/s 3 of that Act.

Section 10 of the Act reads as follows:

10. Functions of the Council. - (1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may, - ... (c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to -

(i) technical institutions, and

(ii) Universities imparting technical education in co-ordination with the Commission;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms

for enforcing accountability;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education; (p) inspect or cause to inspect any technical institution;

(t) advise the Commission for declaring any institution imparting technical education as deemed to be university.

Section 11 reads thus:

11. Inspection. - (1) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Council shall communicate to the technical institution or University the date on which any inspection under Sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

(3) The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in Sub-section (3).

Section 22 reads thus:

22. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the procedure to be followed by the members in the discharge of their functions;
- (b) the Inspection of technical institutions and Universities;
- (c) the form and manner in which the budget and reports are to be prepared by the Council;
- (d) the manner in which the accounts of the Council are to be maintained; and (e) any other matter which has to be, or may be, prescribed.

Section 10(t), as seen above, provides that the AICTE may advise the Commission for declaring any institution as a technical education or a deemed to be university.

25. Guidelines were framed by AICTE for recommending to the UGC to grant Deemed to be University status to technical institutions. The following guidelines are relevant for the purpose of this case:

1. Objectives -

These norms are prepared with the objective of ensuring that the "Deemed-to-be-University" status will be recommended only for such institutions which are maintaining consistently high standards in Teaching, Research, Developmental activities, innovations and extension services, having financial viability and possess credible and accountable administrative set up.

A1. The institution desirous of being declared as Deemed-to-beUniversity should provide evidence of having acquired academic excellence which can easily be considered as being higher than that laid down by the AICTE.

A7. The institution must undertake to abide by the requirements which may be laid down by the AICTE/UGC in respect of deemed to be university from time to time under the provisions of respective Acts of AICTE/UGC.

4. Visiting Committee -

(a) AICTE - UGC joint inspection Committee is to visit technical education institutions for grant of Deemed-to-be-University status. The constitution of the Committee is as follows -

(i) Two experts nominated by AICTE

(ii) Two experts nominated by UGC

(iii) One official of UGC, not below the rank of Deputy Secretary.

(iv) One official of MHRD, not below the rank of Deputy Secretary.

(v) Advisor, AICTE, be the Member Secretary of the Committee.

26. The AICTE has also framed rules for inspection of technical institutions and universities. As per Rule 4 thereof, the Council would sent to the head of the

institution a questionnaire seeking information on relevant materials before undertaking the inspection and Rule 5 provides that after receipt of the information under Rule 4, the date for inspection by AICTE would be fixed and communicated to the head of the institution and as per Rule 7, as soon as possible after inspection, the committee shall report its findings to the Council.

27. In the year 2005, the All India Council for Technical Education (AICTE) Grant of Approval for starting new technical institutions, introduction of courses or programmes and increase/variation of intake capacity of seats for the courses or programmes and Extension of approval for the existing technical institutions and maintenance of norms and standards in Universities including Deemed to be Universities Regulations, 2005 were framed in supersession of the Regulations No. F.3 7-3/Legal/2004 dated 6.1.2005. (sic) According to these Regulations, no University, including deemed to be university shall conduct technical courses or programmes without ensuring maintenance of the norms and standards prescribed by AICTE Regulation 2.7 provides for the approval process for processing applications for extension of approval to existing technical institutions and ensuring maintenance of standards of teaching, examinations and research in an University including Deemed to be University.

Sub-Regulation 2.7.1 provides that the AICTE approved technical institutions shall submit two copies of Compliance Report in the prescribed format along with mandatory disclosure information in the prescribed format.

Sub-Regulation 2.7.2.2 states that the Universities including Deemed to be Universities shall submit an undertaking in the prescribed format stating that the information provided in the compliance report is factual and correct and that the Council can take appropriate action if found that any information provided in the compliance report is false.

Sub-Regulation 2.7.2.3 provides that based on the compliance report received from the Universities, including Deemed to be Universities, conducting technical education courses/programmes, the Council may cause an inspection to any University, including Deemed to be University for the purposes of ascertaining the financial needs, or its standards of teaching, examination and research etc. The Council may also cause inspections with or without notifying the dates in cases where specific complaints of mis-representation, violation of norms and standards, mal-practices etc. reported to verify the facts.

Sub-Regulation 2.7.2.4 states that in case an University or Deemed to be University found to have been violating norms and standards of teaching, examination research etc., the Council may communicate its findings and action to be taken as a result such findings for appropriate action as Deemed fit to -

(1) The University/deemed to be university concerned

(2) The University Grants Commission

(3) The MHRD Govt. of India/State Govts. Concerned.

Sub-Regulation 2.7.2.5 provides that the Council may publish in newspapers and display in its website and/or any other means to inform the general public about its findings cautioning the general public.

Sub-Regulation 2.7.2.6(a) provides that the Universities including Deemed to be Universities shall publish a information booklet before commencement of the academic year giving the details regarding the courses/programmes being conducted and details of infrastructural facilities including faculty etc. in the form of mandatory disclosure. The information booklet shall be made available to the stakeholders of the technical education on cost basis. The information shall be revised every year with updated information about all aspects of the institution.

Sub-Regulation 2.7.2.6(b) makes it mandatory for the Universities including Deemed to be Universities to maintain a Web-site providing the prescribed information. The website information must be continuously updated as and when changes take place.

Sub-Regulation 2.7.2.6(c) provides that if a University including Deemed to be University conducting technical education courses/ programmes fail to disclose the information or suppress and/or misrepresent the information, appropriate action could be initiated by the Council.

28. The deemed to be universities had, in the mean time, started new courses and increased or modified the intake contrary to the communication issued by the UGC on 16.12.2004 that "all university departments will take approval of the UGC before starting any technical courses". Though the direction of the UGC was violated, the UGC did not take action either by calling upon the deemed to be universities to explain the cause for such violation or by invoking its power u/s 14 of the UGC Act. The AICTE issued the notice dated 17.10.2005, almost identical to the notice dated 8.12.2003, which was the subject matter of the earlier writ petition.

29. Thereafter, the public notice dated 21.2.2006 came to be issued, which was followed by the violence by the student community, already referred to. Various writ petitions also came to be filed and thereupon, the Central Government issued a notification u/s 20(1) of the UGC Act and Section 20(1) of the AICTE Act, in which, inter alia, it was stated as follows:

No. F.2-1/2006 U.3(A) Government of India

Ministry of Human Resource Development
Department of Secondary & Higher Education
(U & HE Bureau)

New Delhi, the 5th April, 2006

NOTIFICATION

Whereas, the Central Government is of the opinion that the role and powers of the AICTE established under the All India Council for Technical Education Act, 1987 and of the UGC established under the University Grants Commission UGC Act, 1956 are required to be clarified in the public interest, in so far as their application to maintaining the standards of education in institutions notified as "Deemed to be Universities" u/s 3 of the UGC Act is concerned;

And whereas, the Central Government is also of the opinion that such clarification is a question of policy;

Now, therefore, in exercise of its powers vested u/s 20(1) of University Grants Commission Act, 1956 and Section 20(1) of All India Council for Technical Education Act, 1987, the Central Government do hereby direct the UGC and the AICTE, to publicize the following clarification for the information of the general public by appropriate means, including through their respective institutional web-sites (www.ugc.ac.in&www.aicte.ernet.in):

The UGC, while making its recommendation to the Central Government, for the grant of the "Deemed to be University" status on any institution, may seek the advice of the AICTE or other relevant Statutory Authorities, as the case may be (e.g. the AICTE for technical and management education, the Medical Council of India for medical education, the Dental Council of India for dental education etc.)

Institutions notified by the Central Government u/s 3 of the UGC Act as "Deemed to be University" are empowered to award degrees as specified and notified u/s 22 of the UGC Act, 1956.

It is not a pre-requisite for an institution notified as a "Deemed to be University" to obtain the approval of the AICTE, to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, institutions notified as "Deemed to be University" are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses that come under the jurisdiction of the said Council. It is expected that the institutions notified as "Deemed to be University" maintain their standards of education higher than the minimum prescribed by the AICTE.

In accordance with provisions u/s 11(1) of the AICTE Act, 1987, the AICTE may cause an inspection of the relevant departments of the institution declared as "Deemed to be University", offering the courses that come under the jurisdiction of the AICTE Act, 1987 in order to ensure the maintenance of standards by them.

However, while the AICTE would not issue any directions to the institutions notified as "Deemed to be University" on the basis of inspection report of the Council's Expert Committee, the Council may bring the findings and recommendations of its

Expert Committee to the notice of the University Grants Commission, which after considering the report of the Expert Committee of the AICTE and recommendations, if any, may issue necessary directions for appropriate action.

Section 12(d) of the UGC Act, 1956 empowers the UGC to recommend, to any University including institutions notified as "Deemed to be University", the measures necessary for the improvement of University education and advise them for all such actions as are necessary for the purpose of implementing such recommendations.

Section 13 of UGC Act, 1956 empowers the UGC to cause an inspection, in consultation with the University, or of any its departments for the purpose of ascertaining its standards of teaching, examination and research, in such manner as may be prescribed by the Rules/ Regulations.

The power to inspect Universities/Institutions notified as "Deemed to be University" to the AICTE as well as to the UGC are to be seen separately in the light of the "Preambles" and "Statements of Reasons" of their respective Acts. The powers of inspection accorded to the AICTE, is specifically in order to ensure the maintenance of standards in management and technical education, whereas the power of inspection to the UGC, is to ensure overall functioning of Universities/ Institutions notified as "Deemed to be University" including faculties thereof, in order to ensure overall standards like that of a University including administrative and academic standards.

Section 14 of the UGC Act. 1956 deals with the consequences of failure of the Universities including the institutions which are "Deemed to be University" to comply with recommendations of the Commission.

All institutions which are "Deemed to be University" are required to abide by the institutions/recommendations of the UGC, failing which the UGC may even consider to recommend to the Central Government for the withdrawal of "Deemed to be University" status.

The manner of inspections, if any, to be carried out by the UGC and the AICTE would be in accordance with the Rules/Regulations framed by the Commission and the Council under their respective Acts. However, the Rules/Regulations of the AICTE may confine only to the inspection, preparation and submission of the Report in regard to institutions which are "Deemed to be University". The action on the recommendations in the report needs to be dealt separately through the appropriate Regulations of the UGC in accordance with the provisions of the UGC Act, 1956.

The standards prescribed by the AICTE for various technical and management courses and programmes as well as the UGC guidelines on institutions notified as "Deemed to be Universities" are available on the official web-site (www.ugc.ac.in &

www.aicte.ernet.in) of the UGC and the AICTE respectively.

Sd/-

(Sunil Kumar)

Joint Secretary to the Government of India

30. Section 20(1) of the AICTE Act refers to the directions given by the Central Government on questions of policy, which will guide the AICTE and which according to the said Act are final. Similarly, in the UGC Act also, Section 20(1) requires the Commission to be guided by the directions on questions of policy. The Central Government purported to issue this statement as its clarification on questions of policy. But, a reading of the said notification indicates that it is actually the Central Government's understanding of how the two bodies, viz. the Commission and the Council work with each other.

31. It may be mentioned at this stage that in April 2005, the UGC had issued a D.O. to all the Directors/Vice Chancellors of Deemed to be Universities since, "Some of the institutions, who have been accorded Deemed to be University status, are not following prescribed guidelines with regard to admissions, fees, introduction of new courses (including courses offered through private franchising under distance learning) and intake capacity of the students. Some of the Deemed to be Universities offering courses in Engineering and Technology have increased their intake capacity manifold without corresponding increase in the infrastructure and without seeking approval from any regulatory authority. The Deemed to be Universities are not even holding regular meetings of the Board of Management and Finance Committee as per the provisions contained in their Memorandum of Association and Rules. The Minister of Human Resource Development has also taken a serious view on this issue. Keeping in view the above, it has been decided to take the following actions -

1. All the Deemed to be Universities shall seek prior approval of the UGC for any increase in intake capacity or for starting any course. The norms laid down by the concerned statutory councils shall be followed in this regard. To regularize the enhancement in the intake capacity already undertaken or the courses which have already been started without UGC's approval, a one-time opportunity is being given to the Deemed to be Universities to obtain ex-post-facto approval within three months of the issue of this letter. For this purpose, the information may be submitted to the UGC expeditiously in the prescribed proforma enclosed as Annexure-I.

2. All the Deemed to be Universities are required to hold regular meetings of the Board of Management and Finance Committee. The information regarding the date of the meetings, agenda and the minutes shall also be sent to the UGC and the M/HRD regularly.

3. The UGC shall continuously and closely monitor the working of Deemed to be Universities to ensure that the objectives for which the Deemed to be Universities

were set up, are being fulfilled. For this purpose, the UGC may cause inspection of any Deemed to be University or its centre randomly. The expert committee constituted for the purpose may suggest any improvement required in the functioning and management of the institute and may even recommend for the withdrawal of the Deemed to be University status if it feels that the objectives are not being met.

For this purpose, relevant information may be sent to the UGC in the enclosed proforma Annexure-II at the earliest.

32. From the counter filed by the UGC, it is seen that since the Commission has been entrusted, inter alia, with the responsibility of maintaining and co-ordinating the standards of teaching, examination and research in the institutions of higher education, including the Deemed to be Universities, the Commission, in order to discharge this responsibility, takes the help of individual experts and specialized statutory bodies, wherever required. The Commission underscores the importance of constant monitoring of the standards of deemed to be universities offering courses in engineering and technology. The Commission may cause an inspection by an Expert Committee, which may include nominee or nominees of the AICTE in order to ensure the maintenance of standards in such Deemed to be Universities. In fact, in the notification dated 16.7.2001, by which the petitioner in W.P. No. 38316 of 2005 was granted the Deemed to be University status, it is clearly mentioned that the grant was subject to the condition that the Deemed to be University will adhere to the guidelines/instructions issued by the UGC/AICTE from time to time as applicable to the deemed to be universities. According to the UGC, the other statutory bodies entrusted with the responsibility of maintenance of standards in different disciplines like technical, medical and dental sciences, which in the instant case is the AICTE, are concerned, they may make a recommendation to the UGC, which will be to aid the UGC in discharge of its responsibilities for maintaining and co-ordinating the standards of teaching, examination and research. According to the UGC, even if the statutory body visits any University Department of a Constituent College, then it will sent its report to the UGC so that the UGC may take a final decision in the matters in respect to any University, including a deemed to be university. It is against this background that we have to fix the parameters of AICTE's power vis-à-vis the university.

33. The parameters of AICTE's power

According to the Managements of the deemed to be universities, in view of the definition of deemed to be university in the AICTE Act and Section 3 of the UGC Act, it is not open to anyone to contend that the Judgment in Bharathidasan's case does not apply to deemed to be universities. The parties opposing the deemed to be universities point out that the Judgment itself highlights the only question of law which relates to the requirement of prior approval by the appellant/ University created under the relevant Act. According to them, therefore, the Judgment would

apply only to statutory Universities, and the question whether deemed to be universities required prior approval did not fall for consideration in the said case. A technical institution is defined in Section 2(h) of the Act as an institution which is other than a University. This is unambiguously stated in the definition clause, where the phrase "not being a University" is used. The Act, therefore, maintains the distinction between technical institutions and Universities and treats them separately, and wherever the University or the activities of the University must be overseen by AICTE, University is specifically mentioned along with technical institutions and it is left out where the AICTE's power is not to be exercised over Universities. The parties opposing the deemed to be universities directed our attention to the AICTE Regulations, 1994 where Regulation 3(g) defines deemed to be universities, and the Regulations make reference to Universities and "deemed to be universities" separately and therefore, if the context so requires "deemed to be university" should not be treated as a University.

34. It is difficult to accept this contention in view of the Judgment in Bharathidasan's case. It is no doubt true that the Regulations define deemed to be universities separately and Regulation 4 compels Universities to seek for and obtain prior approval. But this has been held to be "directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the AICTE Act" and therefore, void and unenforceable. In Bharathidasan's case, the provisions of the AICTE Act and the UGC Act were scrutinized in juxtaposition to each other and it was held that the role of AICTE vis-à-vis the Universities is advisory and recommendatory in nature and is a guiding factor serving the object of maintaining the standards and norms for which the Council was created under the Act. In fact, the Judgment also refers to deemed to be universities, holding that the Act only envisages AICTE to advise UGC for declaring the institution as a deemed to be university and not to do any such thing by itself and it is observed therein that "Parliament while enacting the AICTE Act was fully alive to the existence in full force and effect of the provisions of the UGC Act 1956 which specifically deals with the co-ordination and determination of standards at University level of institutions as well as institutions for higher status of category or clause other than but Deemed to be Universities, and yet roped into the definition of technical institutions, only institutions not being a University as defined u/s 2(i) of the AICTE Act". When Sections 2(h) and 2(i) of the AICTE Act are clear, a deemed to be university must be deemed to be a University for the purposes of the AICTE Act, and the fiction will operate and it cannot be treated as a technical institution specially, in the teeth of the Judgment in Bharathidasan's case.

35. It is true that the judgment in Bharathidasan's case opens with the following words:

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 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.

But the judgment has to be read as a whole and the following paragraphs must also be kept in mind:

We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent finds 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....

The Act, for all purposes and throughout maintains 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 are also to be supervised or regulated and guided by 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 Sections 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, reference being made to technical institutions alone. It is equally important to see that when AICTE is empowered to inspect or cause to inspect any technical institution 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 AICTE to only advise UGC for declaring any institution imparting technical education as a deemed to be university and not do any such thing by itself.

To put it in a nutshell, a reading of Section 10 of the AICTE Act will make it clear that whenever the Act omits to cover a "University" , the same has been specifically provided in the provisions of the Act. For example, while under Clause (k) of Section 10 only "technical institutions" are referred to, Clause (o) of Section 10 provides for the guidelines for admission of students to "technical institutions" and "Universities" imparting technical education. If we look at the definition of a

"technical institution" u/s 2(h) of the Act, it is clear that a "technical institution" cannot include a "University". The clear intention of the legislature is not that all institutions whether University or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the legislature to have merely provided a definition of "technical institution" by not excluding "University" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and University in several provisions in the Act. The definition of "technical institution" excludes from its purview a "University". When by definition a "University" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "University" will be reading into the Act what is not provided therein.

Therefore, the role of the AICTE vis-à-vis the Universities has been spelt out specifically. The decision in the above case applies undoubtedly to deemed to be universities. The AICTE is not a silent spectator nor a passive player. It will act in co-ordination with the UGC, as we will see in our answer to the next question, in order to achieve the objects for which it was set up.

36. The balance of power between UGC and AICTE

The Sections relating to the powers of inspection have already been extracted above. We have already seen that in the AICTE Act, conspicuous and deliberate care has been taken to specifically mention the word "Universities" wherever there is reference to the exercise of power by the AICTE to inspect with regard to Universities. The prior approval of AICTE is not required, as decided in Bharathidasan's case, whenever a University, including a deemed to be university, intends to start a department or commence a new course or programme in technical education. But, they still have the duty to conform to the standards and norms laid down by AICTE for the purpose of ensuring coordinated and integrated development of technical education and maintenance of standards.

37. The AICTE may inspect any department or departments of a technical institution or University, both for the purposes of ascertaining their financial needs or the standards of teaching, examination and research. This is seen from Section 11 of the AICTE Act. However, the Act does not indicate anywhere that the Council has the power to conduct surprise inspection as and when it chooses according to its whims. Section 11(2) requires the Council to communicate to the University, the date on which any inspection is to be made. Subsection (3) to Section 11 deals with communication of its views and Subsection (4) with the action that is proposed to be taken for the purposes of implementing such recommendation. u/s 22, rules are framed, inter alia, with regard to inspection of technical institutions and Universities. According to the Management/petitioners, the AICTE has no power of inspection dehors Section 11, whereas according to the respondents, since Section 10 deals with the functions of the Council which makes it the duty of the Council to take all such

steps as are necessary for ensuring co-ordinated and integrated development of technical education. Sections 10(1)(g) and 10(o) empowers the Council not only to evolve suitable performance appraisal systems, but also to incorporate norms and mechanisms for enforcing accountability and also to provide guidelines for admission of students.

38. As regards UGC, its power of inspection is dealt with in Section 13 of the UGC Act. The purposes for which the inspection has to be undertaken are identical to what is specified in Section 11 of the AICTE Act. Section 13 of the UGC Act also speaks of "ascertaining the financial needs of a University or its standards of teaching, examination and research". The language of Section 11 of the AICTE Act is identical to Section 13 of the UGC Act.

39. The complaint is that the UGC has never stirred itself to ensure that the standards are maintained, and has been content with exercising its power to make grants to the various institutions governed by it; and when the avowed object of AICTE is to maintain the standards, this body cannot be emasculated, resulting in total deterioration of standards, much to the detriment of the students' interest. When the UGC has the power to inspect, the fact that the power to inspect has been "sparingly exercised" cannot make us wish it away. In fact, in [Bharati Vidyapeeth \[Deemed University\] and Others Vs. State of Maharashtra and Another](#), where the question raised before the Supreme Court was whether it was open to the State or University to impose rules regarding admissions to institutions which are governed by the UGC Act, the Supreme Court has rejected the contention that the only power of the UGC is to make grants in the following words:

Learned counsel appearing for the State very strenuously urged that the UGC Act is only for the purpose of making grants to various institutions governed by it and it was not an authority which would create a University and give a special status to it so as to keep it out of the control of the University or the State where it is located. This argument ignores the provisions of the enactment and particularly those to which we have adverted to just now, for such institutions are recognised or granted Deemed status for the maintenance of the standards in the institutions and for coordinating the teaching in Universities which is a higher purpose than merely giving grants and with that object, the enactment is made. We do not think it could be confined only to making of grants as has been contended by the respondents. This argument, therefore, needs to be rejected.

40. According to the Central Government, in view of the judgment in Bharathidasan's case, while the deemed to be universities may start departments or courses without prior approval of AICTE, they need to maintain the standards prescribed by the AICTE. It is clear that the power to take action against the Universities in the event of their failure to maintain prescribed standards is given only to the UGC u/s 14 of the UGC Act. Once the status of a University is conferred on the deemed to be universities as such, then their continued existence would

depend on the UGC and not the AICTE.

41. Though the learned senior counsel for the Managements objected to the AICTE's alleged scramble for power over deemed to be universities, they also do acknowledge that they must conform to the norms and standards set by the AICTE. In fact, even before the Supreme Court in Bharathidasan's case, this was acknowledged:

The fact that initially the Syndicate of the appellant University passed a resolution to seek for approval from AICTE and did not pursue the matter on those lines thereafter or that other similar entities were adopting such a course of obtaining the same and that the Andhra Pradesh High Court in M. Sambasiva Rao case¹ had taken a particular view of the matter are not reasons which can be countenanced in law to non-suit the appellant. Nor such reasons could be relevant or justifying factors to draw any adverse finding against and deny relief by rejecting the claims of the appellant University. We also place on record the statement of the learned Senior Counsel for the appellant, which, in our view, even otherwise is the correct position of law, that the challenge of the appellant with reference to the Regulation in question and claim of AICTE that the appellant University should seek and obtain prior approval of AICTE to start a department or commence a new course or programme in technical education does not mean that they have no obligation or duty to conform to the standards and norms laid down by AICTE for the purpose of ensuring coordinated and integrated development of technical education and maintenance of standards.

42. That the AICTE cannot totally usurp the powers of inspection, is dealt with in Bharathidasan's case too:

All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the Universities and thereby superimpose itself upon such Universities merely for the reason that it is imparting teaching in technical education or programmes in any of its departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the Universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of Universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-à-vis Universities and the activities and functioning of its departments and units.

The ultra-activist view articulated in M. Sambasiva Rao case¹ on the basis of supposed intention and imagined purpose of AICTE or the Act constituting it, is

uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and Universities irrelevant or even as non-entities by making AICTE a superpower with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them....

...special care seems to have been conspicuously and deliberately taken to make specific mention of Universities, wherever and whenever AICTE alone was expected to interact with Universities and University departments as well as its constituent institutions." There was no intention of sidelining the UGC or subjugating it to the control of AICTE when the latter act came into force, and there is nothing in the AICTE Act to indicate such subjugation. A careful reading of the various provisions contained in Sections 10, 11 and 22 will further go to show that it has, no further or direct control over such Universities or scope for any direct action except bringing it to the notice of UGC or other authorities only, of any lapses in carrying out any directions of AICTE in this regard, for appropriate action, in achieving its purpose of ensuring proper maintenance of norms and standards. The Supreme court held that the object of creating AICTE or passing of the AICTE Act was not to render the Universities virtually subordinate to it. Nor was (it) ever in the contemplation of Parliament nor should UGC and the Universities been relegated to a role subordinate to AICTE. UGC and Universities have always had and have an accepted and wellmerited role of primacy to play in shaping as well as stepping up a coordinated development and improvement in the standards of education and research in the sphere of education.

43. Even if it is assumed without conceding that AICTE acted with the best of intentions in issuing the inspection notice dated 17-10-2005, or in enacting the 2005 Regulations or in issuing the Public Notice which resulted in absolute mayhem, that cannot excuse the AICTE's approach. The notices and the Regulations are contrary to Section 11 of the AICTE Act and the Rules of Inspection 1992. That the AICTE has the power to inspect is not denied, but the AICTE must bear in mind the manner in which it exercises the power. Both UGC and AICTE have a common object i.e. maintaining standards of excellence in education, but the UGC has primacy over AICTE, since even if the AICTE discovers the shortcomings of a deemed to be university it has no further or direct control, nor is there any scope for AICTE initiating any direct action against the said deemed to be university, it can only bring these defects to the notice of UGC for further action. The AICTE which has the duty to ensure that the Universities adhere to the standards and norms of excellence shall function cohesively with UGC, there should be mutual understanding between UGC and AICTE, always keeping in mind that neither shall act in a manner that reduces the importance of the other in their common object.

44. The observations of a Division Bench of this Court while dealing with the balance of power between the AICTE and the University are apposite in this context. In [Trichy Engineering College and Others Vs. Anna University and Others](#), the Division Bench has dealt with the inter se relationship between the Anna University and the AICTE. This throws light on how we should balance the roles of UGC and AICTE vis-à-vis the Universities. In that case, the writ petitioner had been approved with the permitted strength of students intake by the AICTE. While so, the University after conducting inspection issued a notice for rectification of deficiencies. Not satisfied with the rectification of the defects, the University issued a show cause notice and thereafter, recommended disaffiliation. Against this, writ petitions were filed. It was contended that when admittedly the AICTE was satisfied about the requirements and had granted approval, the University had no power to complain that such requirements were not fulfilled by the Colleges. The Division Bench held that the analysis of the relevant provisions and regulations make it abundantly clear that the power of granting the withdrawal of approval is with the AICTE, which has the exclusive power and discretion to deal with issues relating to staff pattern, infrastructural and instructional facilities. The following observations of the Division Bench are relevant: ...But the methodology or approach to the issue has to be in consonance with the mutual statutory obligations and limitations. While on the same issue when A.I.C.T.E., which is the competent body to grant approval and had in fact granted approval, if another statutory body like the University should strike a different note and also proceed further to disaffiliate the course, it would lead to total chaos and confusion and not to mention the resultant situation, as pointed out by Mr. Vijay Narayan, rendering the functioning of the A.I.C.T.E. itself ineffective.

The Supreme Court as well as this Court had, on several occasions, pointed out that the scheme of the various legislations relating to the manner of control over the educational institutions contemplate consultative process among the various authorities. Grant of approval/ affiliation/consent by different authorities and renewal of the same have to be achieved by cohesive exercise of all the statutory authorities. All the statutory bodies involved in the process, actually perform the duty of a single entity, namely, that of the sovereign Government. A situation of uncertainty and incongruity cannot be made to prevail by the action or inaction of the statutory authorities. They have to function in a cohesive manner in public interest....

45. In [State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others](#), the Supreme Court has underlined the important role played by AICTE in incorporating the appropriate standards and norms, and evolving suitable appraisal mechanisms:

The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. ... This duty and responsibility cast on the Council implies that the norms and standards to

be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical education system in all parts of the country uniformly; that there will be coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council.

It is only then that there will be uniformity and excellence in the technical education imparted by the various institutions in our country.

46. The AICTE made the Regulations in the year 2005, which have been extracted above. When both the Acts have been construed and the respective roles of the Commission and the Council are clear, these Regulations cannot enhance the power of AICTE, nor do they result in whittling down the power of UGC. The Supreme Court, in the judgment in *Bharathidasan's* case, has dealt with this aspect in the following words:

AICTE cannot, in our view, make any regulation in exercise of its powers u/s 23 of the Act, notwithstanding Sub-section (1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be - not inconsistent with the provisions of this Act, and the Rules.... "When the language is specific, unambiguous and positive, the same cannot be overlooked to give an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made u/s 23 of the Act have constitutional and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which

AICTE could not have made so as to bind Universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a University in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any University or any of its departments and constituent institutions."What applies to the regulations relating to prior approval applies equally to the newly made regulations in so far as they are beyond AICTE's power vis-à-vis Universities.

47. Section 10 of the AICTE Act deals with the functions of the AICTE insofar as universities, including deemed to be universities are concerned. Section 11 provides for the manner in which the inspection is to be done. When that is so and when the deemed to be universities admittedly have the obligation and duty to conform to the AICTE's standards and norms for the purpose of ensuring co-ordinated and integrated development and educational development and maintenance of standards, the challenge to Section 10(g) and (o) as well as Section 11 of the AICTE Act stands rejected. The language of Section 11 of the AICTE Act and Section 13 of the UGC Act are identical. So both the bodies have been given the power to inspect the institutions in accordance with the respective provisions. The AICTE has the power to inspect, but only in accordance with Section 11 of the AICTE Act. It cannot charge like a bull in a China shop, for that will only wreak havoc. The AICTE also cannot take action directly on the erring Universities; all that it can do is to report to the UGC. This does not mean that the object of the AICTE Act will be rendered nugatory. The AICTE has to perform its role of promoting and co-ordinating University education for determination and maintenance of standards of teaching, examination and research in Universities, but it will do so in consonance with the provisions of the AICTE Act. It will assist, aid and advise the UGC in seeing that the quality of education is not diluted. So, the apprehension that the AICTE will be reduced to a silent spectator is unfounded.

48. Chapter 3 of the AICTE Act deals with the powers and functions. It was urged on behalf of the Management that apart from the power of granting u/s 10(c) of allocating and disbursing grants from and out of the fund of fund of the Council to Universities none of the functions of the Council enumerated in Section 10 can be made applicable to Universities including deemed to be universities and the Section should be read down restricting the power of the AICTE accordingly. This cannot be accepted. It is true that Section 10(p) refers only to technical institutions and reads, "Inspect or cause to inspect any technical institution". As far as Section 10(k) is concerned that was a subject matter of Bharathidasan's case and it was held that it will not apply to Universities. But when Section 10(g) refers specifically to the Council's power to evolve suitable performance appraisal systems for technical institutions as well as Universities and when Section 10(o) requires the AICTE to provide guidelines for admission of students to technical institutions as well as Universities we cannot ignore the specific reference to Universities in these two sub-sections, and there is no reason to do so in view of the fact that Section 11

which deals with inspection makes it clear that the power of inspection is undertaken for two purposes,

- (a) for ascertaining the financial needs of the technical institution or an University, or
- (b) for ascertaining its standards of teaching, examination and research.

49. The Inspection undertaken for ascertaining the financial needs is for deciding how much funds should be allocated and disbursed and on what terms and conditions as per Section 10(c) and it stands to reason that the second purpose of undertaking inspection namely to ascertain the standards of teaching, examination and research is for exercise of the power u/s 10, where University is not specifically excluded and in particular, for exercise of power u/s 10(o) and 10(g) where the word "University" is specifically included. Therefore, it would not be correct to hold that AICTE's powers of inspection are only for determining the financial needs of deemed to be universities. They are also for ensuring coordinated and integrated development of technical education.

50. When the earlier writ petition was filed, the deemed to be universities only challenged the inspection notice dated 08-12-2003. Sections 10(g) and (o) were not challenged. While dismissing the writ petition, the Division Bench observed that the AICTE appears to be empowered to call for such information u/s 10 and 11 before us also the Constitutionality of the said Sections has not been seriously challenged. While it is true that the deemed to be universities need not take the prior approval of the AICTE u/s 10(1)(k) of the AICTE Act they are bound by the other provisions relating to standards and norms laid down by the AICTE.

51. It was contended on behalf of the petitioner in the PIL that the definition of University suffers from the vice of over inclusion, in view of the scheme of AICTE and also in view of the fact that in the relevant regulations and also in the UGC Act, the dichotomy between University and deemed to be university is maintained. The reference to "Universities" in the various Sub-sections in Section 10 of the AICTE Act should not be so read as to include deemed to be universities and that the reference to Universities should be held to include Deemed to be University only "if the context so requires". It was also submitted that the deemed to be university was a technical institution which required the approval of AICTE as envisaged under the Act until it was declared as a deemed to be university as per Section 3 of the UGC Act and that the deeming provision cannot be extended beyond the purpose for which the fiction is created so as to render the object and purpose for which the AICTE was established, nugatory. In *Bharathidasan's* case, the Supreme Court has referred to the definition of technical institution as per Section 2 of the AICTE Act and had then observed that the technical institution is a technical institution other than a University which is defined in Section 2(1) and which also includes an institution which is Deemed to be an University u/s 3 of the said Act. It is also specifically observed by the Supreme Court that when the AICTE Act was enacted, the

Parliament was fully conscious of the force and effect of the provisions of the UGC Act and yet roped into the definition of the technical institution, only those institutions which were not Universities as defined in Section 2(1). Therefore, this objection has to be rejected and though decisions have been referred to support this contention, it is not necessary to refer to them, since the Bharathidasan's case is exactly on that point. We have already seen in paragraph 24 supra that the AICTE Act clearly defines "technical institutions" and "university". Therefore, the objection that the definition suffers from over inclusion or that it has to be read down" must be rejected.

52. It is clear that all is not well in the world of the deemed to be universities. It is true, some of the petitioners before us have produced documents to show the standards of excellence that have been achieved by the particular Deemed to be University, but there are obviously Deemed to be Universities which have not cared to maintain the standards of quality that they are bound to maintain. This state of affairs cannot continue.

53. It is also brought to our notice that the deemed to be universities had introduced new courses and increased or modified the student intake without the approval of the UGC. We have already seen that by the communication dated 16.12.2004, the UGC had informed all the universities, including the deemed to be universities, that they should get the approval of the UGC before starting a new course. In the same communication, the UGC had also informed the deemed to be universities that the concerned Council, which in the instant case is the AICTE, may visit the university department or constituent college and send its report to the UGC for final approval. Corresponding to the introduction of a new course or increase of student intake, the respective institutions had to improve the infrastructure facilities. It is, therefore, desirable that a joint inspection of the deemed to be universities in the State is made by the UGC and the AICTE within a timeframe, preferably within a period of three months from the date of this order. Before the inspection is made, all the deemed to be universities shall furnish the information required in the proforma annexed with the D.O. issued by the UGC in April, 2005. This shall be done within a period of four weeks from the date of this order.

54. The information called for by the UGC in its D.O. of April, 2005 has been furnished only by some deemed to be universities. The Proforma that is enclosed would show that Clause 12 which deals with details of Under Graduate and Post Graduate Courses run by the Deemed to be Universities would state that whether it is as per UGC/AICTE specifications. It also calls for information regarding courses offered at the time of conferment of status and courses introduced after becoming Deemed to be University and whether approval of the statutory council is taken and whether approval of UGC has been taken.

55. For all the above reasons, the writ petitions are disposed of as follows:

(i) Sections 2, 10(g) and (o) and Section 11 of the AICTE Act are valid and are in accordance with the provisions of the Act and cannot be challenged.

(ii) The public notice of February, 2006 issued by the AICTE is quashed.

(iii) The provisions of AICTE Regulations 2005 are set aside insofar as they are inconsistent with Sections 10 and 11 of the AICTE Act as well as the provisions of the UGC Act as far as deemed to be universities are concerned.

(iv) The AICTE, u/s 11 of the AICTE Act and the UGC, u/s 13 of the UGC Act, are empowered to inspect the Universities to ensure that the standards and norms are maintained.

(v) "Ordinarily", before the AICTE conducts any inspection, it shall request the UGC to send a member of the UGC to be a part of the Inspection Committee. If the UGC does not depute such a member within a reasonable time, the AICTE can proceed to conduct the inspection and forward its report alongwith its conclusions if any to the UGC for the UGC to take action.

(vi) All the deemed to be universities in this State shall respond to the notice given by AICTE as well as the D.O. issued by UGC within a period of four weeks from the date of this order, if they have not done so.

(vii) Thereafter, the UGC and the AICTE shall jointly conduct the inspection within a period of three months from the date of this order and the UGC shall take such action as it deems fit.

(viii) In the interest of the student community, it is desirable that the UGC actively ensures the maintenance of standards in the deemed to be universities in the State either by itself or with the help of AICTE, so that a situation like the present state of affairs does not arise in future.

(ix) All the deemed to be universities in the State shall place on their websites, all information regarding the nature of courses offered by them, the intake that has been approved of, the date of UGC's approval, the details of the corresponding increase in the infrastructure facilities, if intake has been increased or new courses have been introduced, the dates of inspection by the UGC/AICTE and the results, if any, and any other information that the deemed to be universities wish to be placed on the websites in order to ensure complete transparency in the working of the deemed to be universities.

There will be no order as to costs. Consequently, all the connected miscellaneous petitions are closed.