STATE OF TAMIL NADU AND ANR. A

v.

ADHIYAMAN EDUCATIONAL AND RESEARCH INSTITUTE AND ORS.

MARCH 24, 1995 B

[P.B. SAWANT AND S.C. AGRAWAL, JJ.]

Constitution of India, 1950 : Entry 66 List I and Entry 25 List III Schedule VII—Subjects covered by Entry 66—Always remained within the purview of Parliament even before and after Forty Second Amendment—Entry C *25 List III—State legislation in conflict with Central legislation including subordinate legislation—Held: To the extent it is in conflict it is void and inoperative.*

Article 254—Subjects covered by List III—Repugnancy between State and Central legislation—State legislation would be inoperative unless saved D *by Article 254(2)—Pre-Constitutional law of Provincial Legislature—Post-Constitutional law of Parliament—Repugnancy between—Held: Law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy.*

Education : All India Council for Technical Education Act, 1987: E

Technical Education—Subject covered by the statute—Within the scope of Entry 66 of List I and Entry 25 of List III.

Tamil Nadu Private Colleges (Regulation) Act, 1976 : Technical Education—Provisions of the Act in conflict with Central Act—To the extent F *of inconsistency Act void—Standards and requirement laid down by State—Cannot be higher than those laid down by the Central Act—Applicants not qualified according to such higher standards—State cannot deny situations/seats to such applicants—State also cannot derecognise or disaffiliate an institution on this ground.* G

Tamil Nadu Private Colleges (Regulation) Rules, 1976 : Rule 2(b)—Not applicable to technical Colleges—However, rule can be amended and made applicable to technical Colleges.

Madras University Act, 1923 : Pre-Constitutional law—Repugnant to the H

A *Central Act—University Act stands impliedly repealed to the extent of repugnancy—Conditions prescribed by University for grant of affiliation—Will have to be in conformity with the norms and guidelines prescribed under Central Act.*

Words & Phrases : "Coordination"—Meaning and scope of.

B

"College"—Meaning of.

The State Government had permitted private management to start new Engineering Colleges under the Self-financing scheme without any financial commitment to the Government, but subject to the fulfillment of C **certain conditions. The first respondent - Trust was granted permission by the Government to start a private Engineering College. The Trust was granted provisional affiliation by the University subject to the fulfilment of certain conditions.**

In the meanwhile, the State Government appointed a High Power D **Committee to inspect the College which stated that the Trust had not fulfilled certain conditions imposed by the State Government. Thereupon, the State Government issued a show cause notice to the Trust as to why permission granted by it should not be withdrawn. The University also accepted the report of the High Power Committee and passed a resolution** E **cancelling the provisional affiliation.**

The Trust filed a writ petition before the High Court for prohibiting the Government from taking further action in pursuance of the Show Cause notice and also for quashing the resolution passed by the Univer- F **sity which was allowed. Aggrieved by the High Court's judgment the appellants preferred the present appeals and SLPs.**

On behalf of the appellants it was contended that Entry 66 of List I of the Seventh Schedule to the Constitution did not debar the State Legislature from prescribing higher standards; that the University had the G **power to affiliate or disaffiliate the College; and that if the College were to close down for want of adequate infrastructure the Government might have to bear the burden in taking over the College.**

Dismissing the appeals and the SLPs, this Court

H **HELD: 1.1. Repugnancy may arise between a legislation made by**

Parliament and a legislation enacted by the State legislature on a subject falling in the Concurrent List. Article 254 takes care of this repugnancy. Repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be in force by virtue of Article 372 and a post-Constitutional law made by Parliament in which case, the law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy to the law made by Parliament. [1089-C, 1088-F]

1.2. If there is a conflict between the Central legislation and the State legislation, unless the State legislation is saved by the provisions of the main part of clause (2) of Article 254, it would be inoperative being repugnant to the Central legislation. [1114-C]

1.3. Repugnancy may also arise between a legislation made by Parliament under the Union List and a legislation made by the State Legislature under the Concurrent List in which case the law made by Parliament will prevail over the law made by the State legislation. [1088-D]

1.4. Whether a State legislation made under the Concurrent List is repugnant to the Central Legislation made under the Union List or the Concurrent List, will have to be determined by an examination of the provisions of the two laws. [1114-D]

2.1. The primary object of the All India Council for Technical Education Act, 1987 (Central Act) is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Legislation which impinge upon the provision of the Central Act are void, and, therefore, unenforceable. [1100-H, 1101-A]

2.2. Entry 66 of List I of the Seventh Schedule to the Constitution has remained unchanged since its inception. After the Constitution (Forty-Second Amendment) Act, 1976 the Constitutional position on that score

A has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. Thus the legislation with regard to co-ordination and determination of standards in Institutions for higher education or research and Scientific and Technical Institutions has always been the B preserve of the Parliament. [1087-E]

2.3. The expression "coordination" used in Entry 66 of the Union List does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain C design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given D its full effect according to its plain and express intention. [1113-G-H]

2.4. On the subjects covered by the Central Act, the State could not make a law under Entry 11 of List II prior to Forty- Second Amendment nor can it make a law under Entry 25 of List III after the Forty-Second E Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, on the enactment of the Central Act, the provisions of the said law, if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. [1095-F]

F 3.1. The provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (State Act) show that, if it is made applicable to technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas. [1100-D]

3.2. The expression "means and includes" used in Rule 2(b) of the G Tamil Nadu Private College (Regulation) Rules, 1976 confines only to those species of the genus which are specifically enumerated in the said rule, and hence the State Act as it stands today, is not made applicable by the said Rules to the Technical Colleges including the Engineering Colleges. It cannot, however, be denied that in view of the wide application H of the State Act by virtue of Section 1(3) and the wide definition of "private

college" contained in Section 2(8) of the State Act, it is capable of being made applicable any time to the Institutions imparting Technical education by amending the Rules. [1100-A-C] A

P. Kasilingam & Ors. v. *P.S.G. College of Technology*, [1995] 2 SCR 1061, referred to. B

4.1. The Madras University Act, 1923 (University Act) is a preconstitutional law which has been continued under Article 372 of the Constitution. A comparison of the Central Act and the University Act shows that as far as institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University in respect of matters other than affiliation of technical colleges like Engineering Colleges and the conditions for grant and continuation of such affiliation by the University. So far as the rest of the matters are concerned in the case of the Institutions imparting technical education, it is not the University Act or the University but it is the Central Act and the Council entered under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical collages like the Engineering Colleges. C D

[1103-D-H, 1104-A]

4.2. The provisions of the University Act regarding affiliation of Technical colleges like the Engineering Colleges and the conditions of grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the university for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act. [1104-C] E F

5.1. So far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Such norms, standards and requirements etc. will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the country necessarily implies a set of minimum standards the fulfilment of which should entitle an institution and its G H

A alumni, titles, degrees and certificates to recognition anywhere in the country. It is true that the higher than the minimum standard implies compliance with the minimum standard. The argument that there is no repugnancy or inconsistency between the minimum and the higher than minimum standard will have to be rejected. [1104-G-H, 1105-A, F]

B *Tika Ramji* v. *State of UP,* [1956] SCR 393, referred to.

G.P. Steward v. *B.K. Roy Chowdhury,* AIR (1939) Cal. 629, approved.

5.2. When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central Law. [1114-E]

D 5.3. However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally. [1114-G-H]

5.4. There is no material on record to show that the standards or requirements prescribed by the Council are such that the institutions complying with these are unable to conduct the relevant courses. If, however, the State Government thinks that the standards prescribed by the Council are low and will not enable an institution to conduct the course, the State Government can certainly take up the matter with the Council and get the standards raised by it. However, pending the modifications, if any, in the requirements laid down by the Council, the State Government cannot reject the permission of any technical institution or derecognise the existing institution because it has not satisfied the standards and requirements laid down by it. [1113-C-E]

H 6.1. When the power to recognise or derecognise an institution is

given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with ore repugnant to those which are laid down under the Central Act. [1106-E]

The Gujarat University, Ahmedabad **v.** *Krishna Ranganath Mudholkar & Ors.,* **[1963] Supp. SCR 112;***State of Andhra Pradesh & Ors.* **v.** *Lavu Narendranath & Ors. etc.,* **[1971] 3 SCR 699;***Dr. Ambesh Kumar etc.* **v.** *Principal, LLRM College, Meerut & Ors. etc.,* **[1987] 1 SCR 661 and** *Usmania University Teachers Association* **v.** *State of Andhra Pradesh & Anr.,* **[1987] 3 SCR 949, referred to.**

R. Chitralekha & Anr. **v.** *State of Mysore & Ors.,* **[1964] 6 SCR 368, followed.**

6.2. The provisions of the Central Act on the one hand and of the State Act and the University Act on the other, being inconsistent and, therefore, repugnant with each other, the Central Act will prevail and the derecognition by the State Government or the disaffiliation by the University on grounds which are inconsistent with those enumerated in the Central Act will be inoperative. [1115-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1634-35 of 1990 Etc. Etc.

From the Judgment and Order dated 23.11.89 of the Madras High Court in W.A. No. 793-94 of 1989.

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The Judgment of the Court was delivered by

SAWANT, J. The short question involved in these matters is whether

A after the coming into force of the All India Council for Technical Education Act, 1987 [hereinafter referred to as the 'Central Act'] the State Government has power to grant and withdraw permission to start a technical institution as defined in the Central Act. In the present case, the technical institutions with which we are concerned are the respondent Engineering Colleges which are being run in the State of Tamil Nadu.
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2. To understand the issue, we will refer to the facts in CA. Nos. 1634-35/1990. The State Government under G.O.M. No. 429 dated 17th April, 1984 issued by the Education, Science and Technology Department had permitted private managements to start new Engineering Colleges
C under the self-financing scheme without any financial commitment to the Government, but subject to the fulfilment of certain conditions. The first respondent, viz., Adhiyaman Educational Research Institute [for short, the Trust'] applied to the Government of Tamil Nadu for permission to start a new self-financing private Engineering College in terms of the said policy.
D The Government granted the permission to the Trust to start a private Engineering College under the name and style of Adhiyaman College of Engineering at Hasur in Dharmapuri district beginning with the academic year 1987-88 by its order of 9th June, 1987. The permission was to offer three degree courses with the intake of 180 students per year, i.e., sixty students in each course in the subjects of [a] Mechanical Engineering, [b]
E Electronics and Communication Engineering and [c] Computer Science and Engineering. One of the conditions imposed by the Government was that the Trust could admit candidates of its choice upto 50 per cent of the approved intake under the management quota, and the remaining 50 per cent of the seats would be allotted by the Director of Technical Education
F from among the candidates of the approved list prepared for admission to Government and Government-aided Engineering Colleges. The Government had also stipulated that if any of the conditions imposed by them was not fulfilled, the permission granted to start the College would be withdrawn and the Government will have the right to take over the College with all its movable and immovable properties including endowment and
G cash balance without paying compensation. Pursuant to this permission, the Trust applied to the University on 18th June, 1987 for affiliation of the College. After inspection of the College, the Inspecting Commission of the University submitted its report on 5th November, 1987 and the University on 21st November, 1987 granted temporary affiliation to the College for
H the academic year 1987-88 subject to the fulfilment of certain conditions.

The University also made it clear to the Trust that the Trust should make an application for affiliation for the second year B.E. degree course for the academic year 1988-89 and that no admission should be made to the degree course until the permission was granted by the University.

3. The College started functioning from July 1987. On 17th September, 1988, the University extended the affiliation for first year of B.E. degree course for the academic year 1988-89 subject to the implementation of the recommendations of the Inspecting Commission made in its report of 5th November, 1987 and subject to the conditions of affiliation already intimated while granting the initial temporary affiliation. On 24th November, 1988, the Trust applied for affiliation for third year B.E. degree course for the academic year 1989-90 and continuation of affiliation for first year and second year B.E. degree courses. In March 1989, the Committee appointed by the Director of Technical Education, inspected the College and submitted its report which was forwarded to the Trust with a direction to take necessary steps to create requisite infrastructural facilities. The Trust sent a reply to the Director informing him of the progress made by it with regard to the provision of necessary infrastructural facilities.

4. In the meanwhile, on 27th March, 1989, the State Government appointed a High Power Committee to visit the self-financing Engineering Colleges and make an assessment of their functioning. In its report, the High Power Committee stated that the Trust had not fulfilled the conditions imposed by the Government at the time of the grant of permission and also the conditions imposed by the University while granting affiliation. On receipt of this report, the Director of Technical Education issued a show cause notice on 16th July, 1989 and asked for an explanation within fifteen days as to why the permission granted by the Government to start the College should not be withdrawn.

In the meanwhile, in May 1989, the University appointed a three-member Inspection Commission to inspect the functioning of the College for the purposes of considering the question of continuance of the affiliation of the College for the academic year 1989-90. Even before the receipt of the report of the Inspection Commission, the Syndicate of the University accepted the report of the High Power Committee appointed by the Government and resolved to reject the request for provisional affiliation for the academic year 1989-90 and also to issue a show cause notice to the

A Trust as to why the affiliation granted to it for the academic years, 1987-88 and 1988-89 should not be cancelled. Pursuant to this resolution, the University on 25th July, 1989, issued a notice to the Trust to show cause as to why the Statute 44[A] of Chapter XXVI of Vol.I of the Madras University Calendar should not be invoked in respect of the provisional affiliation already granted for the first year for the academic year 1987-88 B and for the academic year 1988-89. On 26th July, 1989, the University sent a communication to the Trust informing that the Syndicate had accepted the report of the High Power Committee appointed by the Government and it resolved to reject the request of the Trust for provisional affiliation for 1989-90 for the first year and also the request for provisional affiliation C for second and third year courses for 1989-90. The communication also informed the Trust that it should make alternative arrangement to distribute the students already admitted to the academic year 1987-88 and 1988-89 among other institutions with adequate facilities.

D The Trust, therefore, filed a writ petition being W.P. No. 10222 before the High Court for prohibiting the Director of Technical Education from taking further proceedings in pursuance of his show cause notice dated 16th July, 1989. The Trust also filed another writ petition being W.P. No. 10233 of 1989 for quashing the resolution passed by the Syndicate of the University and for directing the University to grant provisional affilia- E tion to its College. The Secretary to the Government, Ministry of Human Resources Development [Central] and All India Council for Technical Education were also impleaded as parties to the writ petitions as respondents. During the pendency of the writ petitions, the learned Single Judge appointed a Committee to inspect the College and make a report with F regard to its deficiencies which are pointed out by the Government and the University. The Court Committee submitted a report that the Trust had not even provided the requisite infrastructural facilities for conducting different courses. By a common judgment, the leaned Single Judge allowed W.P. No. 10222/1989 which was against the State Government and dismissed W.P. No. 10223/1989 which was directed against the University. The G learned Single Judge held that after the passing of the Central Act, the State Government had no power to cancel the permission granted to the Trust to start the College and it could not rely for the purpose on a report of the High Power Committee appointed by it since the appointment of such a committee was itself illegal and unconstitutional. According to the H learned Judge, the only course open to the State Government was to refer

the matter to the All India Council of Technical Education [for short 'Council']. According to him, under the Central Act, the duty was imposed on the Council for recognising or derecognising any technical institution in the country and it was not open to the State Government or the university to give approval or disapproval to any technical institution. According to the learned Judge, further, if after the coming into operation of the Central Act, each State Government and University was allowed to recognise or derecognise the technical institutions, each of them would follow different yardsticks which will be against the object of the Central Act. However, he held that the University could take action under Statute 44[A] in Chapter XXVI of Vol. I of the Calendar of the University on the ground that one of the conditions imposed by it for grant of affiliation, viz, that the Trust should obtain concurrence of the Council for the College was not fulfilled and consequently he held that the resolution passed by the University Syndicate was valid.

Aggrieved by this decision, the Trust, the State Government as well as the University preferred writ appeals. It appears that during the appellate stage, even the students were allowed to intervene in the proceedings. The Division Bench allowed the writ appeal of the Trust and quashed the resolution of the University Syndicate passed on 21st July, 1989 and dismissed the writ appeals of the State Government and the University. The Division Bench not only confirmed the decision of the learned Single Judge that the State Government had no jurisdiction to derecognise the College, but it also held that even the University could not have acted on the report of the High Power Committee appointed by the State Government and could not have refused extension of affiliation without giving reasons for the same which were admittedly not discussed in its impugned communication. The Division Bench further held that condition No. 18 which was mentioned in the University's letter dated 21st November, 1987 while granting initial temporary affiliation was beyond the jurisdiction of the University since after the coming into operation of the Central Act, the concurrence of the then council [the predecessor of the present Council] which was a non- statutory body and which ceased to exist in March, 1988 was neither necessary nor could it have been obtained.

5. It may thus be seen that although on the facts in the present case, what is questioned is the power of the State Government and the University respectively to derecognise and disaffiliate the Engineering College, what

A is involved is the larger issue as stated at the outset, viz., the conflict between the Central Act on the one hand and the Tamil Nadu Private Colleges (Regulation) Act, 1976 [for short 'the State Act'] and Rules made thereunder, viz., the Tamil Nadu Private Colleges (Regulation) Rules, 1976 and the Madras University Act, 1923 [hereinafter referred to as the 'University Act'] the and the statutes and ordinances made thereunder on B the other. We have, therefore, in effect to address ourselves to this larger issue.

6. We may begin by examining the provisions of the Constitution delineating respective spheres of the Central and the State legislatures. C Entry 66 of the List I, i.e., the Union List of Seventh Schedule of the Constitution reads as follows:

> "66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

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This Entry has remained unchanged since the inception of the Constitution. Before the Constitution [Forty Second Amendment] Act, 1976 which came into force w.e.f. 3rd January, 1977, Entry 11 in List II, i.e., the State List was as follows:

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> "Education including Universities subject to the provisions of Entries 63, 64 , 65 and 66 of List I and Entry 25 of List III".

Entry 63 of List I relates to the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University estab- F lished in pursuance of Article 371-E, i.e. Central University in Andhra Pradesh, and other institutions declared by Parliament by law to be an institution of national importance. Entry 64 of the said List refers to institutions for scientific or technical education financed by the Government of India wholly or in part and declared by the Parliament by law to G be institutions of national importance and Entry 65 relates to the Union agencies and institutions for [a] professional, vocational or technical training, including the training of police officers; or [b] the promotion of special studies or research; or [c] scientific or technical assistance in the investigation or detection of crime.

H Entry 25 of List III, i.e., the Concurrent List prior to the said

Constitutional Amendment read as follows: A

"Vocational and technical Training of Labour."

After the Amendment it reads as follows :

"Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour." B

The Constitutional provisions dealing with the scope of the powers of the Union and the State legislatures on the subject in question may be summarised as follows: C

The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of the Parliament. This was so even before the Forty-Second Amendment, since Entry 11 of List II even then was subject, among other, to Entry 66 of List I. After the said Amendment, the Constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of the Parliament. What was contended before us on behalf of the State was that Entry 66 enables the Parliament to lay down the minimum standards but does not deprive the State Legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place. D E F

We may now refer to the provisions of Articles 246, 248 and 254 in Part II of Chapter I which relates to the distribution of the legislative powers between the Parliament and the State Legislatures. It is not necessary to enter into a detailed discussion of these Articles since they have been the subject matter of various decisions of this Court. We may only summarise the effect of these Articles as has emerged through the judicial decisions, so far as it is relevant for our present discussion. While Article G H

246 states the obvious, viz. that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I and has also the power to make laws with respect to any of the matters enumerated in List III, the State Legislature has exclusive power to make laws with respect to any of the matters enumerated in List II subject, of course, to the Parliament's power to make laws on matters enumerated in List I and List III. Parliament has also power to make laws on matters enumerated in List II for any part of the territory of India not included in a State. Article 248 vests the Parliament with the exclusive power to make any law not enumerated in the Concurrent List or the State List including the power of making any law imposing a tax not mentioned in those Lists. This is a residuary power of legislation conferred on the Parliament and is specifically covered by Entry 97 of list I. In case of repugnancy in the legislations made by the Parliament and the State Legislatures which arises in the case of Legislations on a subject in List III, the law made by the Parliament whether passed before or after the law passed by the State Legislature shall prevail and to that extent, the law made by the Legislature of a State will be void. Where, however, the law made by the legislature of a State is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the law made by the Legislature of the State shall, if it has received the assent of the President, prevail in that State. However, this does not prevent the Parliament enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. The repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be in force by virtue of Article 372 and the post-Constitutional law of Parliament in which case, the law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy to the law made by the Parliament.

According to some jurists, the repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be inforce by virtue of Article 372 and the post-Constitutional law of the Parliament in which case by virtue of the first part of Article 254 [1], the law made by the Parliament shall prevail, notwithstanding that the Provincial Legislature was competent to make the law prior to the commencement of the Constitution. This is the consequence of the relevant provision of Article 254 [1] which reads as follows:

"254 [1]. Inconsistency between laws made by Parliament and the laws made by the Legislatures of States. - [1] If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact... the law made by Parliament, whether passed before or after the law made by the Legislature of such State.... shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

According to this view, it is to take care of this repugnancy that the aforesaid provision in the first part of Article 254[1] is made. The repugnancy arising out of the two laws made on matters in the Concurrent List is referred to in the other part of Article 254 [1] and if the framers of the Constitution wanted to provide only for the repugnancy arising between the two laws made on the subjects in the Concurrent List, the aforesaid provision of Article 254 [1] was unnecessary. However, in view of the repugnancy resulting in implied repeal of the pre- Constitutional provincial law by the post-Constitutional parliamentary law, this controversy need not detain us here.

7. In the light of the aforesaid Constitutional provisions, we may now examine the provisions of the Central Act and the two State enactments and the subordinate legislation made thereunder to find out whether there is encroachment by the said law on Entry 66 of List I or whether there is repugnancy between the Central Act and the State Acts.

The Preamble of the Central Act states that it has been enacted to provide for the establishment of an All India Council for Technical Education with a view to [1] proper planning and *coordinated development* of the technical education system throughout the country [ii] promotion of qualitative improvement of such education in relation to *planned quantitative growth,* [iii] regulation and *proper maintenance of norms and standards* in the technical education system and [iv] for matters connected therewith [emphasis supplied]. Section 2[g], 2[h] and 2[i] of the Central Act define 'technical education', 'technical institution' and 'University' respectively as follows:

"2. In this Act, unless the context otherwise requires,

x x x x x x x x x

A [g] "technical education" means programmes of education, research and training in engineering, technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may in consultation with the Council, by notification in the official Gazette, declare;

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[h] "technical institution" means an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council by notification in the official Gazette, declare as technical institutions;

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[i] "University" means a university defined under clause (f) of section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under section 3 of that Act."

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Section 3 (1) gives power to the Central Government to establish the Council. Since the composition of the Council is important to deal with one of the aspects of an argument, we may cite the relevant provisions of sub-section [4] of Section 3 which refers to the said composition. It reads as under:

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"[4] The Council shall consist of the following members, namely :-

x x x x x x x

F [j] two members of parliament of who, one shall be elected by the House of the People and one by the Council of States.

[k] eight members to be appointed by the Central Government by rotation in the alphabetical order to represent the State and the Union territories:

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Provided that an appointment under this clause shall be made on the recommendation of the Government of the State, or as the case may be, the union territory concerned;

[l] four members to be appointed by the Central Government to

H represent the organisations in the field of industry and commerce;

[m] seven members to be appointed by the Central Government to represent:-

[i] .....

[ii] the Association of Indian Universities;"

Suffice it to say that the Council, besides having on it the representatives of the various ministries, of higher educational institutions, professional bodies in the field of technical and management education and organisations in the field of industry and commerce also has the representatives of the State in the form of the Members of parliament and the Members to be appointed by the Central Government to represent the States and the Union Territories and also of the State Universities. Section 7 further empowers the Council to associate with itself any person whose assistance or advice it may desire in carrying out any of the provisions of the Act.

Chapter III of the Act enumerates the powers and functions of the Council. Section 10 of the said Chapter states that in order to perform its duties and to take all such steps as it may think necessary to ensure the object of and perform the functions under the Act, the Council may, among others,

"[b] coordinate the development of technical education in the country at all levels;

x x x x x x x

[f] promote an effective link between technical education system and other relevant systems including research and development organisations, industry and the community;

[g] evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability.

[h] formulate schemes for the initial and in service training of teachers and identify institution or centres and set up new centres for offering staff development programmes including continuing education of teachers:

A [i] lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

[j] fix norms and guidelines for charging tuition and other fees;

B [k] grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

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

[m] lay down norms for granting autonomy to technical institutions;

D

[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;

E

[p] inspect or cause to inspect any technical institution;

[q] withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time F and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

[r] take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's G responsibilities and to create positions of professional, technical and supporting staff based on requirements;

[s] declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

H x x x x x x x

[u] set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendations to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;"

Section 11 provides for inspection to be caused by the Council, of any department or departments of a technical institution or University for the purposes of ascertaining the financial needs of such institutions or a University or standards of teaching, examination and research. It also provides for inspection as well as for communicating the results of such inspection to such institution and University with a view to recommending to it the action to be taken as a result of such inspection. The executive authority of the institution or University is under an obligation to report to the Council, the action if any which is proposed to be taken by it for the purpose of implementing the recommendations made by the Council, pursuant to the result of the inspection made by it. Section 13 requires the Council to establish among others an All India Board of Technical Education and an All India Board of Under-graduate Studies in Engineering and Technology and Post-graduate Education and Research in Engineering and Technology. The Council is also empowered to establish such other Boards of Studies as it may think fit. These Boards of Studies are required to advise the Executive Committee of the Council constituted under Section 12 of the Act on academic matters including on norms and standards model curricula, model facilities and structure of courses. Section 14 requires the Council to establish four Regional Committees; viz., Northern, Southern, Western and Eastern Regional Committees with their offices at Kanpur, Madras, Bombay and Calcutta respectively. The Council has also the powers to establish other Regional Committees if it thinks fit. These Regional Committees have to advise and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region. Section 20 empowers the Central Government to give directions to the Council from time to time on questions of policy, and the Council is bound by such directions. Sections 22 and 23 give power to the Central Government and the Council to make rules and regulations respectively under the Act which are to be laid before the Parliament. It is not necessary

A to refer to other provisions of the Act.

8. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is, further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should but 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 technial education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a 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. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well-known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiencies but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high

norm or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-Second Amendment nor can it make law under Entry 25 of List III after the Forty-Second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

A B C D E F G

9. We may now examine the provisions of the State law, viz., Tamil Nadu Private Colleges [Regulation] Act. Section 1 [3] makes the Act applicable to all private colleges. Reasons for the enactment circulated with the Bill of the Act stated that the State Government had decided to regulate the conditions of service of teachers employed in private colleges H

A and to make the law relating to managing bodies and payment of grant to such colleges statutory. It was also proposed to make provisions to the effect that no private college shall be established without affiliation to a University, that the non-teaching staff of private colleges would also come within the scope of the measure and that the University may make regulations, statues and ordinances specifying the qualifications for appointment
B of teachers and other persons employed in private colleges. Section 2 [3] defines the "competent authority" to mean [i] any university, [ii] authority, officer or person, empowered by the Government to be the competent authority in relation to any provision of the Act and states that different authorities may be appointed for different provisions or for different areas
C or in relation to different classes of private colleges. Section 2[8] of the State Act define "private college" as follows:

> "2. Definitions:- In this Act, unless the context otherwise requires-
>
> [8] "private college" means a college maintained by an educational
> D agency and approved by, or affiliated to, a university but does not include a college -
>
> (a) established or administered or maintained by the Central Government or the Government or any local authority or any
> E university; or
>
> (b) giving, providing or imparting religious instruction alone, but not any other instructions;"

Section 3 prohibits a person save as otherwise expressly provided in
F the Act, from establishing on or after the date of the commencement of the said Act any private College without the permission of the Government and except in accordance with the terms and conditions specified in such permission. It also enjoins that the college so permitted will have to obtain affiliation to the University. Section 4 requires the educational agency of every private college proposed to be established, to make an application
G to the Government for permission to establish such college giving particulars, among other things, with regard to [a] the need for the private college in the locality; [b] the course for which such private college proposes to prepare, train or guide its students for appearing at any examination conducted by or under the authority of a university; [c] the
H amenities available to students and teachers;[d] the equipment, laboratory,

library and other facilities for instruction; [e] the sources of income to ensure the financial stability of the private college; and [f] the situation and the description of the buildings in which such private college is proposed to be established. The educational agency of every private college in existence on the date of commencement of the Act is also required to furnish a statement giving some of the said particulars. Section 5[1] gives power to the Government to grant or refuse to grant permission after considering the particulars in the application. Section 5[3] prohibits the University from granting affiliation to any private college unless permission has been granted under Section 5 [1] of the Act. Section 8, however, permits a minority whether based on religion or language, to establish and administer any private college without permission under sub-section (1) of Section 5 read with Section 3. Section 10 [1] provides that the Government may pay to the private college grant at such rate and for such period as may be prescribed. Section 10 [2] entitles the Government to withhold permanently or for a specific period, whole or part of any grant paid under Section 10 [1] if the private college does not comply with any of he provisions of the Act or rules made thereunder or the directions issued in that behalf, or where the private college has not paid to teacher or other person employed in such college pay and allowances payable to him or which contravenes or fails to comply with any conditions as may be prescribed, while granting permission to start the college. Section 11 makes it mandatory to have a college committee for the private college [not being a minority college] which shall include the Principal of the private college and two senior professors employed in such college. Section 14 then lays down the functions of the college committee and the responsibility of the educational agency under the said Act. The functions are [a] to carry on the general administration of the private college excluding the properties and funds of the private college; [b] to appoint teachers and other persons of the private college, fix their pay and allowances and define their duties and the conditions of their service and [c] to take disciplinary action against teachers and other persons of the private college. Sub-section [2] of Section 14 lays down that the educational agency shall be bound by anything done by the college committee in the discharge of its functions and sub-section [3] of the said Section states that any decision or action taken by the college committee in respect of any matter or on which the committee has jurisdiction shall be deemed to be the decision or action taken by the educational agency. Section 15 leaves it to the University to make regulations,

A statutes, or ordinances specifying the qualifications required for the appointment of the teachers and other persons employed in the private college. Section 17 enables the Government to make rules in consultation with the University regulating the number and conditions of service of the teachers and other persons employed in the College. Section 19 prohibits
B the teacher or other person employed in the private college from being dismissed removed or reduced in rank or the appointment being otherwise terminated except with prior approval of the competent authority. Section 24 states that Chapter IV which deals with terms and conditions of service of teacher and other persons employed in the private colleges or any rule providing for all or any of the matters specified in this Chapter or any order
C made in relation to any such matter shall have effect notwithstanding anything contained [i] in any other law for the time being in force, or [ii] in any award, agreement or contract of service, whether such award, agreement or contract of service was made before or after the date of commencement of this Act, or [iii] in any judgment, decree or order of
D court, tribunal or other authority. Section 25 prohibits a private college or a class or course of instruction therein from being closed without notice to the competent authority and without making such arrangements as may be prescribed for the continuance of the instructions of the students of such college or the class or course of instruction as the case may be for the
E period of study for which the students have been admitted. Section 28 prohibits private college from levying any fee or collecting any other charge or receiving any other payment except a fee charge or payment specified by the competent authority. Section 30 provides for the taking over of the management of a private college if the educational agency
F running such college had neglected to discharge any of the duties imposed on or to perform any of the functions entrusted to such agency. Section 34 provides for the accounts of every private college being audited at the end of every academic year by such authoirty as may be prescribed. Section 35 provides that the competent authority shall have the right to cause an inspection of or an inquiry in respect of, any private college, its building,
G laboratories, libraries, workshops and equipment, and also for the examinations, teachings and other work conducted or done by the private college. It also gives power to the competent authority to cause an inquiry to be made in respect of any other matter in respect of the discharge of any other function under the Act. Section 37 provides for appeal against the order
H of the competent authority whereas Section 38 provides for constitution of

tribunals for the purposes of the Act. Section 41 gives power of revision to the Government over the orders passed by the appellate authority. Section 49 bars the jurisdiction of Civil Court to decide or deal with any question which is by or under the Act required to be decided or dealt with by any authority or officer empowered under the Act. Section 52 states that the provisions of the Act shall have the effect notwithstanding anything to the contrary contained in any other law for the time being in force including any regulation or statute of any university. Section 53 gives power to the Government to make rules to carry out the purpose of the Act. These are the only relevant provisions of the State Act which are necessary to be noted for our purpose.

10. Under Section 53 of the said Act, the State Government has made rules called Tamil Nadu Private College (Regulation) Rules, 1976. Rule 11 [1] provides that the number of teachers employed in a college shall not exceed the number of posts fixed by the Director of Collegiate Education from time to time with reference to the academic requirements and norms of workload prescribed by the respective Universities and overall financial considerations. Rule 11 [1-A] [1-B], [1-C] and [1-D] provides for reservations in the post of teachers and other employees in favour of Scheduled Castes and Scheduled Tribes and Backward Classes. The rest of the said provision provides for the service conditions of the teachers and other employed in the college including the scales of pay and allowances etc. The remaining rules are made to work out the other provisions of the Act and it is not necessary to discuss them here.

11. It will thus be apparent that since Section 1 [3] of the States Act makes it applicable to all private colleges, it could also apply to the colleges imparting technical education including the Engineering Colleges. However, the Rules as is apparent from Rule 2 [b], exclude technical institutions like Engineering Colleges. Rule 2 [b] defines "College" as follows:

> "2. Definitions.- In these rules, unless the context otherwise requires-
>
> [b]. "College" means and includes Arts and Science College, Teachers Training College, Physical Education College, Oriental College, School of Institute of Social Work and music College maintained by the educational agency and approved by, or affiliated to the University."

A It is not necessary to emphasise that the expression "means and includes" used in the definition confines the definition to only those species of the genus which are specifically enumerated in the definition, and hence, the Act as it stands today, is not made applicable by the said Rules to the technical colleges including the engineering colleges with which we are concerned in the present case. In this context, reference may be made to the decision of this Court in Civil Appeal Nos. 10001-03 of 1983 [*P. Kasilingam & Ors.* v. *P.S.G. College of Technology,]* pronounced today. It cannot, however, be denied that in view of the wide application of the Act by virtue of Section 1[3] and the wide definition of "private college" contianed in Section 2[8] of the Act, it is capable of being made applicable at any time to the institutions imparting technical education by amending the Rules.

The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for introduction of new courses or programmes, taking steps to prevent commercialisation of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring the compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the constitution of the Council and its executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the Central Act. What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which

is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court.

12. As regards the Madras University Act, 1923, which is the other State enactment, Section 2[a] thereof defines "Affiliated College" to mean any college affiliated to the University established under the said Act and providing courses of study for admission to the examination for degrees of the university. Section 2 [aa] defines "Approved College" to mean any college approved by the university and providing courses of study for admission to the examinations for titles and diplomas and the pre-university examination of the University. Section 2[aaa] defines "Autonomous College" as any college designated as an autonomous college by statutes, i.e., the Statutes of the University. Section 2 [aaaa] defines "College" to mean any college or any institution maintained or approved by or affiliated to the University and providing courses of study for admission to the examinations of the University. Section 2[2] defines "Post-Graduate College" as a University college or an affiliated college providing post-graduate courses of study leading up-to-the post-graduate degrees of the University. Section 2[gg] defines "Professional College" as a college in which are provided courses of study leading up-to-the professional degrees of the University. Section 15 of the Act creates Senate as the supreme governing body of the University which also has power to review the action of the Syndicate and of the Academic Council, when the Syndicate and the Academic Council have not acted in accordance with the powers conferred upon them under the Statutes and Ordinances or the Regulations. Under Section 16, the Senate is given power, among others, to make statutes, amend or repeal them or modify or cancel the ordinances or regulations, and under sub-section [6] of Section 16 also to prescribe in consultation with the Academic Council the conditions for approving colleges or institutions or for the preparation of the students for titles or diplomas of the University and to withdraw the approvals and to prescribe after consultation with the Academic Council, the conditions for affiliating

A colleges to the University and to withdraw the affiliation from colleges. The Senate has also power to provide for such lectures and instructions for students of university colleges, affiliated colleges, and approved colleges, as the Senate may determine. Sub-section [11] of Section 16 gives power to the Senate to provide for inspection of all Colleges and hostels, and sub-section [12] thereof gives powers to the Senate to institute degrees, B titles, diplomas and other academic distinctions. The Senate is further empowered to institute, after consultation with the Academic Council, fellowships, travelling fellowships, scholarships, studentships, bursaries, exhibitions, medals and prizes. Sub-section [17] enables the Senate to prescribe fees to be charged for the approval and affiliation of college, for C admission to the examinations, degrees and diplomas of the University, for the registration of graduates, for the renewal of registration etc. Section 18 provides for the constitution of the Syndicate. Section 19 gives powers to the Syndicate which, among others include the power to regulate and determine all matters concerning the University in accordance with the said Act and the statutes, regulations and ordinances made thereunder Section D 19[g] gives power to the Syndicate to appoint University Professors, Readers and Lecturers and the Teachers and servants of the University, fix their emoluments, define their duties and the conditions of service, among others. Under Section 19 [jj], it has power to affiliate colleges to the University and to recognise colleges as approved colleges. Section 19 E [1] gives power to the Syndicate to prescribe in consultation with the Academic Council qualifications of teachers in University colleges, affiliated and approved colleges. Section 19[n] enables it to charge and collect such fees as may be prescribed and Section 19[o] gives it power to conduct the University examinations and approve and publish the results F thereof. It can make Ordinances regarding the admission of students to the university or prescribing examinations to be recognised as equivalent to university examinations under Section 19[p].

The Senate and the Syndicate can make respectively statutes and ordinances to enforce the provisions of the Act. The Act and the statutes G and the ordinances made thereunder show that the University is given powers to prescribe terms and conditions for affiliation also of the technical colleges such as the engineering colleges and also the power to disaffiliate such colleges for non-fulfilment of the said conditions. It further gives power to the university to prescribe the qualifications of the teachers H and also their service conditions. The University is also given the power to

inspect, and to conduct local inquiries of the affiliated colleges and to issue directions to the colleges on the basis of the reports of such inspection and inquiries. It can prescribe the curricula for the different courses conducted by the colleges and conduct examinations to confer degrees and diplomas. It can recommend to the appropriate authorities empowered to sanction, withhold or refuse the teaching and other grants, to decline to forward to the UGC any application made by the management for sanction of any grant, to suspend the provisional affiliation or approval granted to the college in course or courses of study, to decline to entertain any new application for affiliation or approval or applications for increase in strength in any course of studies conducted by the college, to recommend to the Government to take over the management of the college temporarily or permanently. Statute 44-A enables the University to grant affiliation provisionally, for fixed period and to grant extensions for such provisional affiliation.

A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tution fee and other fees, granting approval for starting new technical institutions or introducing new courses of programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding recognition or derecognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not

A the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extend, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges. As has been pointed out earlier, the Central Act has been enacted by the Parliament under Entry B 66 of the List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions C that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.

D Shri P.P. Rao, the learned counsel appearing for the appellants, however contended that while it may be open for the Council to lay down the minimum standards and requirements, to achieve the object as mentioned in Entry 66, it does not debar the State from prescribing higher standards and requirements while making a law under Entry 25 of List III. According to him, further, that is what both the State Act and the Univer- E sity Act purport to do. He, further, contended that the University has an exclusive power to affiliate or not to affiliate and to disasffiliate the colleges. That power cannot be taken away by the Central Act and in fact, it has not done so.

F As pointed out earlier, so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central Act is to determine and coordinate G the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc. will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the H country necessarily implies a set of minimum standards the fulfilment of

which should entitled an institution and its alumni, titles, degrees and certificates to recognition anywhere in the country. It is true that the higher than the minimum standard implies compliance with the minimum standard. But as has been aptly pointed out by Justice Rau while dealing with the meaning of repugnancy in *G.P. Stewart* v. *B.K. Roy Chowdhury,* AIR (1939) Cal.629 which is a decision approved by this Court in *Tika Ramji* v. *State of U.P.,* [1956] SCR 393,

> "It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says "do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test; there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time." Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified. This was the type of repugnancy that arose for consideration in [1896] AC 348."

For the same reasons, the argument advanced by the learned counsel that there is no repugnancy or inconsistency between the minimum and the higher than minimum standard will have to be rejected.

Shri Rao also contended that in practice, the prescription of higher standards by the State may not be in conflict with the standards laid down by the Council under the Central Act. To bring this home, he gave an illustration that where several institutions apply for starting technical institution and the State Government chooses the one which has the best equipment, infrastructure and resources, compared to others who merely fulfill the minimum requirements laid down under the Central Act, it cannot be said that the preference given to the institution by the State Government was contrary to or inconsistent with the Central statute. Yet another illustration he gave was where the Central Act prescribes minimum

A marks for admission to a technical institution or minimum qualifications for the teaching staff, but among the applicants, there are enough number of students or teachers with higher marks or qualifications, respectively, than the minimum prescribed to compete for the limited number of seats. In such cases, when a technical institution selects those with more than minimum marks or qualifications, it cannot be said that there is a non-compliance with the provisions of the Central Act. It is true that, in practice, it may happen that institutions with higher resources and students and teachers with higher marks and qualifications, respectively, than are prescribed apply and compete for the places, seats or vacancies as the case may be. However, it is equally true that when the vacancies are available for institutions or students or teachers as the case may be, the applicants cannot be denied the same on the ground that they do not fulfill the higher requirements laid down under the State Act, if they are qualified under the Central Act. Similarly, the institutions cannot be derecognised or disaffiliated on the ground that they do not fulfil the higher requirements under the State Act although they fulfil the requirements under the Central Act. So also, when the power to recognise or derecognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act.

13. In this connection, we may refer to certain authorities. In *The Gujarat University, Ahmedabad* v. *Krishna Ranganath Mudholkar and others,* [1963] Supp. SCR 112, a Constitution Bench of this Court was called upon to decide whether the University was authorised under the Gujarat University Act, 1949 to prescribe Gujarathi or Hindi or both as exclusive medium or media of instruction or for examination and whether the legislation authorising the University to impose such media was constitutionally valid in view of Entry 66 of List I, Seventh Schedule. This Court held as follows:

> ".....Power to legislate in respect of medium of instruction is, however, not a distinct legislative head; it resides with the State Legislatures in which the power to legislate on education is vested, unless it is taken away by necessary intendment to the contrary. Under items 63 to 65, the power to legislate in respect of medium of instruction having regard to the width of those items, must be

deemed to vest in the Union. Power to legislative in respect of medium of instruction, in so far it has a direct bearing and impact upon the legislative head of coordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 of List I to be vested in the Union.

The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the co-ordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would effort a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within power of the union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is to ensure maintenance or improvement of standards. The facts that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 on List I would have to be judged having regard to whether it implinges on the

field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co-ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254 (1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the union field would still be invalid.

Counsel for the University submitted that the power conferred by item No. 66 of List I is merely a power to co-ordinate and to determine standards i.e., it is a power merely to evaluate and fix standards of education, because, the expression "co-ordination" merely means evaluation, and "determination" means fixation. Parliament has therefore power to legislate only for the purpose of evaluation and fixation of standards in institutions referred to in item 66. In the course of the argument, however, it was somewhat reluctantly admitted that steps to remove disparities which have actually resulted from the adoption of a regional medium and the falling of standards, may be under taken and legislation for equalising standards in higher education may be enacted by the Union Parliament. We are unable to agree with this contention for several reasons. Item No. 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in items 66 or elsewhere in the Constitution which supports the submission that the expression "co-ordination" must mean in the context in which it is used merely evaluation. Co-ordination in its normal connotation means harmonising or bringing into proper relation in which all the things co-ordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 List I is not

conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power. A

There is nothing in the entry which indicates that the power to legislate on co-ordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to co-ordinate, and of necessity, implied therein is the power to prevent what would make co-ordination impossible or difficult. The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention. It is true that "medium of instruction" is not an item in the legislative list. It falls within item No. 11 as a necessary incident of the power to legislate on education: it also falls within items 63 to 66. In so far as it is a necessary incident of the powers under item 66 List I it must be deemed to be included in that item and therefore excluded from item 11 List II....." B C D

In *R. Chitralekha & Anr.* v. *State of Mysore & Ors.*, [1964] 6 SCR 368 the majority of the Constitution Bench after referring to the *Gujarat University* v. *Sri Krishna* (supra) observed after quoting a part of the passage to which we have already made a reference above, as follows : E

"This and similar other passages indicate that if the law made by the State by virtue of entry 11 of list II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that F G H

A if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so B long as its action does not contravene any other law."

In *State of Andhra Pradesh & Ors.* v. *Lavu Narendranath & Ors. etc.* [1971] 3 SCR 699, the State Government prescribed for the first time an entrance test for admission to the medical colleges and also prescribed a C standard of eligibility for the test. A large number of candidates far in excess of the seats available took the test. Thereafter, unsuccessful candidates filed a writ petition challenging the validity of the test prescribed and the method of selection for admission. One of the grounds on which the petition was filed was that the holding of the entrance test and making selections on the basis thereof, in disregard of the marks obtained at the D examination held by the University, encroached upon the Central subject listed in Entry 66 of list I of the Seventh Schedule to the Constitution. Dealing with the said ground, the Court held as under:

"In our view the test prescribed by the Government in no way E militates against the power of Parliament under Entry 66 of List I of the Seventh Schedule to the Constitution. The said entry provides:

"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical F institutions."

The above entry gives Parliament power to make laws for laying down how standards in an institution for higher education are to be determined and how they can be co-ordinated. It has no relation to a test prescribed by a Government or by a University for G selection of a number of students from out of a large number applying for admission to a particular course of study even if it be for higher education in any particular subject."

In *Dr. Ambesh Kumar etc. etc.* v. *Principal, LLRM, Medical College, Meerut* H *and Ors. etc.etc.,* [1987] SCR 661 the facts were that in accordance with the

provisions of Section 33 of the Indian Medical Council Act, 1956, the Medical Council with the previous sanction of the Central Government had made Regulations laying down the standards of proficiency to be obtained and the practical training to be undertaken in medical institutions for grant of recognised medical qualifications. The said Regulations lay down the criterion for selection of candidates for post-graduate training and one such criteria is that the students of post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. While inviting applications for admission to the various post-graduate courses in degree and diploma in different specialities, the State Government issued an order which was to the effect that no candidate would be eligible for admission to post-graduate degree or diploma courses who had obtained less than 55 per cent and 52 per cent marks respectively for the degree and diploma courses in merit. The unsuccessful candidates approached this Court under Article 32 making a grievance about the prescribed percentage of marks and some approached this Court against the judgment of the Allahabad High Court by special leave petitions. The question that arose for consideration was about the competence of the State Government to prescribe the minimum marks obtained in M.B.B.S. for admission to post-graduate courses and whether such an order was in conflict with the power of the Central Legislature to make laws in respect of matters specified in Entry 66 of List I. While dismissing the appeals, this Court held that since the number of seats for admission to various post-graduate courses is limited and a large number of candidates, undoubtedly, apply for admission to these courses, the impugned order laying down the qualifications for candidates to be eligible for being considered for selection for admissions cannot be said to be in conflict with the Regulations made under the Indian Medial Council Act or in any way to have encroached upon the standards prescribed by the said Regulations. On the other hand, by laying down such standard of eligibility, it furthers the standard of instruction. It must be noted in this connection that the Regulations made under the Indian Medical Council Act do not prescribe any minimum percentage of makes in the undergraduate courses for being eligible to be admitted to the post-graduate courses and it was not a case where the number of seats were more than the number of candidates and the candidates though qualified according to the Regulations under the Central statute, were not admitted to the available seats.

A B C D E F G H

A In *Osmania University Teachers Association* v. *State of Andhra Pradesh & Anr.*, [1987] 3 SCR 949, the facts were that the State Government had enacted the Andhra Pradesh Commissionerate of Higher Education Act, 1986 providing for the constitution of a Commissionerate to advise the Government in matters relating to higher education in the State and to oversee its development with perspective planning and for matters connected therewith and incidental thereto and to perform all functions necessary for the furtherance and maintenance of excellence in the standards of higher education in the State. The validity of the Act was challenged in the High Court which while upholding it held that the Act fell under Entry 25 of Concurrent List. In appeal, it was urged in this Court that the C State Act was a mere duplicate of the University Grants Commission Act and the State had no legislative power to enact it since it squarely fell under Entry 66 of List I. On behalf of the State Government, it was contended that the enactment, in pith and substance fell within Entry 25 of list III and not under Entry 66 of List I. It was held that -

D

"1.4 The Commissionerate Act has been drawn by and large in the same terms as that of the U.G.C. Act. Both the enactments deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the words and sentences used in the Commis- E sionerate Act may be different from those used in the UGC Act, but nevertheless, they convey the same meaning. It is just like referring the same person with different descriptions and names.

1.5 The High Court has gone on a tangent, and would not have fallen into an error if it had perused the UGC Act as a whole and F compared it with the Commissionerate Act or *vice-versa.*

1.6 The Commissionarate Act contains sweeping provisions encroachng on the autonomy of the Universities. The Commissionerate has practically taken over the academic programme and activities of the universities. The universities have been rendered G irrelevant if not non-entities.

1.7 It is unthinkable as to how the State could pass a parallel enactment under Entry 25 of List III, unless it encroaches Entry 66 of List I. Such an encroachment is patent and obvious. The H Commissionerate Act is beyond the legislative competence of the

State Legislature and is hereby declared void and inoperative". A

14. Shri Rao also contended that if the colleges for want of inadequate infrastructure and resources ultimately close down, the State Government may have to bear the responsibility of accommodating the students who are already admitted and are taking their courses in such colleges, and in some cases, the Government may also have to take over such colleges. It is, therefore, necessary that the higher standards and requirements prescribed by the State for starting and running the institutions should prevail. There is no material on record to show that the standards and requirements prescribed by the Council are such that the institutions complying with them are unable to conduct the relevant courses. If, however, the State Government thinks that the standard prescribed by the Council are low and will not enable an institution to conduct the courses, the State Government can certainly take up the matter with the Council and get the standards raised by it. As pointed out earlier, under the Central Act, the State Governments have a representation on the Council and have a say in laying down the standards and requirements for starting and running technical institutions. Even otherwise, it is always open to the State Government to bring to the notice of the Council the inadequacies of the requirement laid down by it. However, pending the modifications, if any, in the requirements laid down by the Council, the State Government cannot reject the permission of any technial institution or derecognise the existing institution because it has not satisfied the standards and requirements laid down by it. B C D E

15. What emerges from the above discussion is as follows: F

[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan or development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the G H

absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.

16. We find nothing in the impugned judgment of the High Court which is contrary to or inconsistent with the propositions of law laid down above. Hence we dismiss the appeals and the special leave petitions with costs.

As a result, as has been pointed out earlier, the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and, therefore, repugnant with each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State university on grounds which are inconsistent with those enumerated in the Central statute will be inoperative.

V.S.S. Appeals and Petitions dismissed.