

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V**

**WEDNESDAY, THE 6<sup>TH</sup> DAY OF OCTOBER 2021 / 14TH ASWINA, 1943**

**WP(C) NO. 15358 OF 2021**

**PETITIONER:**

SREEPATHY INSTITUTE OF MANAGEMENT AND TECHNOLOGY  
REP. BY ITS PRINCIPAL, VAVANOR, KOOTTANAD, PALAKKAD  
DISTRICT-679 533.

BY ADVS.  
S.KRISHNAMOORTHY  
SNEHA ROSE

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF  
HIGHER EDUCATION, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAAM-695 001.
- 2 THE DIRECTOR OF TECHNICAL EDUCATION,  
PADMA VILASAM ROAD, EAST FORT, THIRUVANANTHAPURAM,  
PIN-695 023.
- 3 STATE BOARD OF TECHNICAL EDUCATION  
REP BY ITS SECRETARY, FORT P.O.,  
  
THIRUVANANTHAPURAM-695 023.
- 4 ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,  
REPRESENTED BY MEMBER SECRETARY, NELSON MANDELA  
MARG, VASANT KUNJ, NEW DELHI-110 033.
- 5 ADDL.R5-APJ ABDUL KALAM TECHNOLOGICAL UNIVERSITY  
REPRESENTED BY ITS REGISTRAR CET CAMPUS, TRIVANDRUM  
- 695 016  
ADDL.R5 IS IMPEADED AS PER ORDER DATED 7/9/21 IN IA  
3/21 IN WP(C) 15358/2021.

BY ADVS.

SHRI.SAJITH KUMAR V., SC, ALL INDIA COUNCIL FOR  
TECHNICAL EDUCATION - AICTE  
ELVIN PETER P.J.

SRI RAMANAND KB SPL GP TO ADDL AG

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06.10.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The Sreepathy Institute of Management and Technology, the petitioner herein, has been conducting an Engineering College since the year 2009. They have approached this Court seeking to quash Ext.P3 letter issued by the 2nd respondent, as per which the application filed by the petitioner seeking No Objection Certificate (NOC) for starting Diploma level courses in the College was refused to be considered on the ground that NOC cannot be granted to Private Self-financing Institutions. The petitioner also challenges Ext.P4 which places an interdiction in granting NOC to private self-financing institutions and limits the same to Government controlled institutions run by CAPE, where admissions are purely on merit.

2. The facts of the case as borne out from the pleadings and records are as under:

The petitioner institution is conducting Degree Level Engineering courses after obtaining affiliation from the APJ Abdul Kalam Technological University, the additional 5th respondent herein. While so, the All India Council for Technical Education (AICTE) invited applications for granting additional Diploma courses in Engineering College premises. After conducting an inspection, the AICTE granted Ext.P1 approval for conducting courses in

Artificial Intelligence, Automation and Robotics, Civil and Environmental Engineering for the academic year 2021-2022. As per the Approval Process Handbook issued by the AICTE, the applicant institution is required to obtain NOC from the State Government. In the said circumstances, the petitioner submitted Ext.P2 request, which came to be rejected by Ext.P3 letter on the ground that the policy of the Government is not to grant NOC to Private Self-financing Institutions for starting new courses in the academic year 2021-2022. In Ext.P3, reference is made to Ext.P4 which says that NOC can be granted only to Government controlled institutions run by CAPE where admission is purely on merit. The petitioner contends that the stand taken by the 1st respondent is clearly arbitrary and is violative of the rights guaranteed under the Constitution. It is in the afore circumstances that the petitioner is before this Court seeking the following reliefs:

- i) to issue a writ of certiorari or other appropriate writ, order or direction to call for the records leading to Ext.P3 and P4 order issued by the 2nd respondent as well as the 1st respondent and to quash the same.
- ii) to issue a writ of mandamus or other appropriate writ, order or direction directing the 2nd respondent to issue NOC for starting new diploma courses approved by AICTE in Exhibit P1 for the academic year 2021-22.
- iii) to issue a writ of mandamus or other appropriate writ, order or direction directing the 2nd respondent to grant affiliation to the petitioner institution for conducting diploma courses in Artificial Intelligence and Machine learning, Automation & Robotics, Civil & Environmental Engineering in pursuance to Ext.P1 Approval order issued by the AICTE.

3. Before advertng to the counter affidavits filed by the respondents, it needs to be mentioned that the prayer of the petitioner for grant of provisional affiliation at the interlocutory stage was rejected by this Court and it was the subject matter of an appeal. The sequence of events that led to the rejection and the orders passed by their Lordships of the Division Bench has some relevance for adjudicating the issues involved.

4. Originally, the APJ Abdul Kalam Technological University was not arrayed as a party to this proceeding. When the matter had come up for admission, the petitioner had sought an interim direction to the respondents 1 and 2 to provisionally grant NOC for all the Diploma courses approved by AICTE in Ext.P1 and to conduct an inspection, if needed, for granting affiliation for the current academic year 2021-2022. The petitioner had also sought for including the petitioner institution in the prospectus for the purpose of allotting students for the current academic year.

5. The said request was objected to by the APJ Abdul Kalam Technological University. The University had contended that after having obtained affiliation from the University, the petitioner was bound by the Approval Process Handbook, the University Act and the First Statute to obtain the concurrence of the University before starting Diploma courses in the affiliated institution. This Court heard the rival sides and rejected the

application for interim directions. This Court took the view that grant of approval without the knowledge and concurrence of the affiliating University would imperil the studies of students who are pursuing their Engineering course.

6. The matter was taken in appeal and the Division Bench of this Court by judgment dated 13.08.2021 in Writ appeal No. 1060 of 2021 directed the petitioner to prefer an application before APJ Abdul Kalam Technological University to cause inspection of their College, and to ascertain as to whether the B.Tech degree courses can be conducted in separate buildings without causing any hindrance to the students pursuing their Engineering course. It was further ordered that on receipt of inspection reports from the University, if the Director of Technical Education is satisfied that the courses are conducted in two different places without causing hindrance to the continuance of the B.Tech degree Engineering course, appropriate orders could be passed.

7. It appears that inspection was conducted and a report has been forwarded to the Director of Technical Education as ordered by this Court. A copy of the report has also been placed before this Court by the 5th respondent. Based on the preliminary report submitted by the Inspection team, the request for NOC has been rejected by the 2nd respondent.

8. With the above facts in mind, the contentions of the respondents

can be adverted to.

9. In the statement filed by the learned standing counsel for the 4th respondent, the AICTE, it is stated that the institute was approved by the AICTE for conducting courses in Engineering and Technology. The AICTE has also granted subsequent extension of approval to the institute up to the academic year 2020 – 2021. The petitioner institute applied for three new diploma courses before the academic year 2021-22 and in terms of the provisions of the Approval Process Handbook, approval was granted for all the Diploma courses based on 'Nil deficiency' reported by the Expert Visit Committee (EVC) along with extension of approval for existing courses for academic year 2021 – 2022. It is further stated that AICTE has no role to play in the matter concerning the grant of NOC.

10. During the proceedings the APJ Abdul Kalam Technological University was impleaded as additional 5th respondent.

11. In the affidavit filed by the additional 5th respondent it is stated that as directed by this Court an inspection was conducted by a committee and Exhibit R5(a) report has been prepared. It is borne out from the report of the committee that the institute is planning to share the infrastructural facilities and lab facilities for the proposed diploma course which are presently being used for the existing B.Tech programs. It is further stated that one academic

block of the institute could not be inspected since the said building was being utilised by the grama panchayat authorities as a Covid first-line treatment centre as per the direction of the District Collector. It is also stated that steps are being taken to conduct the inspection of the premises at the earliest.

12. In response, an affidavit has been filed by the principal of the institution stating that the institution intends to run diploma courses in building No.06/162B comprised of 4688 m<sup>2</sup>. The said building has been allotted to the local authority as Covid Domicile care centre. It is also stated that the main building is divided into three parts and in case Covid centre could not be vacated before the commencement of the current academic year, the courses can be started in the main building, which is having an area of more than 12138 m<sup>2</sup>. It is also stated that the institution is having all the infrastructure facilities for B.Tech courses as well as diploma courses. It is stated that the inspection team did not care to visit the building which is being used as a Covid domiciliary centre. It is further stated that without appreciating the facts a report has been submitted before the DTE by the University and the DTE in turn has refused NOC by Exhibit P12 order purely based on the report. The order has been passed on the premise that the report of the respondent has revealed that the institution is proposing to share the infrastructural and lab facilities for the proposed diploma course with the existing B Tech program. Exhibit P13 photographs have been produced to substantiate that there is

sufficient infrastructure to conduct both the courses simultaneously. It is also stated that for some of the Colleges in the State where engineering courses are conducted, the DTE has granted approval without NOC from the University. It is also stated that after the issuance of the rejection order by the DTE, the University has sent an email communication on 23.9.2021 informing that they are proposing to visit the institution on 29.9.2021.

13. The University was asked to respond to the assertions made by the petitioner that other colleges are conducting diploma courses in engineering Colleges without obtaining permission from the University. In response, it is stated that the 10 colleges, the details of which have been mentioned by the petitioner and which are stated to be conducting diploma courses, had never sought for no objection certificate from the University. It is also stated that the University has not issued NOC to the said colleges for conducting diploma courses.

14. I have heard Sri. S. Krishnamoorthy, the learned counsel appearing for the petitioner, Sri. V. Sajith Kumar, the learned standing counsel appearing for the AICTE, Sri Elvin Peter the learned standing counsel appearing for the University, and Sri. Ramanand, the learned Senior Government pleader.

15. Sri. Krishnamoorthy submitted that once AICTE has granted

approval, respondents 1 to 3 are bereft of any powers to refuse the grant of sanction for the Diploma courses. According to the learned counsel, a policy decision by the State not to grant sanction for new courses would clearly be in the teeth of the provisions of the Central Act. Reliance is placed on a judgment of this Court in the **State of Kerala and Ors. v. KMCT Polytechnic College, Mampara** [MANU/KE/1255/2017] to contend that the State has no authority to withhold permission to start new Diploma courses based on any policy decision of the Government. The learned counsel would refer to Exhibit P13 photographs to bring home his point that there is the required infrastructure and amenities to carry out degree courses and diploma courses without the students of one course being affected in any manner by the conduct of the other course. Reliance is also placed on Exhibit P11 Certificate issued by the grama panchayat detailing the area of the buildings situated in the premises of the institution and it is contended that there are as many as three separate buildings in an area of about 10.2 acres of land and it cannot be contended that there is any deficiency in infrastructure. Finally, it is submitted that after considering an incomplete report, the 2nd respondent has refused to grant permission to conduct diploma level courses, that too without seeking any explanation from the petitioner. According to the learned counsel, before issuing such an order, the DTE ought to have heard the petitioner after conducting a physical inspection of the infrastructure and ascertain whether there is any sharing of resources.

16. Sri. Ramanand, the learned Senior Government Pleader submitted that it was pursuant to the orders issued by the Division bench that the University had conducted an inspection and forwarded the report to the DTE. The report clearly reveals that there is sharing of infrastructure. Based on the said report Exhibit P12 rejection order was issued. It was also contended that the AICTE Handbook clearly states that the NOC of the affiliating University/Board is a necessary requisite.

17. Sri. V. Sajith Kumar, the learned standing counsel appearing for the AICTE submitted that the AICTE has considered all relevant aspects while issuing Ext.P1 extension of approval.

18. Sri. Elvin Peter, the learned standing counsel appearing for the affiliating University, submitted that sanctioning of diploma courses is within the exclusive domain of the Government and the DTE. The University has nothing to do with the same. However, it is contended that if the intention of the petitioner is to use the facilities earmarked for the students pursuing the engineering Course for the proposed new courses, then permission of the University needs to be obtained. It is submitted by the learned counsel that the petitioner cannot be heard to contend that the assent from the affiliating University cannot be insisted as the order passed by this Court holding so has been confirmed by the Division bench and directions have also been issued to the University to conduct an inspection. According to the learned counsel,

affiliation for conducting engineering courses was granted after a detailed inspection by the University for ascertaining whether the amenities and infrastructural facilities and staff in the college were sufficient to impart education as per the norms fixed by the examining body. Though Universities cannot dilute standards prescribed by the AICTE, the power of Universities to prescribe enhanced norms and standards has been upheld by the Apex Court. It is contended that it would be the students who would suffer if the facilities in the College are below par. The learned counsel would also point out that it is doubtful whether a site inspection was carried out by the AICTE before granting an extension of approval and relying on the judgment of the Apex Court in **A.P.J. Abdul Kalam Technological University v. Jai Bharath College of Mngt. & Engg. Technology**, [(2021) 2 SCC 564], it is submitted that the Apex Court had severely deprecated the AICTE for granting approval without conducting a proper physical inspection of the college and purely based on self-disclosure. The learned counsel would urge that ultimately, it is the universities that are obliged to issue degrees and whose reputation is inextricably intertwined with the fate and performance of the students and hence their role cannot be belittled.

19. I have considered the submissions advanced.

20. Two questions arise for consideration in this case. The first question is whether the State can have a policy decision not to permit private

self-financing institutions from starting diploma courses. The next question is whether an institution affiliated with the APJ Abdul Kalam Technological University is required to obtain approval/NOC from the Director of Technical Education before commencing new courses and whether the DTE is required to obtain the views of the University while considering the said request

21. In so far as the first issue is concerned, the question is no longer *res integra*. In **State of Kerala v. M.G.M. College of Arts and Science** [2017 (3) KLT 779], the question which arose for consideration was concerning a policy decision taken by the State Government that no new colleges and courses would be allowed in the self-financing sector in the higher education field in the State. Paragraph Nos.4 to 10 are extracted below for convenience.

“4. First, we may refer to the source of power of the State to take such a decision. It is too late in the day now to contend that right to education is not a part of fundamental rights, for, at last Article 21A of the Constitution has been brought in, but in a limited sense only. Notwithstanding that, can anyone consider life and liberty de hors education? Can anyone consider trade, commerce and business without education? Can anyone consider a livelihood without education? That being the foundation, then the right to provide education would also form a part thereof. If that be so, then that can only be taken away by law and not by mere executive fiat. Therefore, one must look for the source of authority so far as the Government order aforesaid is concerned.

5. We are not dealing with higher education given by technical institutions. We are dealing with Arts and Science Colleges in general. The establishment of such colleges is regulated by various State University Acts and one of them is Mahatma Gandhi University Act,

1985 (the 'Act', for short) enacted by the Kerala State legislature. This is an enactment pursuant to Entry 25 List III of the Constitution, in relation to Education and Universities. If we refer to the scheme of the Act, the Act clearly provides that no college or institution can impart any education for the purpose of grant of degree except upon due affiliation granted by a University within the jurisdiction of which, such institution falls.

6. For grant of affiliation, there are statutes framed under the Act by virtue of Section 35. The statutes concerning the Mahatma Gandhi University are known as Mahatma Gandhi University Statutes, 1997 (the 'First Statutes', for short). Chapter 23 of the First Statutes deals with affiliation of colleges. If we refer to this chapter, we would see that any institution that requires affiliation, would have to first set up the institution, then make an application to the University for grant of affiliation. The University, after scrutinizing the application, may call for further information and then, may appoint a commission to inspect the new college, after physical verification, and submit a report. Clause 9 of the Statutes in Chapter 23 reads as follows:

"9. Grant of Affiliation: (1) The University may appoint a Commission to inspect the proposed site of a new college or to make a physical verification of the facilities that may exist for starting the new college/course, if the application is considered favourably by the University. The Commission shall inspect the suitability of the proposed site, verify the title deeds as regards the proprietary right of the management over the land (and buildings, if any) offered, building accommodation provided, if any, assets of the Management, constitution of the registered body and all other relevant matters. Further action on the application shall be taken on receipt of the report of the Commission.

(2) The grant of affiliation shall depend upon the fulfillment by the Management of all the conditions for the satisfactory establishment and maintenance of the proposed institution/courses of studies and on the reports on inspection by the commission or commissions which the University may appoint for the purpose.

(3) Unless all the conditions are fulfilled, before the commencement of the academic year, no new college/or additional courses shall be permitted to be started during that

year.

(4) Educational agency/Management, the Principal or any other person or persons on their behalf shall neither demand nor accept donations from candidates for appointment to the staff and from students for admission to the college.

(5) The management shall be prepared to abide by such conditions and instructions as regards staff, equipment, library, reading room, playgrounds, hostels etc., as the University may, from time to time, impose or issue in relation to the college.

(6) The educational agency/Management shall give an undertaking to the University to carry out faithfully, the provisions of the Act, Statutes, Ordinances and Regulations and the directions issued by the University, from time to time, in so far as they are related to the college. The undertaking shall be endorsed by the Principal of the College.

(7) After considering the report of the Commission and the report of the local enquiry, if any, and after making such further enquiry as it may deem necessary, the Syndicate shall decide, after ascertaining the views of the Government also, whether the affiliation be granted or refused, either in whole or part. In case affiliation is granted, the fact shall be reported to the Senate at its next meeting."

7. If we refer to the scheme as contained in the Statutes and then to Clause 9(7), we will find that Government's interference is only at the end. Why we have referred to the scheme is that an institution decides to set up a college. Having taken that decision, they create the infrastructure, both in terms of building and in terms of manpower. They then apply to the University for affiliation. University conducts rounds of enquiries and inspections. When it finds everything in order and the condition right for grant of affiliation, it has, at that stage, to "ascertain the views of the Government". Can it be expected of the Government to advise the University to refuse grant affiliation. We think not unless there are some cogent deficiencies in the institution, for, it will be travesty of justice to give the power to the Government, at this stage, where a person may have invested crores of rupees, spent several years in establishing an institution, in recruiting people, construction of building, only to be told no by the Government. Surely, that is not the power of the Government as contemplated under Clause 9(7) of the Statutes. The

power is for the Government to recommend proper compliance of the Statutes, and in so far as improvement of infrastructure is concerned, it is for the University to see, whether the standards are met. Now, once the University approves of the standards that are to be met, in our view, the Government would have no say to advise the University to reject affiliation. If it does, it would be arbitrary unless good reason is shown by the State.

8. Now, we come to the facts of the present case where, after the institutions were set up and inspections were conducted and change of Government, suddenly the Government order was issued on 22.08.2016 putting a complete ban on self-financing colleges. All colleges that had already been set up and were awaiting affiliation thus, virtually became redundant. All investments went down the drain. Rightly, the learned single Judge has disapproved of such a policy decision.

9. Once power has been conferred on the authorities under the University Statute and the Statutes as such, the Government cannot override the discretion of the University, because such a policy makes the entire statute dealing with affiliation redundant. This takes away the right of parties to establish institutions even in the unaided sector. Surely, this right is not exercised by the Government in terms of Clause 9(7) of the Statutes. A policy decision of this nature cannot be valid, even otherwise.

10. Even otherwise, for, it affects the fundamental rights of parties to receive education and to impart education. Education, as noticed in the beginning, is an integral part of life and liberty. Such a right can be restricted not by a policy decision, but only by a law and law means law made by the competent legislature and not by an executive fiat. Further, a policy decision like this fetters future discretion. Such fetters cannot be put. This policy puts a complete embargo for all times that no such self financing institution can be allowed to be established. Such policy restricting future discretion is not reasonable, in any manner. (emphasis supplied)

22. After holding that the fundamental rights of parties to receive education and to impart education cannot be restricted by a policy decision,

but only by a law enacted by a competent legislature and not by executive fiat, it was unequivocally held that such policy restricting future discretion is arbitrary and cannot withstand the test of reasonableness.

23. In **State of Kerala v KMCT Polytechnic College Mampara** MANU/KE/1255/2017, a Division Bench of this Court had occasion to consider the embargo placed by the State Government by a policy decision in not granting sanction for commencing new unaided colleges in the self-financing sector. After considering the conspectus of the enactments as well as the principles laid down by the Apex Court it was held that the right to establish an educational institution like the polytechnic is no more the prerogative of the State nor a privilege to be conferred by the statute, for this matter has been settled by the Apex court in *TMA Pai Foundation and Ors. V. State of Karnataka and Ors.* [(2002) 8 SCC 481] wherein it was held that setting up of educational institution comes within the expression 'occupation' as contemplated under Article 19(1)(g) of the Constitution and it is part of a fundamental right. It was further held that a fundamental right cannot be abrogated by a State much less by a simple policy decision. It was also held that any policy of the State in such matters would be repugnant to the authority of the Central Council under the Central Act and would be void. In that view of the matter, I am of the considered opinion that the policy decision taken by the State to interdict self-financing institutions from commencing new

courses in the State cannot stand legal scrutiny and cannot be sustained.

24. The next question is whether an institution affiliated with the APJ Abdul Kalam Technological University is required to obtain approval/NOC from the Director of Technical Education before commencing new courses and whether the DTE is required to obtain the views of the University before granting such approval/recognition.

25. Ext.P1 would reveal that the institution is running B.Tech courses in various disciplines after obtaining affiliation from APJ Abdul Kalam Technological University. Ext.P1 would also reveal that the AICTE has granted extension of approval for the conduct of 3 Diploma level courses in Artificial Intelligence and Machine learning, Automation and Robotics and Civil and Environmental Engineering with an intake of 60 seats each. Now if the Approval Process Handbook issued by the AICTE is perused, it can be seen that paragraph 2.9 provides for the procedure to start a new Programme/ Level in the existing Institutions. It says that to start a new Programme/ Level, the applicant shall apply on AICTE Web-Portal along with the Extension of Approval for the existing Programme(s) and Course(s) with the additional documents as per Appendix 17 of the Approval Process Handbook. In Appendix 17, paragraph 17.3 states that a Non-Objection Certificate from affiliating University/Board in Format No.2 has to be submitted. Format No.2 contains various information that is to be supplied and the same has to be

signed by the Registrar/Director of the affiliating University/Board.

26. At this juncture, it needs to be mentioned that the AICTE has not prohibited the sharing of laboratory resources. Appendix 4 of the Approval Process Handbook, 2021-22 deals with 'Norms for Land and Built-up Area requirements of the Technical Institutions'. It details the manner in which resources are to be shared between Diploma and Degree level courses. Furthermore, Clause 2.14.1 provides that existing Institutions shall expand their activities by addition of new/additional Course(s)/Divisions to, among other reasons, increase the utilization of Infrastructure available in the Technical Institutions, adhering to requirements of approved student intake. In other words, AICTE encourages the institution to maximize the utilization of existing resources. Clause 2.9.1 of the handbook while enumerating requirements and eligibility of existing institutions seeking affiliation for a new course, provides for a combined built-up area and emphasises that common facilities are to cater to the requirements of the total approved intake of students.

27. Insofar as sanctioning of Diploma courses are concerned, the same is within the exclusive domain of the Government. It is the Director of Technical Education, who acts as the affiliating Board. The 5th respondent University cannot claim that they have anything to do with the grant of approval for Diploma courses.

28. The records would reveal that it was after obtaining extension of approval from the AICTE that the petitioner had applied for approval/NOC from the Board. However, their request was rejected on the sole ground that the State has taken a policy decision not to grant affiliation for private self-financing institutions. This Court has already held that the said policy of the State cannot be sustained under law.

29. For all practical purposes, this ought to have been the end of the matter but for the contentions advanced by the University that their concurrence is also required as the new diploma level courses are proposed to be conducted in a college affiliated with the University. It is the contention of the University that they need to be satisfied that the conduct of new courses would not be detrimental to the interest of the students pursuing the Engineering course. This contention is put forward by the University based on the A.P.J. Abdul Kalam Technological University Act, 2015, and the First Statute of the A.P.J. Abdul Kalam Technological University (hereinafter referred to as "the First Statute" for the sake of brevity) which came into force on 7.8.2020.

30. In this context, it would be relevant to note that it was with a view to regulate technical education in the State that the State of Kerala enacted the A.P.J. Abdul Kalam Technological University Act, 2015 (hereinafter referred to as "the University Act"). Section 5 of the Act deals with the objects of the

University. It says that the University is bound to ensure the academic standards of all colleges and institutions and to improve the learning skills of students and improve the academic standards of the students who join the colleges affiliated with the University. Section 8 of the University Act provides for the power and functions. It says that the University shall among other things have powers and functions to lay down the norms and standards for the establishment, maintenance, administration, supervision and recognition of colleges and centres maintained by the University, to withdraw affiliation of colleges obtained in violation of Statutes of the University, to confer academic autonomy to affiliated colleges, institutions or a department of the affiliated colleges or institutions or a department maintained by the University, to provide for the inspection of affiliated colleges etc.

31. The First Statute of the A.P.J. Abdul Kalam Technological University (hereinafter referred to as "the First Statute" for the sake of brevity) came into force on 7.8.2020. The statute provides for conditions and procedures for affiliation of colleges and for withdrawing the affiliation of colleges. Chapter VI clause (3) of the First Statute says that approval of the Government as well as the AICTE is to be produced if any affiliated institution requires to commence new courses, to modify existing courses, increase or decrease seats etc. Clause (5) of Chapter VI specifically interdicts the institution from commencing new courses in the affiliated college without the

permission of the affiliating University. In view of the above provisions to which the petitioner is bound as an affiliated institution, they cannot be heard to contend that they are entitled to commence new courses in the institution without the concurrence of the University

32. Sri. Krishnamoorthy, the learned counsel submitted that the AICTE Act falls under Entry 66 of List I of the Seventh Schedule of the Constitution and when the Approval Process Handbook does not envisage the institution to get assent from the University for starting Diploma Level courses, the University statute which falls under Entry 25 of List III cannot be relied upon to abridge the Central Statute. The contention forcefully advanced by the learned counsel does not impress me. As held by the Apex Court in **APJ Abdul Kalam Technological University and another v. Jai Bharat College of Management and Engineering Technology and Ors.** [(2021) 2 SCC 564], while it is not open to the Universities to dilute the norms and standards prescribed by the AICTE, it is always open to the Universities to prescribe enhanced norms. It was further held by relying on **Bharathidasan University and Another v. All India Council for Technical Education and Ors.** [(2001) 8 SCC 676] that AICTE is not a superpower with a devastating role undermining the status, authority and autonomous functioning of the Universities in areas and spheres assigned to them.

33. It is in this context that the objection raised by the University in

commencing new courses in the affiliated institutions assume significance. It is undisputed that University had granted affiliation after a detailed inspection by a team of officers for ascertaining as to whether the amenities, infrastructural facilities and faculty were sufficient to impart good education as per the norms fixed by the University for the students pursuing BTech degree. Before permitting the commencement of new courses, it is the duty of the University as per the provisions of the Act and the Statute to ensure that the students pursuing the Engineering course are not put to a disadvantage by sharing the infrastructural resources with the proposed new course. The University is obliged to issue degrees and its reputation is inextricably intertwined with the fate and performance of the students . In that view of the matter, their role cannot be under emphasised. The Universities are ranked according to the quality of education and the standards maintained by them on parameters such as a) teaching, learning and resources, b) Research and professional practice; c) Graduation outcomes; d) Outreach and inclusivity and Peer perception. The 5th respondent University is therefore bound to ensure that the students who are pursuing their Engineering Degree in the institution are not affected by the additional burden placed by the Institution by admitting new students. If the institution has earmarked separate buildings, infrastructure, workshops, libraries and labs for their students of the new course without the facilities of the Engineering Students being affected, the University cannot possibly contend that approval cannot be granted.



grant any such directions as prayed for, nor inclined to direct provisional affiliation to the Diploma Course, by the Director of Technical Education, Thiruvananthapuram, pending disposal of the inspection, submission of reports, and the consequent decision to be taken by Director of Technical Education, Thiruvananthapuram, the affiliating authority.

14. At this juncture, at best, we can only direct the Registrar, APJ Abdul Kalam Technological University, to cause inspection of the abovesaid institutions, as expeditiously as possible, bearing in mind the time schedule already prescribed for allotment of the students. Inspection be caused and reports be submitted to the Director of Technical Education, Thiruvananthapuram, as expeditiously as possible.

15. Mr. Elvin Peter P. J., learned counsel for the APJ Abdul Kalam Technological University, shall instruct the said University, to explore the possibility of conducting the inspection on 16.08.2021 or 17.08.2021, as the case may be.

16. If on receipt of inspection reports from the University, the Director of Technical University, Thiruvananthapuram, is satisfied that the courses are conducted at two different places, without causing hindrance to the continuance of B. Tech Degree Engineering course as stated supra, appropriate orders be passed."

35. Their Lordships held that the Director of Technical Education should be satisfied that the courses are conducted in two different places without hindrance to the continuance of the B Tech Degree Engineering Course. It was in pursuance of the aforesaid directions that the inspection committee of the University had conducted an inspection and Ext.R5(b) report dated 18.8.2021 was prepared and submitted before the Directorate of Technical Education. In the said report, it is stated that the University cannot

grant NOC to the College to conduct Diploma programme and other programmes, in the land or buildings earmarked by the institution for the conduct of B.Tech courses. It was on the basis of the said report that Ext.P12 order dated 31.8.2021 was issued by the 2nd respondent. However, I find that later an email has been sent by the Registrar of the Technological University on 23.9.2021 wherein it is stated that they propose to complete the inspection of one of the academic blocks which is now being used as the COVID First-Line Treatment Centre. The petitioner has produced Ext.P14 letter issued by the Secretary of the Nagalassery Grama Panchayat requesting that they be permitted to occupy one of the buildings for a further period so that they can continue to use the auditorium, the workshops, the canteen, the classrooms etc. as a COVID domiciliary care centre.

36. I find that it was by Ext.P12 order dated 31.8.2021 that the request for approval for commencing new Diploma courses was rejected by the 2nd respondent. The only reason stated is that an adverse report was submitted by the University. Ext.P16 email sent by the University to the petitioner reveals that the inspection of the entire blocks had not been completed. Furthermore, Ext.P12 order does not reveal that the 2nd respondent had heard the petitioner before passing such an order. This is clearly in violation of the principles of natural justice. In that view of the matter, I am of the considered opinion that the 2nd respondent is bound to reconsider the request made by the petitioner and take a decision with notice

to the petitioner as well as the University. While taking a decision, the 2nd respondent would be entitled to peruse the inspection report submitted by the University and their views. If the petitioner is in possession of the necessary infrastructure in the form of separate buildings, workshops, labs, libraries and other amenities to provide good quality education to the students pursuing the degree level as well as diploma level courses, then neither the University nor the DTE can stand in the way of the petitioner conducting the said courses. On the other hand, if the petitioner is not in possession of the necessary infrastructure mentioned above and the faculty to pursue both the courses simultaneously without causing a strain on the resources of the Engineering students, the affiliating University will be well justified in refusing the grant of assent to the DTE. It is for the DTE to consider the matter in all its perspectives and take a decision with the interest and welfare of the students in mind and without affecting the right of the petitioner to impart education and in strict compliance with the relevant rules and regulations. Before taking a decision the DTE shall also inspect the institution and its premises.

37. Having considered the entire facts and circumstances, I dispose of this Writ Petition by issuing the following directions.

- a) Ext.P3 and P4 orders issued by the respondents 1 and 2 are set aside.
- b) The 5th respondent shall forward a conclusive report after examining all facilities in the institution and forward the same to the 2nd respondent within a period of two weeks from 6.10.2021.

- c) There will be a direction to the 2nd respondent to consider the application for NOC/Approval afresh. Before taking a decision, the 2nd respondent shall inspect the petitioner institution, take note of the report of the committee constituted by the 5th respondent and take a decision as directed above.
- d) If the DTE is satisfied that the petitioner is having the infrastructure and the amenities to conduct both the courses simultaneously, it is for the said authority to grant approval without being restricted by any policy decision taken by the State Government. Appropriate orders shall be passed within a further period of four weeks from the date of receipt of a copy of the report from the University as directed above. Before passing orders, the petitioner as well as the 5th respondent shall be heard.

**Sd/-**

**RAJA VIJAYARAGHAVAN V  
JUDGE**

ps

APPENDIX OF WP (C) 15358/2021

PETITIONER'S EXHIBITS:

- Exhibit P1 TRUE COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DATED 15.7.2021
- Exhibit P2 TRUE COPY OF THE REQUEST DATED 18.6.2021 FILED BY THE PETITIONER
- Exhibit P3 TRUE COPY OF THE LETTER DATED 5.7.2021 ISSUED BY THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF THE LETTER DATED 29.6.2021 ISSUED BY THE 1ST RESPONDENT
- Exhibit P5 TRUE COPY OF THE JUDGMENT IN WA NO 1239/2017 DATED 22.8.2017 OF THE HON'BLE COURT
- Exhibit P6 TRUE COPY OF THE INTERIM ORDER IN WP 13009/2020 DATED 2.7.2020 OF THE HON'BLE COURT
- Exhibit P7 TRUE COPY OF THE INTERIM ORDER IN WPC 13009/2020 DATED 15.7.2021 OF THIS HON'BLE COURT
- Exhibit P8 TRUE COPY OF THE RELEVANT PORTION OF THE PROSPECTUS SHOWING THE DATES
- Exhibit P9 IN I.A.NO.4 OF 2021 TRUE COPY OF THE REQUEST BEFORE THE ADDITIONAL 5TH RESPONDENT DATED 19/07/2021.
- Exhibit P9 IN I.A.NO.5 OF 2021 TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO.1062/21 DATED 13.8.21.
- Exhibit P10 TRUE COPY OF THE CERTIFICATE ISSUED BY THE NAGALASSERY GRAMA PANCHAYATH DATED 28.6.2021.
- Exhibit P11 TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, NAGALASSERY PANCHAYATH.

- Exhibit P12 TRUE COPY OF THE REJECTION LETTER DATED 31.8.2021 OF THE 2ND RESPONDENT.
- Exhibit P13 TRUE COPY OF THE PHOTOGRAPH OF BUILDINGS WITH DIFFERENT DIMENSIONS
- Exhibit P14 TRUE COPY OF THE CERTIFICATE ISSUED BY THE NAGALASSERY GRAMA PANCHAYATH DT.6-9-2021
- Exhibit P15 RELEVANT PORTION OF THE WEBSITE PUBLICATION FOR SINGLE WINDOW ADMISSION TO POLYTECHNIQUE COLLEGES 2021-22 PUBLISHED BY 2ND RESPONDENT.
- Exhibit P16 TRUE COPY OF THE EMAIL COMMUNICATION DATED 23/9/2021 ISSUED BY THE ADDITIONAL 5TH RESPONDENT.
- Exhibit P17 TRUE COPY OF THE RULES AND REGULATIONS FOR AFFILIATION FOR DIPLOMA LEVEL TECHNICAL PROGRAMMES ISSUED BY THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS:

- Exhibit R5 (A) TRUE COPY OF THE INSPECTION REPORT CONDUCTED AT SREEPATHY INSTITUTE OF MANAGEMENT AND TECHNOLOGY, KOOTANNAD
- EXHIBIT R5 (B) TRUE COPY OF THE LETTER NO.KTU/ASST10 (ADMIN) 3594/2021 DATED 18/08/2021 SENT BY THE REGISTRAR OF THE UNIVERSITY TO THE DIRECTOR OF TECHNICAL EDUCATION, THIRUVANANTHAPURAM ALONG WITH THE INSPECTION REPORT.