IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 5942 of 2004

Shri Prince Shivaji Maratha
Boarding House's
College of Architecture,
Kolhapur & others .....Petitioners

vs

State of Mah and others ..... Respondents

Mr. V. M. Thorat with Shri D. V. Sutar & Mr. A. T. Gade for the petitioners

Mr. P.M. Patil AGP for respondent nos. 1 and 2
Mr. Aspi Chinoy with Ms Beena Menon for respondent no. 3
Mr. Rafiq Dada, Senior Advocate with Mr. V.P. Sawant and Mr. Vijay Patil for Respondent No. 4

CORAM : A.P. SHAH & S.U. KAMDAR JJ.

Dated 8th Sept 2004

Per A.P. Shah J.

1. Rule.

2. The learned counsel appearing for the respondents waive service. By consent, rule is made returnable forthwith.

3. This petition raises a short and interesting question, of some importance, whether the All India Council of Technical Education Act, 1987 (for shot, 'AICTE Act') overrides the provisions of the Architects Act, 1972 in the matter of prescribing and regulating norms and standards of architectural institutions. In other words, whether the AICTE Act which is a later Act has impliedly repealed the provisions of the Architects Act. For a better appreciation of the question it becomes necessary to state few facts. The petitioner no. 1 is a college of architecture established by the petitioner no. 2 trust. The respondent no. 1 is the State of Maharashtra. The respondent no. 2 is the Director of Technical Education, State of Maharashtra. The respondent no. 3 is the All India Council for Technical Education, (for short, 'AICTE') a statutory body constituted under the AICTE Act. The respondent No. 4 is the Council of Architecture established under the provisions of the Architects Act. The petitioner no.1 college is affiliated to Shivaji University, Kolhapur and the intake capacity of the college was 40 students per year. During the inspection jointly held on 25th April 2003 by the AICTE and Council of Architecture certain deficiencies and shortcomings were found in the college and, therefore, for the Academic years 2003-04 and 2004-05 the intake capacity was reduced from 40 students

per year to 30 students per year. On 27th August 2003 the petitioner submitted compliance report pointing out fulfillment of all conditions as mentioned in the inspection report. The Council of Architecture on the basis of the compliance report forwarded by the petitioner carried out inspection of the petitioner college on 9th/10th March 2004 and after having been satisfied with the compliance issued a letter dated 18th May 2004 restoring the intake capacity of 40 students per year. In the meantime, the Director of Technical Education published rules for admission to Bachelor of Architects Course through Common Entrance Test (CET). The Director of Technical Education fixed the intake capacity of 30 students in respect of the petitioner no. 1 college on the basis of the norms and standards fixed by the AICTE. It is this action of the Director of Technical Education which is questioned in this petition. The petitioners contend that the provisions of the Architects Act and regulations framed thereunder shall prevail over the provisions of the AICTE Act and the director of Technical Education has no power to fix the intake capacity contrary to the decision taken by the Council of Architecture. The Council of Architecture has wholly supported the petition. On the other hand the AICTE has maintained that the matter of prescribing and regulating the norms and standards of architectural education falls exclusively within the domain of AICTE under the AICTE Act. Thus the contest is really between the AICTE and Council of Architecture both claiming right to decide architectural education's standards.

4. Mr. Rafiq Dada. learned counsel appearing for the Council of Architecture submitted that the Architects Act, 1972 is a

special law dealing with the subject of architecture providing for prescribing, regulating and maintaining of the standards of architectural education, registration of architects, their conduct and other related matters and complete code by itself. As against this the AICTE Act deals with several disciplines in technical education one of which is architecture. Therefore the AICTE Act is a general law whereas Architects Act is a special law and is not overridden or superseded by the AICTE Act. Mr. Dada urged that the principle generalia specialibus non derogant would be clearly attracted in the instant case and unless the special law is abrogated by express words or by making a provision which is wholly inconsistent with it, cannot be said to have been abrogated by mere implication. According to Mr. Dada there is nothing in the AICTE Act to belittle or destroy the authority or autonomy of the Council of Architecture which is established under the Architects Act. The role of AICTE as far as architectural institutions are concerned is only advisory and for coordination, strengthening and development of architectural education. The general provisions in the AICTE Act touching the subject matter of architecture therefore do not abrogate the provisions of the Architects Act and are not repugnant or inconsistent with the Architects Act. Mr. Dada urged that the AICTE Act does not supplant the provisions of the Architects Act but at the highest supplement them. Mr Thorat, appearing for the petitioners, adopted the submissions of Mr. Dada.

5. Mr. Chinoy, appearing for the AICTE, on the other hand, submitted that the provision of the AICTE Act deal with the same subject matter as that of the Architects Act, 1972 in so

far as promoting, maintaining and managing standards of architecture education is concerned. The provisions of the two Acts cannot stand together and this is borne out from the facts of the present case where the AICTE and Council of Architecture have in their regulations stipulated different intake capacity for the petitioner college. The role of AICTE cannot be said to be advisory or subject to provisions of the Architects Act. The AICTE Act is later Act and specifically covers the field of prescribing, regulating and maintaining standards and norms of architectural education. It must necessarily follow that the AICTE Act has impliedly repealed the provisions of the Architects Act in these matters. Mr. Chinoy also submitted that the AICTE Act is a special law dealing with the subject in as much as it specifically deals with all aspects of the technical education which is statutorily defined to include architectural education. In contradistinction the Architects Act essentially deals with regulating the profession of Architects and in connection therewith makes provisions regarding prescribing, regulating and maintaining norms and standards of architectural education. If the focus and principal subject matter is architectural education, the AICTE Act is a special law and Architects Act is a general law, even though the Architects Act might be a special legislation regarding the Architects' profession. Therefore the doctrine of generalia specialibus non derogant has no application.

6. The cruicial question is whether the AICTE Act is general legislation vis-à-vis Architects Act, which is a special legislation in relation to the architectural education.

Immediately, we are confronted with the question as to whether the AICTE Act is a special legislation or a general legislation because the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and general Act and an argument of implied repeal is raised. The other question which also needs to be addressed is whether the provisions of the two Acts are so inconsistent that earlier statute will not stand in view of the fact that the conferral power undr the later Act deals with the same subject matter. Maxwell on the Interpretation of Statutes (12th Edition) summarised the doctrine of generalia specialibus non derogant in the following words : -

> “Now if anything be certain it is this,” said the Earl of Selborne L.C. in The Vera Cruz, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so”. In a later case, Viscount Haldane said : “ we are bound … to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if

> in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to.”

7. The rationale of this rule is explained by the Supreme Court in J K Cotton Spinning and Weaving Mills Co Ltd vs. State of Uttar Pradesh, AIR 1961 SC 1170 as follows :

> “The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but sprigs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and anther to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier directions should have effect”.

8. In U.P. State Electricity Board vs Hari Shankar Jain, (1978) 4 SCC 16, the Supreme Court observed :

> “In passing a special Act, Parliament devotes its entire consideration to a particular subject.

> When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament".

9. In Life Insurance Corporation vs D J Bahadur, (1981) 1 SCC 315, Krishna Iyer J. has pointed out as under :

> "In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law".

10. In State of M P vs. Kedia Leather and Liquor Ltd & ors, (2003) 7 SCC 389, a two Judge Bench of the Supreme Court observed :

> "There is presumption against a repeal by Implication; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing

> legislation. (See Municipal Council, Palai v T J Joseph, AIR 1963 SC 1561, Northern India Caterers (P) Ltd v State of Punjab, AIR 1967 SC 1581, Municipal Corpn of Delhi vs Shiv Shankar, (1971) 1 SCC 442, and Ratan Lal Adukia v Union of India, (1989) 3 SCC 537). When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius (persone vel rei) est exclusio alterius. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in Garnett v Bradley, (1878) 3 AC 944. The continuance of the existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred.

11. A two Judge Bench of the Supreme Court in a recent judgment in Godavat Pan Masala Products I.P. Ltd vs Union of India, 2004 AIR SCW 4483, observed that in case of conflict

between a special law and a general law, even if both are enacted by the same legislative authority, the special law must displace the general law to the extent of inconsistency. The operation of the maxim generalia specialibus non derogant has been approved and applied by the Court in such situations.

12. To determine whether a later statute repeals by implication an earlier statute, it would be necessary to scrutinize the terms and consider the true meaning and effect of the two statutes. The Architects Act, 1972 is enacted to provide for prescribing, regulating and maintaining the standards of architectural education, qualification of architects based on these standards and for registration of qualified Architects. Section 2 (a) defines the term "Architect" to mean a person whose name is for the time being entered in the register. Section 2 (d) defines "recognised qualification" to mean any qualification in architecture for the time being included in the Schedule or notified under section 15. Section 14 (1) of the Architects Act provides that the qualifications included in the Schedule or notified under section 15 shall be recognised qualifications for the purposes of Act and sub-section (2) provides that the Schedule may be amended so as to include such other recognised qualifications and the Central Government may do so by notification in the official gazette after consultation with the Council of Architecture. Section 17 of the Act contains a non obstinate clause and provides that notwithstanding anything contained in any other law, but subject to the provisions of the Act, any recognised qualification shall be a sufficient qualification

for enrolment in the register. Section 18 provides that every authority in India which grants a recognised qualification shall furnish relevant information to the Council of Architecture as to the courses of study and examination to be undergone and various other matters provided in the section. Section 19 provides for appointment of Inspectors by the Executive Committee to inspect any College or Institution where architectural education is given or to attend any examination held by any college or institution for the purpose of recommending to the Central Government recognition of architectural qualifications granted by that College or Institution. Section 20 confers power for withdrawal of recognition upon report of the Executive Committee to the Council of Architecture that the courses of study and examination, staff accommodation do not conform to the standards prescribed by regulations and the Council in that case shall make necessary report to the appropriate government. Section 21 empowers the Council to prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India. Section 22, empowers the Council of Architecture to prescribe standards of professional conduct and etiquette and a code of ethics for Architects. Under Section 23(2), the Council of Architecture is required to maintain the register of Architects. Under Section 29 the Council is empowered to remove from the register the name of any architect as provided thereunder. Under Section 45, the Council has power to make regulations with the approval of the Central Government to carry out the purposes of the Act. The Council of Architecture has with approval of the Central Government framed regulations

known as Minimum Standards of Architectural Education Regulations, 1983 in exercise of powers conferred by clauses (e), (g), (h) and (j) of sub-section (2) of Section 45 read with Section 21 of the Architects Act. The said regulations provide for eligibility for admission to architectural course, aptitude test, etc. The regulations also provide for intake, course and periods of studies, professional examination, standard of proficiency and conditions of admission, qualification of examiner. They also provide for standards of staff, equipment, accommodation, training and other facilities for architectural education. The Architects Act is thus a complete code in itself in so far as the architectural education is concerned.

13. We shall now turn to the provisions of the AICTE Act. Section 2(g) of the AICTE At defines “technical education” as under :

> “technical education” means programmes of education, research and training to 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 ;

Section 2 (h) defines the words “technical institution” to mean “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, declared as technical institutions. Section 10 of the AICTE Act, provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council amongst other things can lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examination ; grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned; inspect or cause to inspect any technical institution. Under Section 11 the AICTE is authorized to cause an inspection of any technical institution to be made for the purposes of ascertaining the financial needs of a technical institution or a University or its standards of teaching, examination and research. Under Section 23 the AICTE may by notification in the official gazette make regulations generally to carry out the purposes of the Act. The AICTE has framed regulations in exercise of power under section 23 covering almost all the aspects of technical education.

14. On a careful examination of the scheme of the two statutes it is seen that the Architects Act is especially designed to deal with the Architects and the maintenance of the standards in architectural education and profession with recognised qualifications. The Architects Act read as a whole is a complete code in itself for registration and education of architects and specifically deals with the recognised qualifications for architects which includes the regulation and monitoring of the course contents and standards of education. Section 17 of the Architects Act contains a non obstante clause and provides that notwithstanding anything contained by any other law, but subject to the provisions of the Architects Act, any recognised qualification shall be a sufficient qualification for enrolment in the register. A combined reading of sections 14 to 17 and section 21 leaves no manner of doubt that in the field of architectural institutions, the Architects Act has been given overriding effect over the other laws. It is true that section 2(g) of the AICTE Act also includes architecture within the definition of technical education and an institution which offers course of architecture would be a technical institution under section 2(h). However, the scope and ambit of the AICTE Act is wide ranging and covers various programmes of education research and training other than architecture as can be seen from section 2(g) itself. The main function of the AICTE under the AICTE Act is coordinated development of technical education as defined in the said Act. It is not confined to nor is its sole or main concern architecture, architects and their professional conduct, making standards of architectural education and recognition of qualifications granted by the authorities in India and these

matters are specifically dealt with by the Architects Act. Considering the provisions of the Architects Act vis-à-vis AICTE Act, we have no hesitation to hold that as far as architectural education is concerned the Architects Act is a special legislation and the AICTE Act is a general legislation.

15. Mr. Chinoy strenuously urged that the provisions of the later Act i.e. AICTE Act being totally inconsistent or repugnant with the provisions of the earlier enactment, i.e. Architects Act, earlier enactment is abrogated by the later Act. The counsel submitted that conferral powers on two different bodies (the Council of Architecture under the Architects Act and AICTE under the AICTE Act) on the same subject matter would be incongruous and destructive of the object for which the power was conferred. AICTE Act is a later Act and covers the same subject matter as section 19(2), 21 and 45 (e), (f) and (g) of the Architects Act, which also relate to subscribing, regulating and maintaining of the standards of Architectural education. It must necessarily follow that the AICTE Act impliedly repeals the said sections of the Architects Act. Mr. Chinoy drew our attention to a three – Judge Bench decision of the Supreme Court in the case of Ajay Kumar Banerjee and other vs. Union of India and others, reported in (1984) 3 SCC 127 where the Bench observed as under : -

> “The general rule to be followed in case of conflict between two statutes is that other words, a prior special law would yield to a later

general law, if either of the two following conditions is satisfied :

(i) The two are inconsistent with each other.
(ii) There is some express reference in the later to the earlier enactment.
If either of these two conditions is fulfilled, the later law, even though general, would prevail.
39. From the text and the decisions, four tests are deducible and these are:-
(i) The legislature has the undoubted right to alter a law already promulgated through subsequent legislation,
(ii) A special law may be altered, abrogated or repealed by a later general law by an express provision,
(iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot co-exist even though no express provision in that behalf is found in the general law, and
(iv) It is only in the absence of a provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law. See in this connection, Maxwell on the Interpretation of Statutes, Twelfth Edition, pages 196-198.”

16. Mr. Chinoy also referred to the decision in the case of Ratan Lal Adukia vs. Union of India reported in (1989) 3 SCC 537 where the Court held that Section 80 of the Railways Act is a complete, self-contained, exhaustive code in regard to the place of suing respecting suits constituting a special law for such suits. The legislative intent thus is that plaintiffs must institute suits only in the courts mentioned in Section 80 of the Railways Act for enforcement of the claims for compensation against the Railways. By necessary implication, therefore, the operation of provisions of Section 20 of the Code of Civil Procedure, 1908 and Section 18 of the Presidency Small Cause Courts Act, 1882 stands excluded. The bench observed : -

> “The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may, by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be

> applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject matters."

Two more decisions cited by Mr. Chinoy in the cases of Yogender Pal Singh vs Union of India, (1987) 1 SCC 631 and Dharangdhra Chemical works vs Dharangdhra Municipality (1985) 4 SCC 1992 are on the same lines and hold that when a competent authority makes a new law which is totally inconsistent with earlier law and two cannot stand together any longer, it must be construed that the earlier law had been repealed by necessary implication by the later law.

17. Mr. Chinoy submitting that in an almost parallel situation in the case of Gandhi College of Pharmacy vs All India Council of technical Education, AIR 1995 P&H 315, learned single Judge of the Punjab & Haryana High Court has held that with the enactment of the AICTE Act, 1987, section 2(g) of which expressly includes Pharmacy in the definition of technical education, the Pharmacy Act, 1948 which covers the same subject matter of laying down "norms and standards for studies in pharmacy" stood impliedly repealed. The learned single Judge observed in paras 11 and 12 of the judgement as follows :

> "---------- Article 372 of the Constitution provides that notwithstanding the repeal by the Constitution of the enactments referred to in Art 395, all the laws that were in force in the territory of India immediately before the

commencement of the Constitution shall continue to remain in force until altered or repealed or amended by a competent Legislature or other competent authority. The 1948 Act is undoubtedly an existing law which was in force in the territory of India prior to the commencement of the Constitution. This law was thus to continue to operate till it was altered or repealed or amended by a competent legislature. Parliament in exercise of its powers under Entry 66 of List I (Union List) has enacted the 1987 Act. As already noticed above, this Act covers same field which was earlier covered by the 1948 Act, namely to lay down norms and standards for studies in the field of pharmacy. Therefore in terms of Art 372 of the Constitution, the 1987 Act to the extent it covers the same field as covered by the existing law, i.e. the 1948 Act will prevail and the provisions of the 1948 Act to that extent stand repealed or altered. Alteration, repeal or amendment contemplated by Art 372 of the Constitution may be express, i.e. the existing law may be expressly altered, repealed or amended by a competent Legislature. An existing law may also be modified by necessary implication and this can be done even by a separate enactment as in the present case. When two Acts are inconsistent or repugnant to each other, the existing law will be deemed to have been altered, repealed or amended by the later law enacted by

> the competent Legislature. Even when there is no repugnancy or inconsistency between the two enactments, the later law enacted by the competent Legislature will prevail provided that law covers the same field as is covered by the existing law since it is last expression of the will of the Legislature that must prevail.
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> Looking at the background in which the 1987 Act was enacted, the object of Parliament was to coordinate and determine the standards of education in technical institutions including that of pharmacy in the country and it was intended that all technical institutions including the college should be governed by its provisions…."

18. In our view, the decision of the Punjab and Haryana High Court has no application to the present case. The scheme of the Architects Act differs from Pharmacy Act in many respects and especially it contains a non obstante clause giving over riding effect to the provisions of the Architects Act. More over the functions of the AICTE mentioned in section 10(1)(k) and (p) are more apposite in cases where there are no existing special body like Council of Architecture already carrying the same functions under the Architects Act. The provision laying down functions for technical education generally cannot be construed to displace the authority of the Council of Architecture constituted under the Architects Act. It is seen from the statement of Objects and Reasons for the AICTE Act that the

AICTE was originally set up by the government resolution as national expert body to advise the Central and State Governments for ensuring the coordinated development of technical education in accordance with the approved standards and was playing an effective role, but, however, in recent years a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines laid down by the AICTE and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and need to maintain educational standards and curtail the growing erosion of standards, statutory authority was meant to be conferred upon the AICTE to play its role more effectively by enacting the AICTE Act. As against this focus of the Architects Act is for prescribing and maintenance of the minimum standards of architectural education required for granting recognised qualifications which entitles a person to practice his profession of an architect, seek employment with the Government or take up teaching assignments. This twin objectives of prescribing standards and overseeing the maintenance of such standards involve laying down minimum standards of architectural education prescribing requirements for eligibility to course, curriculum, duration of course, practical training, proficiency at the examination, staff student ratio, qualification of teachers etc. On the other hand the focus of function of the AICTE is primarily on proper planning and coordinated development of technical education. A fair reading of sub-clauses (b), (r) and (u) of section 10 of the AICTE Act makes it clear that in respect of existing body like the Council of Architecture, the role of the AICTE is only

advisory for coordination, strengthening and development of the programmes. We are therefore clearly of the view that the provisions of the Architects Act must prevail over the AICTE Act, in regard to matters of prescribing and regulating norms and standards of architectural institutions.

19. In the context of the present case it would be useful to refer to the recent decision of the Supreme Court in Bharthidasan University and another vs. All India Council for Technical Education and others, (2001) 8 SCC 676. The question before the Supreme court was whether the Bharathidasan University created under the Bharathidasan University Act, 1981 should seek prior approval of the AICTE to start a department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection. The University commenced courses in technology such as Information Technology and Management, Bioengineering and Technology, Petrochemical Engineering and Technology, Pharmaceutical Engineering and Technology, etc. It was contended that the University did not apply for and secured the prior approval for those courses before their commencement by the university as envisaged under the AICTE Act and the statutory regulations made thereunder by the AICTE particularly regulation 4 which obligated even the University to obtain such prior approval. The High Court accepted the stand of the AICTE by applying the ratio of the decision of a Full Bench of the Andhra Pradesh High Court in M. Sambasiva Rao vs. Osmania University (1997) 1 An RT 629, and as a consequence thereof, ordered the

cancellation of the admissions made by the University. Allowing the appeal, the Supreme Court held : -

> 8.------When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavoring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law. In the Statement of Objects and Reasons for

the AICTE Act, it is specifically stated that AICTE was originally set up by a government resolution as a national expert body to advise to Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, “however. In recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE” and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing arosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act.

8------The Act, for all purposes and throughout maintains the distinct identity and existence of “technical institutions” and “universities” and it is in keeping tune with the said dichotomy that wherever the university or the activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical institutions and wherever the university is to be left out and not to be roped

in merely refers to the technical institution only in Section 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Section 10(1)(c),(g),(o) which would go to show that universities are mentioned alongside the “technical institutions” and clauses (k), (m), (p), (q), (s) and (u) wherein there is conspicuous omission of reference to universities, reference being made to technical institutions alone. It is equally important to see that when AICTE is empowered to inspect or cause to inspect any technical institution in clause (p) of subsection (1) of Section 10 without any reservation whatsoever, when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisages in Section 11 of the Act. Clause (f) of Sub-section (1) of Section 10 envisaged AICTE to only advise UGC for declaring any institution imparting technical education as a deemed university and not do any such thing by itself. Likewise, clause (u) of the same provision which envisages the setting up of 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 to make recommendations to it, or to the Council, or to the Commission of to other bodies, regarding recognition or de-recognition of the institution or the programme. All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby supremepose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its departments or units. A careful scanning – through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE Vis-à-vis universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring

> significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well – merited attention and consideration in their proper and correct perspective. The ultra-activist view articulated in M. Sambasiva Rao case on the basis of supposed intention and imagined purpose of AICTE or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and universities irrelevant or even as non-entities by making AICTE a superpower with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them."

20. In the light of the above observations it is obvious that the Legislature never intended to confer on the AICTE a super power undermining the status, authority and autonomous functioning of the existing statutory bodies in areas and spheres assigned to them under the respective legislations. There is nothing in the AICTE Act to suggest a legislative intention to belittle and destroy the authority or autonomy of Council of Architecture which is having its own assigned role to perform. The role of the AICTE vis-à-vis the Council of

Architects is advisory and recommendatory and as a guiding factor and thereby subscribing the cause of maintaining appropriate standards and qualitative norms. It is impossible to conceive that the Parliament intend to abrogate the provisions of the Architects Act embodying a complete code for architectural education, including qualifications of the Architects by enacting a general provision like section 10 of the AICTE Act. It is clear that the Parliament did have before it the Architects Act when it passed AICTE Act and Parliament never meant that the provisions of the Architects Act stand pro tanto repealed by section 10 of the AICTE Act. We, therefore, hold that the provisions of the Architects Act are not impliedly repealed by the enactment of AICTE Act because in so far as the Architecture Institutions are concerned, the final authority for the purposes of fixing the norms and standards would be the Council of Architecture. Accordingly, we quash and set aside the order of the Deputy Director reducing the intake capacity of the petitioner college of architecture from 40 to 30. Rule is accordingly made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE FCJURISDICTION

Writ Petition No. 5942 of 2004

Date of Judgement : 8th September, 2004

For approval and signature of :

The Hon'ble Mr. A. P. SHAH J.

The Hon'ble Mr. S. U. KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgement / order?
2. Whether to be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur Aurangabad and Goa offices?