IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL EXTRAORDINARY JURSDICTION

WP(C) NO. /2005

MEMO OF PARTIES

Ms. Sharmishtha S. Das
D/o. Sh. Sharat S. Das
239, Sukhdev Vihar
New Delhi – 110 024 ... PETITIONER

VERSUS

1. Union of India
through Secretary
Ministry of Human Resource Development
Shastri Bhawan
New Delhi.

2. Central Board of Secondary Education
through Chairman
Community Centre
Preet Vihar
New Delhi.

3. Council of Architecture
through Registrar
India Habitat Center
Core 6-A, First Floor,
Lodhi Road
New Delhi

4. All India Council for Technical Education
through Chairman
Indira Gandhi Indoor Complex
Indraprastha Estate
New Delhi. ... RESPONDENTS

Certified to be True Copy

Examiner Judicial Department
High Court of Delhi
Authorised Under Section 76
of Indian Evidence Act.

(DAYAN KRISHNAN)
GAUTAM NARAYAN & AMIT GUPTA)
Advocates for the Petitioner
D-131, Panchsheel Enclave,
New Delhi – 110 017

New Delhi
11.02.2005

IN THE HIGH COURT OF DELHI

WRIT PETITION (CIVIL) NO. 2669/2005

Date of decision: July 12th ,2005

Ms.Sharmishtha S Das ... Petitioner
through Mr. Maninder Singh with Mr.D.Krishnan
& Mr.Amit Gupta, Advocates

VERSUS

Union of India and others ... Respondents
through Mr. Suresh Kait for Respdt. no.1/UOI.
Mr. Amit Bansal with
Ms.Manisha for CBSE -Respdt. no.2
Mr. Naveen R. Nath, Adv. with
Ms.Hetu Arora for Council of
Architecture respondent no.3.
Mr. Raju Ramachandran, Sr. Adv.
with Mr.CBN Babu and Mr.S.P.Arora
Advocate for AICTE respondent no.4.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL.

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J.

1. By way of the present writ petition, the petitioner seeks the

following prayers :-

"(a) Declare the eligibility criteria for the entrance examination of 5-year degree course of architects for AIEEE 2005 as highly illegal, unconstitutional and violative of the petitioner's fundamental rights under article 14, 19 and 21.
(b) Issue a writ in the nature of certiorari quashing the impugned eligibility criteria laid down by the Respondent No. 1 and 2 for AIEEE 2005.
(c) Issue a writ of prohibition restraining the Respondents from implementing the impugned criteria for appearing in the AIEEE 2005.
(d) Issue a writ in the nature of mandamus directing the Respondents to conduct the exam as per the criteria laid down under the Architects Act, 1972 and its Regulations and Guidelines.
(e) Issue orders/directions to the Respondents to allow the petitioner to appear in the exam for AIEEE 2005.
(f) Pass such other order/s as may be deemed fit and proper in the facts and circumstances of the case."

2. This writ petition raises questions relating to the jurisdiction of the All India Council of Technical Education (arrayed as respondent no. 2 and abbreviated as AICTE hereafter) to provide eligibility criterion for appearing in the All

India Engineering/Architecture Entrance Examination 2005 for admission to the five year degree course of the Bachelor of Architecture and Bachelor of Planning. It is contended that in view of the regulations being the Minimum Standards of Architectural Education Regulations 1983 framed by the Council of Architecture (arrayed as respondent no. 3 herein) by virtue of powers conferred under Section 45 read with Section 21 of the Architecture Act 1972 providing for eligibility for admission to the Architecture Course, the Guidelines on Admission to the First Year of Full Time 5 Year Degree Course in Bachelor of Architecture and the Regulation 8(3) of the All India Council of Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional College) Regulations 1994, the All India Council of Technical Education has no legislative competence, power or authority to frame regulations or guidelines providing any eligibility conditions which are at variance from those provided by the Council of

Architecture.

3. The other issues raised relates to the legislative competence of the All India Council of Technical Education to make regulations for admission to the course of Bachelor of Architecture.

4. Assuming such power vested in the All India Council of Technical Education , it would be necessary to consider its applicability to students who have opted for subject choices based on the prevalent regulations at the time when they were required to exercise subject options.

5. The further issue raised is whether the provisions of the Architecture Act, 1972 stand impliedly repealed by the provisions of the later enactment being the All India Council of Technical Education Act 1987 which is contended by the respondents to be a special enactment.

6. The facts giving rise to the present petition are within a narrow compass and there is no material dispute to the same.

The petitioner has contended that her father was an Architect and that she came from a family of Architects. The petitioner passed her class 10 board examination in the year 2003 as a student of the Delhi Public School, Vasant Kunj, New Delhi. As a consequence thereupon the petitioner was required to make subject choices for the courses to be pursued by her in class 11 and 12 of the course. As the petitioner wish to pursue the profession running in the family she made such subject choices which would render her eligible for undertaking the entrance examination for admission to the Bachelor of Architecture course.

7. For this purpose the petitioner scrutinised the eligibility criterion laid down by the Council of Architecture in the Minimum Standards of Architectural Education Regulations 1983 which provided as hereunder:-

> "4. **Admission to the Architecture Course**
>
> (1) No candidate, with less than 50% marks in aggregate, shall be admitted to the architecture course unless he/she has passed

an examination at the end of the new 10+2 scheme of Senior School Certificate Examination or equivalent with Mathematics and English as subjects of examinations at the 10+2 level.

(2) Where 10+2 scheme is not introduced, candidates must have passed after 11 years schooling the High Secondary/pre-university/pre-engineering or equivalent examinations in the Science group of any recognized University or Board with English, Physics, Chemistry and Mathematics as compulsory subjects.

Notwithstanding anything contained in these regulations, the institutions may prescribe minimum standards of Architectural Education provided such standards does not, in the opinion of the Council, fall below the minimum standards prescribed from time to time by the Council to meet the requirements of the profession and education thereof".

These regulations were placed before both Houses of the Parliament and approved on 26th March, 1983 and 27th August, 1983 and came into effect thereupon.

8. As such the petitioner was required to complete her 12th class board examination with not less than 50% marks and mathematics and english as compulsory subjects in which the

entrance examination was also held.

9. It subsequently transpired that the Supreme Court of India delivered a judgment in the case of JP Unnikrishnan and others vs. State of Andhra Pradesh reported at AIR 1993 SC 2178. Relevant para 170 of this judgment reads as under:-

> "170.The scheme evolved herewith is in the nature of guidelines which the appropriate Governments and recognising and affiliating authorities shall impose and implement in addition to such other conditions and stipulations as they may think appropriate as conditions for grant of permission, grant of recognition or grant of affiliation, as the case may be. We are confining the scheme – for the present -- only to 'professional colleges.'
>
> The expression 'professional colleges' in this scheme includes:
> (i) medical colleges, dental colleges and other institutions and colleges imparting Nursing, Pharmacy and other courses allied to Medicine, established and/or run by private educational institutions,
> (ii) colleges of engineering and colleges and institutions imparting technical education including electronics, computer sciences, established and/or run by private educational institutions, and
> (iii) such other colleges to which this scheme

is made applicable by the Government, recognising and/or affiliating authority."

The expression "appropriate authority" means the Government, university or other authority as is competent to grant permission to establish or to grant recognition to a professional college.

The expression 'competent authority' in this scheme means the Government/University or other authority, as may be designated by the Government/University or by law, as is competent to allot students for admission to various professional colleges in the given State.

It is made clear that only those institutions which seek permission to establish and/or recognition and/or affiliation from the appropriate authority shall alone be made bound by this scheme. This scheme is not applicable to colleges run by Government or to University colleges. In short, the scheme hereinafter mentioned shall be made a condition of permission, recognition or affiliation, as the case may be. For each of them viz., grant of permission, grant of recognition, grant of affiliation, these conditions shall necessarily be imposed, in addition to such other conditions as the appropriate authority may think appropriate.

No private educational institution shall be allowed to send its students to appear for an examination held by any Government or other body constituted by it or under any law or to any examination held by any University unless the concerned institution and the relevant

course of study is recognised by the appropriate authority and/or is affiliated to the appropriate University, as the case may be.

(1) A professional college shall be permitted to be established and/or administered only by a Society registered under the Societies Registration act, 1860 (or the corresponding act, if any, in force in a given State), or by a Public Trust, religious or charitable, registered under the Trusts act, Wakfs act (or the corresponding legislation, if any, e.g., Tamil Nadu Religious and Charitable Endowments act and A.P. Religious and Charitable Endowments act). No individual, firm, company or other body of individuals, by whatever appellation called – except those mentioned above – will be permitted to established and/or administer a professional college. All the existing professional colleges which do not confirm to the above norm shall be directed to take appropriate steps to comply with the same within a period of six months from today. In default whereof, recognition/ affiliation accorded shall stand withdrawn. (In this connection reference may be had to Rule 86(2) of Maharashtra Grant-in-aid Code [referred to in State of Maharashtra v. Lok Shikshan Sanstha, 1971 (Suppl.) SCR 879 : (AIR 1973 SC 588)] which provided that schools which are not registered under the Societies Registration act, shall not be eligible for grant. Grant of recognition and affiliation is of no less significance).

(2) At least, 50% of the seats in every

professional college shall be filled by the nominees of the Government or University, as the case may be, hereinafter referred to as "free seats". These students shall be selected on the basis of merit determined on the basis of a common entrance examination where it is held or in the absences of an entrance examination, by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. It is, however, desirable and appropriate to have a common entrance exam for regulating admissions to these colleges/institutions, as is done in the State of Andhra Pradesh. The remaining 50% seats(payment seats) shall be filled by those candidates who are prepared to pay the fee prescribed therefor and who have complied with the instructions regarding deposit and furnishing of cash security/Bank guarantee for the balance of the amount. The allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats. There shall be no quota reserved for the management or for any family, caste or community which may have established such college. The criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats. The only distinction shall be the requirement of higher fee by the 'payment students'. The Management of a professional college shall not be entitled to impose or prescribe any other and further eligibility criteria or condition for

admission either to free seats or to payment seats. It shall, however, be open to a professional college to provide for reservation of seats for constitutionally permissible classes with the approval of the affiliating University. Such reservation, if any, shall be made and notified to the competent authority and the appropriate authority at least one month prior to the issuance of notification calling for applications for admission to such category of colleges. In such a case, the competent authority shall allot students keeping in view the reservation provided by a college. The rule of merit shall be followed even in such reserved categories.

(3) The number of seats available in the professional colleges (to which this scheme is made applicable) shall be fixed by the appropriate authority. No professional college shall be permitted to increase its strength except under the permission or authority granted by the appropriate authority.

(4) No professional college shall call for applications for admission separately or individually. All the applications for admission to all the seats available in such colleges shall be called for by the competent authority alone, along with applications for admission to Government/University colleges of similar nature. For example, there shall be only one notification by the competent authority calling for applications for all the medical colleges in the State -- and one notification for all the engineering colleges in the State and so on.

The application forms for admission shall be issued by the competent authority (from such offices, centres and places as he may direct). The application form shall contain a column or a separate part wherein an applicant can indicate whether he wishes to be admitted against a payment seat and the order of preference, up to three professional colleges.

(5) Each professional college shall intimate the competent authority, the State Government and the concerned University in advance the fees chargeable for the entire course commencing that academic year. The total fees shall be divided into the number of years/semesters of study in that course. In the first instances, fees only for the first year/semester shall be collected. The payment students will be, however, required to furnish either cash security or bank guarantee for the fees payable for the remaining years/semesters. The fees chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent Court. The competent authority shall issue a brochure, on payment of appropriate charges, along with the application form for admission, giving full particulars of the courses and the number of seats available,t he names of the colleges, their location and also the fees chargeable by each professional college. The brochure will also specify the minimum eligibility conditions, the method of admission (whether by entrance test or otherwise) and other relevant particulars.

(6) (a) Every State Government shall forthwith constitute a Committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The Committee shall consist of a Vice-Chancellor, Secretary for Education (or such Joint Secretary, as he may nominate) and Director, Medical Education/Director Technical Education. The committee shall make such enquiry as it thinks appropriate. It shall, however, give opportunity to the professional colleges (or other association(s), if any) to place such material, as they think fit. It shall, however, not be bound to give any personal hearing to anyone or follow any technical rules of law. The Committee shall fix the fee once every three years or at such longer intervals, as it may think appropriate.

(b) It would be appropriate if the U.G.C. Frames regulations under Section 12A (3) of affiliated colleges, operating on no-grant-in-aid basis, are entitled to charge. The Council for Technical Education may also consider the advisability of issuing directions under Section 10 of the A.I.C.T.E. Act regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council and the Central Government may also consider the advisability of such regulation as a condition for grant of permission to new medical colleges under Section 10-A and to impose such a condition on existing colleges under Section 10-C.

(c) The several authorities mentioned in

sub-paras (a) and (b) shall decide whether a private educational institution is entitled to charge only that fee as is required to runt he college or whether the capital cost involved in establishing a college can also be passed on to students and if so, in what manner. Keeping in view the need, the interest of general public and of the nation, a policy decision may be taken. It would be more appropriate if the Central Government and these several authorities (U.G.C., I.M.C. and A.I.C.T.E.) coordinate their efforts and evolve a broadly uniform criteria in this behalf. Until the Central Government, U.G.C., I.M.G. and A.I.C.T.E. issue orders/regulations in this behalf, the committee referred to in the sub-para (a) of this para shall be operative. in other words, the working and orders of the committee shall be subject to the orders/regulations, issued by Central Government, U.G.C., I.M.C. or A.I.C.T.E., as the case may be.

(d) We must hasten to add that what we have said in this clause is merely a reiteration of the duty – nay, obligation – placed upon the Governments of Andhra Pradesh, Maharashtra, Karnataka and Tamil Nadu by their respective legislatures – to wit, Section 7 of Andhra Pradesh Act 5 of 1983,Section 4 of Maharashtra ,act 6 of 1988, Section 5 of Karnataka act of 1984 and Section 4 of Tamil Nadu Act 57 of 1992. Other States too may have to have similar provisions, carrying statutory force.

(7) Any candidate who fulfills the eligibility

conditions would be entitled to apply for admission. After the free seats in professional colleges are filled up, at least 10 day's time will be given to the candidates (students) to opt to be admitted against payment seats. The candidates shall be entitled to indicate their choice for any three colleges (if available). In such a case, he shall comply with the deposit and cash security/Bank guarantee – taking the institution charging the highest fees as the basis – within the said period of ten days. If he is admitted in an institution, charging less fee, the difference amount shall be refunded to him. (The cash security or Bank guarantee shall be in favour of the competent authority, who shall transfer the same in favour of the appropriate college if that student is admitted).

(8) The results of the entrance examination, if any, held should be published at least in two leading newspapers, one in English and the other in vernacular. The payment candidates shall be allotted to different professional colleges on the basis of merit-cum-choice. The allotment shall be made by the competent authority. A professional college shall be bound to admit the students so allotted. The casual vacancies or unfilled vacancies, if any, shall also be filled in the same manner. The management of a professional college shall not be permitted to admit any student other than the one allotted by the competent authority – whether against free seat or payment seat, as the case may be. It is made clear that even in the matter of reserved categories, if any, the

principle of inter se merit shall be followed. All allotments made shall be published in two leading newspapers as aforesaid and on the notice boards of the respective colleges and at such other places as the competent authority may direct, alongwith the marks obtained by each candidate in the relevant entrance test or qualifying examination, as the case may be . No professional college shall be entitled to ask for any other or further payment or amount, under whatever name it may be called, from any student allotted to it whether against the free seat or payment seat. ;

(9) After making the allotments, the competent authority shall also prepare and publish a waiting list of the candidates along with the marks obtained by them in the relevant test/examination. The said list shall be followed for filling up any casual vacancies or 'drop-out' vacancies arising after the admissions are finalized. These vacancies shall be filled until such date as may be prescribed by the competent authority. Any vacancies still remaining after such date can be filled by the Management.

It is made clear that it shall be open to the appropriate authority and the competent authority to issue such further instructions or directions, as they may think appropriate not inconsistent with this scheme, by way of elaboration and elucidation.

This scheme shall apply to and govern the admissions to professional colleges commencing from the academic year 1993-94.

We are aware that until the commencement of the current academic year, the Andhra Pradesh was following a somewhat different pattern in the matter of filling the seats in private unaided engineering colleges. Though all the available seats were being filled by the allottees of the Convener (State) -- and the managements were not allowed to admit any student on their own -- a uniform fee was collected from all the students. The concepts of 'free seats' and 'payment seats' were therefore not relevant in such a situation -- all were payment seats only. We cannot say that such a system is constitutionally not permissible. But our idea in devising this scheme has been to provide more opportunities to meritorious students, who may not be able to pay the enhanced fee prescribed by the Government for such colleges. The system devised by us would mean correspondingly more financial burden of payment on students whereas in the aforesaid system (in vogue in Andhra Pradesh) the financial burden is equally distributed among all the students. The theoretical foundation for our method is that a candidate/student who is stealing a march over his compatriot on account of his economic power should be made not only to pay for himself but also to pay for another meritorious student. This is the social justification behind the fifty per cent rule prescribed in clause (7) of this scheme. In the interest of uniformity and in the light of the above social theory, we direct the State of Andhra Pradesh to adhere to the system derived

by us."

10. It is to be noted that the Council of Architecture had issued "Guidelines on Admission to First Year of the Full Time Five year degree course in Architecture" which stipulated that admission to 5 year Architect course would be granted at the first year level through an aptitude test specially designed to assess the candidate's aptitude. The relevant clause of these guidelines read as under:-

> "1.1 In exercise of the powers conferred by clauses(e),(g),(h) and (j) of sub-section (2) of Section 45 read with Section 21 of the Architects act, 1972 (20 of 1972), the Council of Architecture, with the approval of the Central Government, framed the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983. These Regulations were published in the Gazette of India, Part III, Section 4, on 26th March, 1983 and 27th August, 1983."
>
> 1.3 These Regulations stipulate that admission to the 5-year B Arch course should be made at 1st year level through an aptitude test specially designed to assess the candidates' aptitude.

These regulations do not provide for lateral admission to any other stage/semester of the 5-year course in Architecture.

1.5 The candidates admitted to 1st year of a 5-year course without appearing in the aptitude test in architecture and who have been granted B.Arch. Degree or other qualifications shall not be deemed to have attained recognised qualification listed in the schedule of qualifications appended to the Architects Act, 1972. Such candidates will not be eligible for registration as an architect with the Council of Architecture.

1.6 As per the decision of the Supreme Court of India, delivered in the case of Unnikrishnan, J.P. And others Vs. State of Andhra Pradesh and others (AIR 1993 Supreme Court 2178), the aptitude test shall be conducted by the Competent Authority alone as well as Admission Counselling as enunicated under scheme-para 170 of the judgment.

1.7 The All India Council for Technical Education (norms and guidelines for fees and guidelines for admissions in professional college) Regulations, 1994, published in the Gazette of India : Extraordinary (Part II-Sec.3 (i) on May 26, 1994 provide in Regulation 8 (3) that : "The Council of Architecture constituted under Section 3 of the Architects Act, 1972 (20 of 1972), shall formulate a

comprehensive entrance test including aptitude test on an all India basis".

2.0 ELIGIBILITY FOR ADMISSION

A candidate who has passed 10+2 examination and has secured not less than 50% marks with Mathematics and English as subjects of examination shall be eligible for admission to 1st year of a 5-year B.Arch. Course, subject to an aptitude test."

11. Perusal of the Regulations and the Guideline framed by the respondent no.3 clearly shows that in order to be eligible to take the examination, a candidate was required to pass 10+2 examination securing not less than 50% marks with maths and english as subjects of examination and additionally was required to undertake an aptituoe test as per the pronouncement of the Apex Court.

12. It is to be noticed that All India Technical Education (Norms and Guidelines For Admission in Professional Colleges) Regulations were notified in 1994. Vide regulation 8 (3) it was mandated that the Council of Architecture constituted under Section 3 of the Architects Act 1972(Act 20 of 1972)

shall formulate a comprehensive entrance test including an aptitude test on All India Basis.

13. The petitioner states that she went to class 11 and 12 and that she was eligible and entitled to take admission to the five year degree course subject to her qualifying the aptitude test. This entrance test was to be conducted under the directions of the respondent no.1.

14. The respondent no.3 stated to have issued a public notice dated 21.2.2004 in National Daily the Hindu dated 27.2.2004 wherein the following note was provided:-

> **"Introduction of new courses/increase in intake** : Any institution desirous of introducing a 5-year degree course in Architecture or increase its existing intake or introducing an additional course in advised to get the feasibility of its proposal evaluated by COA to ensure its compliance with Sections 18, 19, 20, 21 and 45 of the Act read with Regulations 1983, for the conduct of the course.
>
> Relevant orders of the Hon'ble High Court of Madras : Hon'ble High Court of Judicature at Madras, vide its interim order dated 15.12.2003, has **restrained the All**

India Council for Technical Education from acting in any manner in interfering with the administration of the existing and establishment of the new institutions by imparting, education in Architecture as they are governed by the Architects Act, 1972 and its regulations pending disposal of the writ petition no. 36520 and other similar writ petitions.

Hon'ble High Court of Judicature at Madras, vide its interim order dated 28.11.2003, has restrained the Central Board of Secondary Education from conducting entrance examinations for the course of Bachelor of Architecture by prescribing entry level qualification other than what has been prescribed by the Council of Architecture pending disposal of the writ petition no. 34692 and 34693 of 2003."

15. So far as the eligibility for admission for the first ye Bachelor of Architecture course is concerned this public notic stated as under:-

"Eligibility for admission to 1st year B. Archi :
As per the Minimum Standards of Architectural Education Regulations 1983, No candidate, with less than 50% marks in aggregate, shall be admitted to the architecture course unless he/she has passed an examination at the end of the new 10+2 scheme of Senior School Certificate Examination or equivalent with

Mathematics and English as subjects of examination at the 10+2 level, subject to an Aptitude Test."

No lateral admission was permissible to the candidates. Therefore, so far as the admissions effected upto 21.2.2004 are concerned, the students faced no difficulties.

16. It is noteworthy that clause 11 and 12 takes two years to complete and the petitioner was taking the senior secondary class 12 examination which had taken place only in the first quarter of August, 2005. The petitioner was eligible in terms of this public notice dated 10.12.2004 as she has secured more than 50% marks and also studied english and maths as her compulsory subjects.

17. The respondents published a public notice for AIEEE admission notice to be held by the CBSE and the All India Engineering/Architects entrance examination 2005. There was a material departure from the earlier notification with regard to

the eligibility which stated thus:-

> "4. **Eligibility**
>
> Candidates must have passed 10+2 (Senior Secondary-Class XII) examination or its equivalent referred to as a qualifying examination from a recognized Board/University for admission to B.E./B.Tech., B. Arch & Planning Courses as under:-
>
> | Course | Compulsory subject | Anyone of the Optional Subjects |
> |---|---|---|
> | xx | xxx | xxxx |
> | B.Arch/B.Planning | Physics & Mathematics | Chemistry, Computer Science, Biology, Engineering Drawing." |

18. It is noteworthy that the respondents had done away with the prescription of qualifying marks of more than 50% in the 10+2 examination and had also changed the requirement of compulsory subject from english to physics. The information bulletin and application form in this behalf has been placed on the record of this case which states that the same has been done as per the decision of the CBSE which was published and printed by the CBSE and states that it was acting pursuant to the

Government of India resolution dated 18.10.2001 which lays down three examination scheme (i.e. JEE in AIEEE Delhi, national level and state level engineering level examination in state level institutions with the option to join the AIEEE). This information bulletin stated the following eligibility criterion:-

> "6. Eligibility Criteria : Candidates are, however, required to appear in the papers as per Scheme of Examination for AIEEE specified in para 2.4 of this Bulletin.
>
> 6.1 The minimum academic qualification for admission through AIEEE is a pass in the final examination of 10+2 (Class XII) or its equivalent referred to as the qualifying examination (see Appendix-VII). Those appearing in 10+2 (Class XII) final or equivalent examination may also appear in AIEEE for consideration of provisional admission.
>
> 6.2 Subject combinations required in the qualifying examination for admission to B.E./B.Tech. And B. Arch./B. Planning

Courses shall be as under :

Course	Compulsory	Anyone of the Operational Subjects
xxxx B.ARCH/B. PLANNING	xxxxx Physics & Mathematics	xxxx Chemistry, Computer Science, Biology, Engineering Drawing"

This is as per decision of the All India Council for Technical Education (AICTE).

19. The petitioner has contended that the aforestated prescription of the eligibility conditions by the All India Council of Technical Education has not been undertaken pursuant to any statutory action or legislative measures but is the result of an executive order or direction made by the Government of India.

20. It is contended that the petitioner has joined her class 12 course and exercised subject options only for reasons that the respondents had notified eligibility conditions which required her to take such subjects. The petitioner has throughout been

desirous of pursuing a career in Architecture. The respondents cannot be permitted to vary the eligibility criterion at this stage when she cannot change her subjects for the school leaving examination and has been rendered ineligible from undertaking the entrance examination for pursuit of the Bachelor of Architecture course. It is submitted that no office order could possibly supersede the legislative exercise undertaken in notifying the "Minimum Standards of Architectural Education Regulations, 1983" and the "Guidelines On Admission to the First Year of Full Time Five Year Degree Course in Architecture" and that the office order issued by the respondent nos. 1 and 4 cannot be given effect to by the respondent no. 2 in view of the statutory regulations framed by the Council of Architecture and notified in accordance with la by the Government of India.

21. It has further been submitted that the respondents have removed the essential condition of securing more than 50%

marks in the school leaving examination and have rendered eligible all candidates irrespective of the percentage secured by them subject to their having merely passed the examination.

22. The form of the petitioner was not being accepted and she was being considered disqualified to join the course. In this background the petitioner has contended that the regulations prescribing minimum norms and guidelines for admission to the architecture course have already been provided by the All India Council of Technical Education which is the supreme expert body and the All India Council of Technical Education does not have any legislative competency to issue directions or to make regulations in this behalf.

23. In the instant case there was no regulations framed by the Council of Architecture but a mere Government directive.

24. In this background the petitioner has made a challenge to the prescription of conflicting eligibility conditions by the respondent no.2 on the ground that the same is illegal, arbitrary

and has no nexus to the objects sought to be achieved.

25. So far as the instant case is concerned, it was urged on behalf of the petitioner that the executive directive issued by the Ministry of Human Resources Development and the norms fixed by AICTE with regard to the eligibility conditions for admission to courses in Architecture were completely without jurisdiction and the AICTE has no legislative competence to make provisions in relation to eligibility conditions, course content etc. for courses of architecture and the AICTE has no legislative competence even to make regulations in this behalf.

26. The respondents appeared on issuance of notice and submitted that inasmuch as the All India Council of Technical Education Act was a later at having been enacted in 1987, its provisions would prevail over the provisions of the Architect Act 1972. It has further been contended that inasmuch as the later Act was concerned with the field addressed by the earlier Act, there would be an implied repeal of the earlier Act. It has

further been contended on behalf of the All India Council of Technical Education that so far as the action of permitting, maintaining and managing standards of Architecture Education are concerned, the two enactments deal with the same subject matter and cannot stand together. It is All India Council of Technical Education Act which is a special enactment dealing with all aspects of technical education. Section 2(f) of the All India Council of Technical Education Act includes architectural education within the scope and purview of the enactment while the Architect Act, 1972 is concerned not with the education but only with the profession of architects.

27. It has been pointed out by the respondents that pursuant to interim orders dated 23.3.04 in WP(C) 34692/03 and WP(C) 34693/03 passed by the learned single judge of the High Court of Judicature at Madras the matter was examined in the Ministry of Human Resources and Development. A decision was taken on 7.4.2004 after noticing the complete facts of the matter. It

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was submitted that the President of the Council of Architecture respondent no.3 in the present matter participated in the meetings of the High Level Committee which had recommended the change in the eligibility conditions. It has also been submitted that the President of the Council of Architecture was present before the Executive Committee on 11.10.2002 and before the Council of All India Council of Technical Education when it ratified the recommendations of the High Level Committee on 24.12.2002. In these circumstances, after consideration of the entire matter the Ministry of Human Resources and Development issued a directive on 7.4.2004 holding that the entry level qualifications prescribed by the All India Council of Technical Education only be considered by the CBSE as the entry level qualifications for appearing in the examination to be held by the CBSE in the AIEEE 2004 for the admission to the Bachelor of Architecture course in session 2004-2005. It has been contended on behalf of

All India Council of Technical Education that the decision of the Government is a considered decision and is binding upon Council of Architecture as well. It is these eligibility conditions which have been notified in the impugned public notice dated 10.12.2004.

28. Learned senior counsel Mr. Raju Ramachandran appearing for the All India Council of Technical Education has further contended that so far as technical education is concerned, 'architecture' is covered within its ambit by virtue of Section 2 (g) of the All India Council of Technical Education Act 1987. It is contended that it is settled law that a prior enactment shall stand impliedly repealed by a later enactment covering the same subject. It is further contended that in any case, the All India Council of Technical Education Act, 1987 was a special law which shall prevail over the Architecture Act, 1972 which is a general law. An alternative submission was made that whereas technical education is required to be provided for under the All

India Council of Technical Education Act 1987, however the Architecture Act is concerned with the profession of Architects, ethics of Architects and the code of conduct and action to be taken for breaches thereof.

29. Learned senior counsel appearing for the AICTE has urged that the AICTE Act 1987 is a special enactment. It was further urged that even if AICTE Act 1987 is held to be a general act, then the same being the later enactment, shall prevail over the provisions of the Architects Act 1972. It was urged with all the vehemence at the command of learned counsel that the provisions of the Architects Act 1972 would stand impliedly repealed by the later enactment.

30. Reliance has been placed on the pronouncement of the Apex court in 1989(3) SCC 557 entitled Ratan Lal Adukia vs. Union of India and 1984(3) SCC 127. Strong reliance is placed on judgment of Punjab and Haryana High Court reported at AIR 1995 Punjab & Haryana 315 entitled Gandhi College of

Pharmacy vs. All India Council of Technical Education in support of the submission that there is an implied repeal of the earlier Act. Reliance has been placed on the text contained in the 9th edition of Justice G.P.Singh's Principles of Statutory Interpretation. On the merits of the decision it is contended that the physics was added as an essential subject on the account of the same being necessary for the purposes of undertaking of bachelor's course in Architecture and that the 50% benchmark in a senior level examination was consciously removed. No explanation for doing so has been rendered.

31. Mr. Amit Bansal appearing for the Central Board for Secondary Education – respondent no. 2 herein (CBSE for brevity) submitted that it is taking the examination since 2002 as per the norms laid down by the All India Council of Technical Education. A directive in this behalf was issued by the Government of India on 18.10.2001. The eligibility qualification for admission to the courses are laid down by the

respondent no. 4, AICTE. It appears that the Registrar of the School of Planning & Architecture had addressed a letter dated 15th December, 2003 to the respondents demanding implementation of the eligibility criterion as per the Minimum Standards stipulated in the Regulation of 1983 prescribed by the respondent no. 3. It is stated that CBSE had sought a clarification from the Ministry of Human Resources and Development of the Government of India vide its letter dated 8.1.2004 with regard to the eligibility criteria for admission to the Bachelor of Architecture course pointing out that the candidates could get registration from the Council of Architecture only if there was compliance with the Minimum Standards of Architecture Regulations 1983 which is mandatory for practising purposes. It was also pointed out that there was variance in the eligibility conditions laid down by the All India Council of Technical Education and that the intervention of the Ministry of was necessary.

32. The respondent no. 2 CBSE has placed reliance on the notification dated 18th October, 2001 and a letter dated 29.2.2004 received from the Ministry of Human Resources and Development (respondent no. 1 herein) referring to a public notice issued by the All India Council of Technical Education notifying the public about amendment to the existing norms for admission qualification and also the requirement of the candidates qualifying in the entrance test. The decision dated 7.4.2004 of the Government of India pursuant to orders of the High Court of Judicature at Madras dated 23rd February, 2004 has been placed on record. According to this decision dated 7th April, 2004, it was directed that the entry level qualification for appearing in the examination to be held by CBSE in AIEEE 2004 for admission to the Bachelor of Architecture Course in the session 2004-2005 should be the qualification prescribed by the AICTE. According to learned counsel, in this view of the matter, it is not open to the petitioner to challenge the norms

laid down by AICTE.

Learned counsel has submitted that the decision to prescribe the All India test was pursuant to the pronouncement in TMA Pai's case by the Apex Court and that CBSE has no role to play in the matter as it only conducts the entrance examination.

33. On the other hand Mr.Naveen Nath learned counsel for the Council of Architecture-respondent no. 3, points out that the two enactments are both central legislations. There is no repugnancy between two acts and in any case, conflict if at all, can be easily reconciled. The Architects' Council consists of experts in the field and is really the expert body created for the purposes of implementing the objects of the enactment. It is submitted that there is a presumption against an implied repeal of an enactment and that there is nothing in the two enactments which could in any manner amount to an inconsistency. It is submitted that the All India Council of Technical Education

has been created in order to coordinate and regulate education relating to certain subjects in the entire country. Section 10(i) of the All India Council of Technical Education Act requires such areas of technical education to be addressed where no regulation exists as management, applied arts etc. According to learned counsel, there is a qualitative difference in the regulation making power conferred under Section 23 of the All India Council of Technical Education Act and under Section 45 of the Architects' Act. It is further submitted that the Council of Architects had sent a dissent note to the Council of All India Council of Technical Education with regard to the change/amendment in the eligibility conditions and the recommendations for removal of the minimum percentage for eligibility to take the examination and the requirement of the subject of physics. It is further pointed out that the Minimum Standards of Architect Education Regulations 1983 framed and notified by virtue of exercise of power under Section 45 read

with Section 21 of the Architect Act 1972 are statutory. The Minimum Standards of Architect Education have been provided so that the standards do not fall in the institutions below the minimum standards prescribed from time to time by the Council to meet the requirements of the profession and education thereof. Strong reliance is placed on the expertise of the Council and also of the requirement to ensure high quality and standards of students who are seeking admission to the course. It is submitted that the removal of the minimum percentage of marks for being eligible to join the course is detrimental to the academic standards and that the essential subjects have been prescribed by the Council of Architecture having regard to the requirement of the course and the subjects contained therein.

34. The issue raised in the present case is as to whether the All India Council of Technical Education Act, 1987 (AICTE Act) overrides the provisions of the Architects Act, 1972 in the matter of prescribing norms for admissions to architectural

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courses and as to whether the AICTE Act, being the later Act has impliedly repealed the provisions of the Architects Act.

35. Judicial review of the administrative action and judicial interpretation of the legislative provisions has serious limitations. Nevertheless, that power is a constitutional fundamental which must be exercised circumspectly but without being scared by statutory omnipotence or executive finality(Ref: 1981(1) SCC 315-LIC vs D.J. Bahadur)

36. So far as interpretation of statutes is concerned, it has repeatedly been stated that the problem of decoding the legislative intent is fraught with perils and pit falls. In this behalf I may advert to the notings of Reed Dickerson in the text 'The Interpretation and Application of Statutes', 1975 Edition (at pages 236 to 237) wherein the author thus stated:-

> "To do his cognitive job well, a judge must be unbiased, sensitive to language usages and shared tacit assumptions, perceptive in combining relevant elements affecting meaning, capable of reasoning deductively, and generously endowed with good judgment. In

view of these formidable demands, it is hardly surprising that judges often disagree on the true meaning of a statute."

37. Lord Denning with regard to statutory interpretation has observed:-

> " A judge should not be a servant of the words used. He should not be a mere mechanic in the powerhouse of semantics."

38. Reed Dickerson has in The Interpretation And Application Of Statutes warned against 'the disintegration of statutory construction' and quoted Fuller (the 'Positivism and Fidelity to Law --A reply to Prof.Hart, 71 Harv L.Rev 665, 666, 669 to state:

> ".....We do not proceed simply by placing the word in some general context..... Rather, we ask ourselves, what can this rule be for? What evil does it seek to avert?"

39. The Apex Court has adverted to the aforestated valuable quotations on several occasions while considering statutory enactments where there is conflict between two enactments or

with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities.- Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885(891) observed that:

> General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or

apart from the general law.

> To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose---these help the judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now."

42. Applying these principles, it was held in AIR 1963 SC 1561(at page 1565) entitled Municipal Council Palai Vs. T.J.Joseph by the Apex Court that the provisions of a Municipal Act which empowered a municipal authority to provide for bus stands were not held to be repealed by a subsequent Motor

Vehicles Act which empowered the Government or its delegate to do the same. The reasons for this conclusion were mainly twofold:-

(i)That the Municipal Act was a special law applying to municipal areas and the Motor Vehicles Act was a general law applying to all areas in general.

(ii)That both the provisions were enabling and there could be no question of conflict till the authority in the later act also provided for bus stands for the same areas for which the bus stands had already been provided under the Municipal Act.

43. Thus, in fact, a law may be special when considered in relation to another piece of legislation but only a general one vis-a-vis till another. In this regard, it will be useful to advert to the law governing matters pertaining to medical education. Such a law would be a special law in relation to a statute embracing education of all kinds but must be regarded as a general law when preference over it is claimed for what may be a more special law. Such more special law would be an enactment in

the nature of a legislation dealing with only one aspect of medical education, for instance legislation restricted to the field of surgery. This "more special law" may become general if there is a conflict between it and another legislation operating in a still narrower field, for instance, that is surgery in a specific area as cardithoracic surgery or neuro surgery.

44. "Special" and "general" are, therefore, relative terms in the context of statute. It is the content and context of one statute in comparison to the other which determines which of the two is to be regarded as a special enactment vis-a-vis the others.

45. In the pronouncements reported at AIR 1979 SC 984(at pages 988-989); (1979) 3 SCC 47 entitled Justiniano Augusto De Piedade Barreto vs. Antonio Vincente Da Fonseca and AIR 1964 SC 260 (at pages 262-263) entitled Kaushalya Rani vs. Gopal Singh, it was held by the Apex Court that a law applicable to a locality or to a class of cases or individuals is a special law as distinguished from a general law which applies to

the whole community.

46. A question came up for consideration before the Apex Court as whether the prohibition against commencement of legal proceedings and suits by virtue of Sec. 446 (1) of the Companies Act 1956 would hold in respect of remedies provided under Sec. 14 & 41 of the Life Insurance Act (31 of 1956). In the judgment reported at AIR 1966 SC 135 entitled Damji Valji Shah and another Vs. Life Insurance Corporation of India, it was held that the provisions of the LIC Act related to a special class and the same was a special enactment and, therefore, the prohibition under the Companies Act 1956 would not apply. Similarly in AIR 1994 SC 2544 entitled Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another it was held that the general provisions contained in Arbitration Act 1899 were effected by Section 52 of Indian Electricity Act, 1910 which carved out certain matters only as available for determination by

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arbitration. Only such matters were directed to be determined by the Arbitrator as arose between the consumer and the licencee as per the provisions of the Electricity Act on the principle of generalia specialibus non derogant.

47. It would be useful to notice the statement of law in Craies on Statute Law, 1971 Edition at pages 371 to 378 wherein the author has stated thus:-

> "As already stated when two statutes, although both are expressed in affirmative language, are contrary in matter, the latter abrogates the former. "The said rule that *leges posteriores priores contrarias abrogant*, was well agreed, but as to this purpose *contrarium est multiplex.(page 371 – 372)*
>
> This rule is often difficult to apply, because the question always arises whether the two statutes are actually or only apparently inconsistent with one another. (page 372)
>
> xxxx "What words," said Dr. Lushington in *The India*, "will establish a repeal by implication it is impossible to say from authority or decided cases. If, on the one hand, the general presumption must be against such a repeal, on the ground that the

intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand, it is not necessary that any express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequence; or if the entire subject-matter were taken away by the subsequent statute. Perhaps the most difficult case for consideration is whether the subject-matter has been so dealt with in subsequent statutes that, according to all ordinary reasoning, the particular provision in the prior statutes could not have been intended to subsist, and yet, if it were left subsisting, no palpable absurdity would have been occasioned." It must therefore always be a question for the court to decide whether this second rule as to intention is applicable or not, and in coming to a decision on this point, repeal by implication is never to be favoured. "We ought not to hold a sufficient act repealed, not expressly as it might have been, but by implication, without some strong reason." So in *Flamnagan v. Shaw*, the Court of Appeal held that section 18 of the Distress for Rent act 1737 was not repealed by the Increase of Rent and Mortgage Interest (War Restrictions) act 1915 as the earlier section was not inconsistent with the later. However, "every act must be considered with reference

to the state of the law when it came into operation. Every act is made either for the purpose of making a change in the law or for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment."(page 372 – 373)

If the later act contains nothing else contrariant to an earlier Act except a mere recital in the later act, this "is not sufficient to repeal the positive provisions of a former statute without a clause of repeal." And "it would be giving too much effect to the loose words in a schedule if we were to decide that they had repealed the positive directions of a previous Act."

Even if a subsequent statute, taken strictly and grammatically, is contrary to a previous statute, yet if at the same time the intention of the legislature is apparent that the previous statute should not be repealed.(page 376)

The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selborne in *Seward v. 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 forces of such general words, without any indication of a particular intention to do so." "There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell on the *Interpretation of Statutes*." The general maxim is, *Generalia specialibus non derogant*-i.e. general provisions will not abrogate special provisions. "When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."(page 377–378)

48. Undoubtedly, the operation of a general enactment may be curtailed by a later special Act even if the general legislation contained a non-obstante clause. (Re:AIR 1966 SC 135: 1965

(3) SCR 665 entitled RV Shah Vs. LIC). In this case the court was examining the prohibition contained in sec. 446 of the Indian Companies Act 1956 prohibiting the commencement of proceedings in the nature of a suit or any other legal proceedings without leave of the Court. It was held that by the statutory provisions of the LIC 1958, a tribunal had been constituted and Sec. 15 of the LIC Act enabling the Insurance Corporation to file a case for recovery of amounts. Exclusive jurisdiction relating to insurance was conferred on such tribunal in this behalf. The court held that the provisions of the special enactment, the LIC Act prevail over the provisions of the general law relating to companies in general in the Indian Companies Act, 1956.

49. The principle laid down in this case was followed in giving overriding effect to the provisions of the Recovery of Debts to Banks and Financial Institutions Act 1993 in the judgment reported in Allahabad Bank Vs. Canara

Bank reported at JT 2004 (4) SC 411: AIR 2000 SC 1535. It was held that the provisions of the Recovery of Debts to Banks and Financial Institutions Act is a special enactment relating to debts to banks, financial institutions and that the Companies Act, 1956 is a general Act applicable to companies generally.

50. It becomes necessary to notice the effect of the non-obstante clause in the Architects Act 1973 in view of the contention made by Mr. Raju Ramachandran, learned Senior Advocate appearing for the AICTE to the effect that the existence of the non-obstante clause in the Architects Act 1972 would be immaterial as the Architect Act 1972 was a prior general legislation.

51. The conflict between one or more enactment operating in the same field and one or the other or both containing a non-obstante clause stating that its provisions will have effect "notwithstanding anything inconsistent therein with any other law for the time being in force" is resolved on a consideration of

the purpose and the policy underlining the enactment and the language used therein. The issue as to which of the two enactments has a general application and which of the two will prevail or whether the earlier enactment was repealed by virtue of the later enactment being given effect to in the same field, can be resolved only by reference to the context of the statute and the purpose for which the two have been drafted.

52. I may advert to the judgments cited on behalf of the respondent in support of the submissions noted above. Reliance has been placed on the judicial pronouncement reported at 1984 (3) SCC 127 entitled Ajoy Kumar Banerjee and others Vs. UOI. This case related to the conditions of service employees under the banking service. The Court while considering the conflict between two legislations held as under:-

> 38. As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail of the principle "Generalia specialibus non derogant". The general rule to be followed in

case of conflict between two statutes is that the labour abrogates the earlier one. In 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 references 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 absences 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."
(Emphasis added)

53. The Court placed reliance on the earlier pronouncement in the LIC Vs. Vijay Bahadur case and on Maxwell Interpretation

of Statutes (4th Edition at pages 196-98) laying down the tests noticed hereinabove.

54. However so far as the question of conflict between the statutes is concerned, it was noticed that the later statute which was being examined specifically provided for exclusion of the earlier enactment.

55. So far as the issue of implied repeal of the earlier enactment is concerned, Mr.Raju Ramachandra learned senior Counsel relied on the pronouncement of the Apex Court reported at **(1989) 3 SCC 537 entitled Ratanlal Adukia Vs. UOI.** The court was called upon to consider the provisions of Section 14 of the Railways(Amendment) Act, 1961(31 of 1961) amending Section 80 of the Railways Act, the operation of Section 20 of the CPC and Section 18 of the Presidency Small Cause Courts Act 1882 stood impliedly repealed. Section 80 was a complete, self contained, exhaustive code in regard to place of suing. Upon consideration of the matter it was held by

the Apex Court as follows:-

> "18.....
> 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.

19. The High Court has come to the conclusion that new Section 80 made a conscious departure on the law as to the place of suing in respect of suits of a particular subject matter envisaged by that section. The High Court has held that the new Section 80 is a self-contained provision in regard to the choice of for a for such suits. According to the

High Court, there was no need for the legislature to specify the places of suing which would otherwise be covered by Section 20 CPC unless the special prescription as to places of suing was considered to be necessary--- in derogation to the general law as the matter contained in Section 20 CPC or the provisions in the Small Cause Courts Act.

20. As to the words "may be instituted" occurring in that section, the High Court observed:

The use of the expression 'may be instituted' in Section 80 of the Railways Act was equivalent to 'shall be instituted'. Section 80 conferred right to institute suits for compensation against the railways for breach of their obligations for carrying passengers, animals or goods specified in Chapter VII of the Indian Railways Act. Both the obligation on the part of the railways and the right of the consignor and the consignee to institute suits are now statutory in their nature. The clear intendment of the legislature was that it would be obligatory for the plaintiffs to institute suits only in the courts mentioned in Section 80 of the Railways Act for enforcement of the claims for compensation against the railways.

21. After a consideration of the matter, we are inclined to the view that the reasoning of and the conclusion reached by the Full Bench of the Calcutta High Court that the new Section 80 is a self-contained provision are sound and

require to be preferred to the view expressed by the Assam and the Madras High Courts. The view of the Full Bench is to be referred having regard to the weight and preponderance of the relevant interpretatory criteria. No appeal, in our opinion, could be made to Section 21-A of the State Amendment to the Small Cause Courts Act either, inasmuch as that provision cannot be understood to have been intended to cover a situation of the present type. It does not exclude a special law applicable to and governing a distinct class of subject matter intended to be covered by that special law."

56. In the legislation in hand, no such intention of the legislature is discernible. The spirit intendment and purpose of the statutes and their areas of operation are clearly distinct.

57. Strong reliance was also placed on a single Bench pronouncement reported as AIR 1995 P&H 315 entitled Gandhi College of Pharmacy Vs. AICTE where the Court considered the provisions of the Pharmacy Act vis-a-vis the AICTE Act. 56. "It would be noteworthy to notice the observations of the Court in the Gandhi College case which was as follows:

"12. Looking at the background in which the 1987 Act was enacted, the object of Parliament was to co-ordinate 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. The view that I am taking finds support from a Division Bench judgment of Madras High Court in Adhiyaman Educational and Research Institutions vs. State of Tamil Nadu AIR 1991 madras 246 which has since been approved by the Apex Court in (1995) 3 JT (SC) 136: (1995 AIR SCW 2179).

It must, therefore, be held that the provisions of the 1987 Act govern the college and the provisions of the 1948 Act stand repealed and altered to the extent they provide for the minimum standard of education and approval of courses and examinations in pharmacy. In this view of the matter, AICTE was well within its rights to grant approval to the college and was also competent to lay down the conditions enumerated in the communication dated 7.1.1994(Annexure P5 with the writ petition)."

58. In view of the reliance placed on the judgment in the Gandhi College case, I have also carefully scrutinized the scheme of the Pharmacy Act 1948. There is material variance between the scope of the Pharmacy Act 1948 and the Architects

Act 1972. This Act does not contain the provisions relating to education or the statutory requirement of binding recommendations of the Council of Architecture for recognition of courses etc. The Pharmacy Act does not contain any non-obstante clause as provided in the Architects Act 1972. The elaborate provisions of the Act of 1972 are conspicuously absent from the Architects Act 1972 and even from the AICTE Act 1987.

59. It has been pronounced in several judgments by the Apex Court that the scheme of the enactments and the context in which statutory provisions have been enacted are to be considered for resolving issues related to repugnancy, implied repeal and also as which of two Statutes is to be considered as general or special.

60. For the purposes of answering the contentions raised in the present case, in my view the judgment in the Gandhi College case (supra) has no application.

61. It would be useful to advert to the authoritative pronouncement reported in (1990) 4 SCC 406 entitled Ashoka Mktg. Limited Vs. Punjab National Bank Limited wherein the Apex Court was concerned with the applicability of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 vis-a-vis the Delhi Rent Control Act, 1958. It was urged before the Court that the provisions of the 1971 enactment override the provisions of the Delhi Rent Control Act 1958.

62. The Apex Court held that both the enactments were special enactments and having regard to the policy, purpose and legislative intent of the two special enactment, the 1971 Act would prevail over the 1956 Act in respect of the properties which were covered under the provisions the Public Premises Act 1971. The Court laid down the binding principles of law as follows:

> "49. This means that both the statutes, viz. the Public Premises Act and the Rent Control Act, have been enacted by the same legislature, Parliament, in exercise of the

legislative powers in respect of the matters enumerated in the Concurrent List. We are, therefore, unable to accept the contention of the learned Additional Solicitor General that the legislative powers in respect of matters enumerated in the Union List would ipso facto override the provisions of the Rent Control Act enacted in exercise of the legislatives powers in respect of matters enumerated in the Concurrent List. In our opinion the questi n as to whether the provisions of the Public Premises Act override the provisions of the Rent Control Act will have to be considered in the light of the principles of statutory interpretation applicable to laws made by the same legislature.

50. One such principle of statutory interpretation which is applied is contained in the latin maxim : *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim : *generalia specialibus non derogant* (a general provision does not derogate from a special one.) This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, Statutory

Interpretation pp.433-34).

54. The Public Premises Act is a later enactment, having been enacted on August 23, 1971, whereas the Rent control Act was enacted on December 31, 1958. It represents the later will of Parliament and should prevail over the Rent Control Act unless it can be said that the Public Premises Act is a general enactment, whereas the Rent Control Act is a special enactment and being a special enactment the Rent Control Act should prevail over the Public Premises Act. The submission of learned counsel for the petitioners is that the Rent Control At is a special enactment dealing with premises in occupation of tenants, whereas the Public Premises Act is a general enactment dealing with the occupants of public premises and that insofar as public premises in occupation of tenants are concerned the provisions of the Rent Control Act would continue to apply and to that extent the provisions of the Public Premises Act would not be applicable. In support of this submission reliance has been placed on the non-obstante clauses contained in Sections 14 and 22 of the Rent Control Act as well as the provisions contained in Sections 50 and 54 of the said Act. On the other hand the learned counsel for the respondents have urged that the Rent Control Act is a general enactment dealing with the relationship of landlord and tenant generally, whereas the Public Premises Act is a special

enactment making provision for speedy recovery of possession of public premises in unauthorised occupation and that the provisions of the Public Premises Act, a later special Act, will, therefore, override the provisions of the Rent Control Act insofar as they are applicable to public premises in occupation of persons who have continued in occupation after the lease has expired or has been determined. The learned counsel for the respondents have placed reliance on Section 15 of the Public Premises Act which bars the jurisdiction of all courts in respect of the eviction of any person who is in unauthorised occupation of any public premises and other matters specified therein. It has been submitted that the said provision is also in the nature of a non-obstante clause which gives overriding effect to the provisions of the Public Premises Act. Thus each side claims the enactment relied upon by it is a special statute and the other enactment is general and also invokes the non-obstante clause contained in the enactment relied upon.

64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government

has substantial interest or corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred in Section 2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments in the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

65. As regards the non-obstante clauses contained in Sections 14 and 22 and the

provisions contained in Sections 50 and 54 of the Rent Control Act, it may be stated that Parliament was aware of these provisions when it enacted the Public Premises Act containing a specific provision in Section 15 barring jurisdiction of all courts (which would include the Rent Controller under the Rent Control Act). This indicates that Parliament intended that the provisions of the Public Premises Act would prevail over the provisions of the Rent Control Act in spite of the above mentioned provisions contained in the Rent Control Act."

63. Similar issues arose for consideration before the Apex Court in the case entitled **Medical Council of India v. State of Karnataka, reported at 1998 (6) SCC 131** wherein the Court was concerned with the provisions of the Medical Council of India Act, 1956 and was called upon to decide on whether they would prevail over the Karnataka State University Act, 1976 and Karnataka Education Institute (Prohibition of Capitation Fee) Act, 1984 in view of repugnancy. Such situation was equally applicable to the Dentists Act,1948. The Apex Court was considering the effect and bindingness of the regulations framed

under Sec. 33 and 33 A of the Medical Council of India Act, 1956. The Court held as under:

> "27. The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the University of the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards ares maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical

colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same Regulations under Section3 3 of the Medical council act, which were made in1 977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail. Teacher-student ratio prescribed inb 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe apart from other things, that the number of teaching beds in the attached hospital will haves to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirement for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.

30. Having thu' held that it is the Medical Council which can prescribe the number of students to be admitted in medical courses in a medical college or institution, it is the Central Government alone which can direct increase in the number of admissions but only on the

recommendation of the Medical Council. In our opinion, the learned Single Judge was right in his view that no medical college can admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government and that Sections 10-A, 10-B and 10-C will prevail over Section 53(10) of the State Universities Act and Section 4(1)(*b*) of the State Capitation Fee Act. To say that the number of students as permitted by the State Government and/or the university before 1-6-1992 could continue would be allowing an illegality to perpetuate for all time to come. The Division Bench, in our opinion, in the impugned judgment was not correct in holding that admission capacity for the purpose of increase or decrease in each of the medical colleges/institutions has got to be determined as on or before 1-6-1992 with reference to what had been fixed by the State Government or the admission capacity fixed by the medical colleges and not with reference to the minimum standard of education prescribed under Section 19-A of the Medical Council Act which the Division Bench said were only recommendatory. *Nivedita Jain case* does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admissions will have to be regulated on the basis of the capacity fixed or determined by the Medical Council. The plea of the State

Government that power to regulate admission to medical colleges is the prerogative of the State has to be rejected.

31. What we have said about the authority of the Medical Council under the Indian Medical Council Act would equally apply to the Dental Council under the Dentists Act."

64. It would also be appropriate to refer to the pronouncement reported at (1999) 7 SCC 120 entitled **Dr. Preeti Srivastava and Another Vs. State of MP & Others** wherein the Court was concerned with the issue as to whether apart from providing reservation to Post-graduate courses in engineering and medicine for special category candidates, it is open to the State to prescribe different admission criterion in the sense of prescribing minimum qualifying marks for special category candidates seeking admission under the reserved quota. The issues raised before the Apex Court were answered thus":

31. A large differentiation in the qualifying marks between the two groups of students would make it very difficult to maintain the requisite standard of teaching and training at the postgraduate level. Any good teaching

institution has to take into account the caliber of its students and their existing level of knowledge and skills if it is to teach effectively any higher courses. If there are a number of students who have noticeably lower skills and knowledge, the standard of education will have to be either lowered to reach these students, or these students will not be able to benefit from or assimilate higher levels of teaching, resulting in frustration and failures. It would also result in a wastage of opportunities for specialised training and knowledge which are by their very nature, limited.

32. It is, therefore, wrong to say that the standard of education is not affected by admitting students with low qualifying marks, or that the standard of education is affected only by those factors which come into play after the students are admitted. Nor will passing a common final examination guarantee a good standard of knowledge. There is a great deal of difference in the knowledge and skills of those passing with a high percentage of marks and those passing with a low percentage of marks. The reserved category of students who re chosen for higher levels of university education must be in a position to benefit and improve their skills and knowledge and bring it to a level comparable with the general group, so that when they emerge with specialised knowledge and qualifications,t hey are able to function efficiently specialized

knowledge and qualifications, they are able to function efficiently in the public interest. Providing for 20% marks as qualifying marks for the reserved category of candidates and 45% marks for the general category of candidates, therefore, is contrary to the mandate of Article 15(4). It is for the Medical Council of India to prescribe any special qualifying marks for the admission of the reserved category candidates to the postgraduate medical courses. However, the difference in the qualifying marks should be at least the same as for admission to the undergraduate medical courses, if not less.

48. In this connection, our attention is also drawn tot he emphasis placed on some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In *Ajay Kumar Singh v. State of Bihar* this Court, relying on *Nivedita Jain* said that everybody has to take the same postgraduate examination to qualify for a postgraduate degree. Therefore, the guarantee of quality lies in everybody passing the same final examination. The quality is guaranteed at the exit age. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in *Post Graduate Institute of Medical Education & Research v. L. Narsimhan.* This

reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellences. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellences is to be promoted at postgraduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standards. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs caliber of students, caliber of teachers, teaching facilities, hospital facilities, standard of examinations etc that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in *Ajay Kumar Singh v. State of Bihar* and *Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan. The Indian Medical Council Act, 1956 and standards.*

55. We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may *prescribe* standards of postgraduate medical education for the guidance of universities. The second

part of sub-section (1) says that the Council may *advise* universities in the matter of securing uniform standards for postgraduate medical education throughout. The last part of sub-section(1) enables the Central Government to constitute from amongst the members of the Council, a Postgraduate Medical Education Committee. The first part of sub-section(1) empowers the Council to prescribe standards of postgraduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practice. Before granting such recognition, a power is given tot he Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The Postgraduate Medical Committee is also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college, hospital or other institution where

medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition concerned in the manner provided in Section 19. Section 19-A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than postgraduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council of India Act. We, therefore, disagree with the overrule and finding given in *Ajay Kumar Singh v. State of Bihar* to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed."

65. In this background, it is necessary to examine the provisions of the Architects Act 1972 vis-a-vis the provisions of the All India Council of Technical Education Act, 1987. Perusal of the statement

of objects and reasons for enacting the Architects Act 1972 shows that the same was necessitated on account of building activity in the country achieving extreme complexity and magnitude. Shortage of developed urban space resulted in complete change of attitude and management of space which was short in availability. Whereas single storey units were the earlier norms, for want of space, multi-storeyed residential and office buildings as well as factory buildings were becoming the norms and in these circumstances it was necessary to have technically qualified Architects who were well equipped to deal with all the nuances and specialised considerations which go into construction of structures which can withstand the rigors of nature, has the stability and strength to bear natural calamities as earth quakes, tornadoes etc. while ensuring quality of existence and life to the citizens of the country. Hence a law was framed to control the profession of architects, by creating a Council of Architects which was vested with several statutory functions as well as requirements of registration with the statutory Council prior to practising the profession of Architecture.

66. So far as the All India Council of Technical Education Act, 1987 is concerned, it appears that in 1945 by virtue of a government resolution, a national-expert body namely the 'All India Council of Technical Education' (AICTE for brevity) was set up for ensuring coordinated development of technical education in accordance with the approved standards. It was found that during the first three decades, the Council functioned quite effectively and there was phenomenal development of technical education in this period. However in the later years, large number of private engineering colleges and polytechnics came up in complete dis-regard of the guidelines laid down by the All India Council of Technical Education which had serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Such growing erosion of standards led to the AICTE in its meeting held in 1981 concluding that it required statutory powers to regulate and maintain standards of technical education in the country. Consequently a National Working Group was set up in November, 1985 which recommended that the AICTE should be

vested with National Statutory Authority for planning, formulation, maintenance of norms and standards, accredition, funding of priority areas, monitoring, evaluation etc. The statement of objects and reasons in support of the bill set out the aims of the proposed enactments as under:-

> "3. The Bill seeks to provide statutory powers to the All India Council for Technical Education to ensure:
>
> (i) proper planning and co-ordinated development of the technical education system throughout the country;
> (ii) promotion of qualitative improvement of technical education in relation of planned quantitative growth, and
> (iii) regulation of the system and proper maintenance of norms and standards."

67. In order to examine the area in which the two statutory enactments operate and the manner in which the statutory power has been vested upon them it would be useful to notice the material provisions thereunder:-

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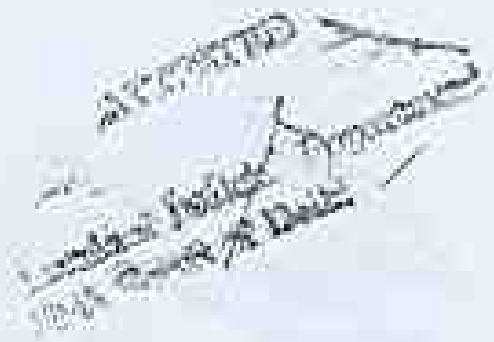
2. Definitions – In this Act, unless the context otherwise requires, -	2(g) "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare,
(a)"architect" means a person whose name is for the time being entered in the register ;	
(b) "Council" means the Council of the Architecture constituted under Sec. 3;	
(c) "Indian Institute of Architects" means the Indian Institute of Architects registered under the Societies Registration Act, 1860;	
(d) "recognized qualification" means any qualification in architecture for the time being included in the schedule or notified under Sec. 15;	3Establishment of the council ---(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Council by the name of the All India Council for Technical Education.
(e) "register" means the register of architects maintained under Sec. 23;	
(f) "regulation" means a regulation made under this Act by the Council;	3(4) The Council shall consist of the following members, namely:-
	(a) a Chairman to be appointed by the Central Government;
	(b) a Vice-Chairman to be appointed by the Central Government;
14. Recognition of qualifications granted by authorities in India – (1) The qualifications included in the schedule or notified under Sec. 15 shall be recognized qualifications for the purposes of this Act.	(c) the Secretary to the Government of India in the Ministry of the Central Government dealing with education, ex officio;
(2) Any authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette amend the Schedule so as to include such qualification therein and any such notification may also direct an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognized qualification only when granted after a specified date;	(d) the Educational Adviser(General) to the government of India, ex officio;
	(e) the Chairman of the four Regional Committees, ex officio;
	(f) the Chairman of,—
	(i) the All India Board of Vocational Education, ex officio;
	(ii) the All India Board of Technician Education, ex officio;



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PROVIDED THAT until the first Council is constituted, the Central Government shall, before issuing a notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette. 15. Recognition of architectural qualifications granted by authorities in foreign countries – (1) The Central Government may, after consultation with the Council, direct, by notification in the Official Gazette, that an architectural qualification granted by any university or other institution in any country outside India in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be a recognized qualification for the purposes of this Act or, shall be so only when granted after a specified date or before a specified date; PROVIDED THAT until the first Council is constituted the Central Government shall, before issuing any notification as aforesaid, consult the expert committee set up under the proviso to sub-section (2) of Sec. 14. (2) The Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a register of architects, for settling of a scheme, of reciprocity for the recognition of architectural qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, direct that such architectural qualification as the Council has decided should be recognized, shall be deemed to be a recognized qualification for the purposes of this Act, and any such notification may also direct	(iii) the All India Board of Under-graduate Studies in Engineering and Technology, ex officio; (iv) the All India Board of Post-Graduate Education and Research in Engineering and Technology, ex officio; (v) the All India Board of Management Studies, ex officio; (g) one member to be appointed by the Central Government to represent the Ministry of Finance of the Central Government; (h) one member to be appointed by the Central Government to represent the Ministry of Science and Technology of the Central government; (i) four members to be appointed by the Central Government by rotation to represent the Ministries and the Department of the Central Government, other than those specified in clauses(g) and (h); (j) two members of Parliament of whom 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 States and the Union territories: 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, 3(4)(m)seven members to be appointed by the Central Government to represent,-- 3(4)(vi) the Council of Architecture;

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that such architectural qualification shall be also recognized only when granted after a specified date or before a specified date.	S.10 Functions of the Council---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 may—
16. Power of Central Government to amend Schedule – Notwithstanding anything contained in sub-section [2] of Sec. 14, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Schedule by directing that an entry be made therein in respect of any architectural qualification.	(a)undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;
17. Effect of recognition – Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognized qualification shall be a sufficient qualification for enrolment in the register.	(b) co-ordinate the development of technical education in the country at all levels;
18. Power to require information as to courses of study and examinations – Every authority in India which grants a recognized qualification, shall furnish such information as the Council may, from time to time, require as to the courses of study and examinations to be undergone in order to obtain such qualification, As to the ages at which such courses of study and examinations are required to be undergone and such qualification is conferred and generally as to the requisites for obtaining such qualification.	(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;
	(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;
19. Inspection of examinations – (1) The Executive Committee shall, subject to regulations, if any, made by the Council, appoint such number of inspectors as it may deem requisite to inspect any college or institution where	(j) fix norms and guidelines for charging tuition and other fees;
	(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

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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. (2) The Inspectors shall not interfere with the conduct of any training or examination, but shall report to the Executive Committee on the adequacy of the standards of architectural education including staff, equipment, accommodation, training and such other facilities as may be prescribed by regulations for giving such education or on the sufficiency of every examination which they attend. (3) The Executive Committee shall forward a copy of such report to the college or institution and shall also forward copies with remarks, if any, of the college or institution thereon, to the Central Government. 20. **Withdrawal of recognition** – (1) When upon report by the Executive Committee it appears to the Council - (a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution, or (b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution, do not conform to the standards prescribed by regulations, the Council shall make a representation to that effect to the appropriate Government.	(l) advice the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates; (n) take all necessary steps to prevent commercialisation of technical education; (o) provided guidelines for admission of students to technical institutions and Universities imparting technical education; (r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the council's responsibilities and to create positions of professional, technical and supporting staff based on requirements; (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 recommendation to it, or to the Council or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme; S.11 — Inspection—(1) For the purposes of ascertaining the financial needs of a technical institution or a University or its standards of teaching examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

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(2) After considering such representation the appropriate Government shall forward it along with such remarks as it may choose to make to the college or institution concerned, with an intimation of the period within which the college or institution, as the case may be, may submit its explanation to the appropriate Government.	(2) The Council shall communicate to the technical institution or University the date on which any inspection under sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.
(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government, in respect of the college or institution referred to in Cl. (b) of sub-section (5), shall make its recommendations to the Central Government.	(3) The Council shall communicate to the technical institution or the University, its view in regard to the results of any such inspection and may, after ascertaining the opinion of that technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.
(4) The Central Government -	(4) All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation as is referred to in sub-section(3).
(a) after making such further enquiry, if any, as it may think fit, in respect of the college or institution referred to in sub-section (3), or	12. Executive Committee of the Council–
(b) on receipt of the explanation from a college or institution referred to in Cl.(a) of sub-section (5), or where no explanation is submitted within the period fixed, then on the expiry of that period, may, by notification in the Official Gazette, direct that an enquiry, shall be made in the Schedule against the architectural qualification awarded by such college or institution, as the case may be, declaring that it shall be a recognized qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.	(1) The Council shall constitute a Committee, called the Executive Committee for discharging such functions as may be assigned to it by the Council.
(5) For the purposes of this section, "appropriate Government" means -	(2) The Executive Committee shall consist of the following members, namely-
(a) in relation to any college or institution established by an Act of Parliament or managed, controlled or financed by the Central Government, the Central Government and	(a) the Chairman of the Council;
	(b) the Vice-Chairman of the Council;
	(c) Secretary to the Government of India in the Ministry of the Central Government dealing with Education, ex officio;
	(d) the Chairmen of the Regional Committees;

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(b) in any other case, the State Government.	(e) three Chairmen of the Boards of Studies;
21. Minimum standard of architectural education – The Council may prescribe the minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India.	(f) a member of the Council representing the Ministry of Finance of the Central government, ex officio;
22. Professional conduct – (1) The Council may, by regulations prescribe standards of professional conduct and etiquette and a code of ethics for architects.	(g) four out of eight members of the Council representing the States and Union territories under clause(k) of sub-section(4) of section 3;
(2) Regulations made by the Council under sub-section(1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force.	(h) four members with expertise and distinction in areas relevant to Technical Education to be nominated by the Chairman of the Council;
23. Preparation and maintenance of register -(1) The Central Government shall, as soon as may be, cause to be prepared in the manner hereinafter provided a register of architects for India.	(i) the Chairman of the University Grants Commission, ex officio;
(2) The Council shall upon its constitution assume the duty of maintaining the register in accordance with the provisions of this Act.	(j) the Director, Institute of Applied Manpower Research, New Delhi, ex officio;
25. Qualification for entry in register – A person shall be entitled on payment of such fee as may be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India and –	(k) the Director General, Indian Council of Agricultural Research, ex officio;
(a) hold a recognized qualification, or	(l) the Member-Secretary of the Council.
(b) does not hold such qualification but, being a citizen of India has been engaged in practice as an architect for a period of not less than five years prior to the date appointed under sub-section (2) of Sec. 24, or	(3) the Chairman and the Member-Secretary of the Council shall respectively, function as the Chairman and the Member-Secretary of the Executive Committee.
	(4) The Chairman or in his absence, the Vice-Chairman of the Council shall preside at the meetings of the Executive Committee and in the absence of both the Chairman and the Vice-Chairman, any other member chosen by the members present at the meeting shall preside at the meeting.
	(5) The Executive Committee shall meet at such time and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings)

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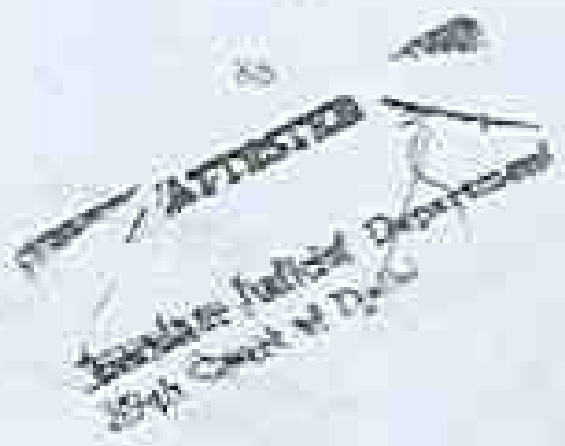
(c) possesses such other qualifications as may be prescribed by rules :	as the Council may provide by regulations.
PROVIDED THAT no person other than a citizen of India shall be entitled to registration by virtue of a qualification-	
(a) recognized under sub-section (1) of Sec. 15 unless by the law and practice of a country outside India to which such person belongs, citizen of India holding architectural qualification registrable in that country, are permitted to enter and practise the professional of architect in such country, or	
(b) unless the Central Government has, in pursuance of a scheme of reciprocity or otherwise, declared that qualification to be a recognized qualification under sub-section (2) of Section 15.	
29. Removal from register.-(1) The Council may, by order, remove from the register the name of any architect -	
(a) from whom a request has been received to that effect; or	
(b) who has died since the last publication of the register.	
(2) Subject to the provisions of this section, the Council may order that the name of any architect shall be removed from the register where it is satisfied, after giving him a reasonable opportunity of being heard and after such further inquiry, if any, as it may think fit to make -	
(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or	
(b) that he has been convicted of any offence which, in the opinion of the Council, involves moral turpitude; or	
(c) that he is an undischarged insolvent; or	



ARCHITECTS ACT	AICTE ACT
(d) that he has been adjudged by a competent Court to be of unsound mind. (3) An order under sub-section (2) may direct that any architect whose name is ordered to be removed from a register shall be ineligible for registration under this Act for such period as may be specified. (4) An order under sub-section (2) shall not take effect until the expiry of three months from the date thereof. 35. Effect of registration -(1) Any reference in any law for the time being in forces to an architect shall be deemed to be a reference to an architect registered under this Act. (2) After expiry of two years from the date appointed under sub-section (2) of Sec. 24, a person who is registered in the register shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any institution recognized by the Central or State Government. 45. Power of Council to make regulations -(1) The Council may, with the approval of the Central Government [by notification in the Official Gazette make regulations not inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purposes of this Act. (2) In particular and without prejudices to the generality of the foregoing power, such regulations may provide for – (a) XXXX (b) XXXX (c) XXXX (d) XXXX	

ARCHITECTS ACT	AICTE ACT
(e) the courses and periods of the study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognized qualifications; (f) the appointment, powers and duties of Inspector; (g) the standards of staff, equipment, accommodation, training and other facilities for architectural education, (h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations; (i) the standards of professional conduct and etiquette and code of ethics to be observed by architects; (j) xxxxx	

68. The legislative intent in implementing the All India Council for Technical Education Act 1987(hereinafter referred to as the AICTE Act 1987 was considered in a pronouncement of the Apex Court reported at **2001(8) SCC 676 entitled Bharathidasan University and another vs AICTE and others**. The Court was concerned with the authority of the AICTE to require a University under the University Grants Commission Act, 1956 to take prior approval of the AICTE for

starting a department or a unit as an adjunct to the university itself to conduct technical education courses of its choice. Though the Act did not provide for it, the AICTE had framed regulations under the AICTE Act requiring the university to obtain such approval. These regulations were held to be void and unforceable. It was observed by the court that 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 be little and destroy the authority or autonomy of other statutory bodies, having their owned assigned rules to perform. Merely activated by some assumed objects or desirabilities the courts cannot adorn the mantle of the legislature. It would be useful to notice the

observations of the Apex Court which were as hereafter:-

> "8. .....When the legislative intent finds specific mention and expression 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 any 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 inent to give definite meaning to words employed in the Act ad adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain 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 the Central and State Governments for ensuring

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

10--------- The Act, for all purposes and throughout maintains the distinct identity and existence of "technical institutions" and "universities" and it is in keeping tune with the said dichotomy that wherever the university or the activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical institutions and wherever the university is to be left out and not to be roped in merely refers to the technical institution only in Sections 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Sections 10(1)(c), (g), (o) which would go to to show that universities are mentioned alongside the "technical institutions" and clauses (k), (m), (p), (q), (s) and (u) wherein there is conspicuous omission

of reference to universities, reference being made to technical institutions alone. It is equally important to see that when AICTE is empowered to inspect or cause to inspect any technical institution in clause (p) of sub-section (1) of Section 10 without any reservation whatsoever, when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Section 11 of the Act. Clause (f) of sub-section (1) of Section 10 envisages 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 or to other bodies. Regarding recognition or derecognition of the institution or the programme. All these vitally important aspects go to show that AICTE created under Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical

education or programmes in any of its departments or units. A careful scanning --- through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-a-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-a-vis universities and and activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underling 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.Sambasiya 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 th status. authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them".

14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strie down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state thebt Regulations made under Section 23 of the Act have "constitutional" and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could

not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence anew department or course and programme in technical education in any university or any of its departments and constituent institutions."

"15..... The clear intention of the legislature is not that all institutions whether university or otherwise ought to be treated as "technical institution" covered by the Act. If that was the intention, there was no difficulty for the legislature to have merely provided a definition of "technical institution" by not excluding "university" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and university in several provisions in the Act. The definition of "technical institution" excludes from its purview a "university". When by definition a "university" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "university" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a "university" but only a

"technical institution". If Section 10(k) does not cover a "university" but only a "technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply to universities when the Act maintains a complete dichotomy between a "university" and a "technical institution". Thus, we have to focus our attention mainly to the Act in question to the language adopted in that enactment. In that view of the matter, it is, therefore, not even necessary to examine the scope of other enactments or whether the Act prevails over the University Act or effect of competing entries falling under Entries 63 to 65 of List I vis-a-vis Entry 25 of List III of the Seventh Schedule to the Constitution."

69. In the instant case I find that the AICTE is drawing jurisdiction based on the inclusion of the word "architecutre" in Section 2(g) of the AICTE Act 1987 which defines the expression "technical education". It is important to note that this statute does not contain any definition of expression 'architecture' nor contains any machinery or mechanism whereby the AICTE is empowered to grant an accredition/registration of a person who has obtained a

qualification as an architecture to render such person fit to practice the profession. There is no method or provision for removal of the authority of a person who is not pursuing the profession from any approved register. On the other hand, the Architects Act contains an elaborate procedure for recognition of the qualifications given by the different institutes within India and abroad.

70. The Architects Act 1972 was enacted to provide for circumscribing, regulating and maintaining standards of the education in the speciality of architecture, qualification of the architects based on prescribed standards and for registration of qualified architects. Only the qualifications included in the schedule or notified under Section 15 shall be recognised qualifications for the purposes of the Act while sub-section 2 thereof provides that the schedule may be amended so as to include other recognised qualifications. Section 17 of the Architects Act contains a non-obstante clause and provides that

notwithstanding anything contained in any other law but subject to the provisions of the Act, any recognised qualification shall be sufficient qualification for enrollment in the register. Other important provisions setting out the powers of the authorities under the Architects Act 1972 have been set out hereinabove. The Council is statutorily enjoined to make regulations under the provisions of Section 45 with the approval of the Central Government.

71. Pursuant to the exercise of such statutory powers the Central government framed regulations which are known as the Minimum Standards of Architectural Education Regulations 1983 in exercise of powers conferred under Section 45(2)(e)(g) (h) and (j) read with Section 21 of the Architects Act 1972. These regulations which are in the nature of delegated legislation provide for eligibility for admission to architecture courses, aptitude test, intake of courses, period of studies and professional examination, standards of proficiency, conditions

of admission, qualification of examiners, standards of staff, equipment accommodation, training and other facilities for an architectural education. It is to be noted that the statute itself envisages that the regulations provide for all these conditions.

72. It is, therefore, important to note that the Architects Act is a code in itself so far as their education and profession of Architects as a class is concerned.

73. All standards for architects, recognition of qualifications including regulation and monitoring of courses, maintenance of standards of education are provided in this enactment. It contains a non-obstante clause in Section 17. There can be no manner of doubt that by virtue of the provisions of the Architects Act 1972, in the field of the architectural institutions and education, the Architect Act has been given an overriding effect over other laws. It is apparent that as per the scheme of the statute primacy is given to architectural experts who are required to recommend even to the Central Government with

regard to the recognition of qualifications given by Indian as well as foreign institutes offering architectural education. The Act specifically provides as to which persons would be entitled to be brought on the register of Architecture maintained by the Architect's Council.

74. The AICTE Act however does not contain any such provisions.

75. Careful scrutiny of the scheme of the AICTE Act shows that its scope and ambit is wide and it functions principally is to ensure coordination of technical education all over the country. It includes several other subjects including pharmacy, engineering etc.

76. The AICTE Act under Section 2(g), wherein the definition of technical education is provided, has included the expression "architecutre". There is no definition given of this expression anywhere in the enactment. This statute also does not empower the AICTE to make any recommendations with regard

to the recognition of qualifications being granted by different institutes or the effect of acquisition of such recognised qualifications. It is also general in its application and its principal concern is not architecture or architects, or the education course or curriculum or standards of architecture education or recognition of qualifications. I find that the AICTE covers a larger general field with the spirit, purpose and intendment of coordinating the institutes providing technical education all over the country.

77. It is settled law that the power to legislate carries a power to repeal the legislation on the same topic. In the instant case, both the enactments are central legislations and there is no dispute as to the legislative competency of the legislature to frame the law.

78. It would be useful to refer to the pronouncement of a Division Bench of the Bombay High Court WP (C) no. 5942/2004 entitled Shri Prince Shivaji Maratha Boarding

House College of Architecture Vs. State of Maharashtra & Others relied upon by the petitioner. The issues urged before this court were also raised in this case. Vide its judgment dated 08.09.04, the Court held as under:

> "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 eduention of architects and specifically deals with the recognised qualifications for architecs 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 in 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 insitutions 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, th 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-a-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.

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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 Architect 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 ct 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.

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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-a-vis the Council of Architects is advisory and recommendatory and as a guiding factor and thereby subserving the cause of maintaining appropriate standards and qualitative norms. It is impossible to conceive that the Parliament intended to abrogate the provisions of the Architects Act embodying a complete code for architectural education, including 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 section10 of 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."

Learned counsel for the petitioner has pointed out

that this judgment has been assailed by the respondent no. 4 before the Apex Court and that though leave to appeal has been granted, however, the effect and operation of the judgment was not stayed by the court in its order dated 10.1005 in SLP(C) No.26936/2004.

79. Having regard to the scheme of the two statutes before this court and the field in which they operate and applying the principles laid down by the Apex Court, I have no manner of doubt that so far as the field of architecture and an architect is concerned, it is the Architect Act 1972 which is a special enactment.

80. I also find that the legislations being considered by the Apex Court in Ajay Kumar Banerjee case (Supra) & Ratan Lal Adukia's case (Supra) also are not comparable to the statutory scheme and the specific provisions of the two legislations before me.

81. In Ratan Lal Adukia's case, upon construction and comparison of the two enactments, the very existence of the two

provisions by itself without examination of anything more, lead to an inference of mutual irreconcilability as the later set of provisions by itself was a complete code with respect to the same matter.

Examination of the two enactments in the instant case leaves me in no doubt that so far as the qualification and education in architecture is concerned, it is the Architects Act, 1972 which is the complete code. The AICTE under the AICTE Act 1987 is the co-ordinating and regulatory body at the national level which for this purpose may lay down norms for education (sec.10(i) provide guidelines for admission(10k) to be added after Gandhi College case.

82. So far as the argument of implied repeal of the earlier enactment is concerned, the same may be provided in the statute itself by providing the period of validity of the enactments. It may be effectuated by implementing a subsequent legislation whereby it is made clear that the previous legislation is to some

extent repealed or abrogated. There can be no dispute that it is open to the Court to examine whether and to what extent nature of those provisions or the nature of the subject matter and scheme of the scheme of the special law exclude operation.

83. An enactment, may be repealed by a later "distinct and repealing enactment or an enactment inconsistent and irreconciliable therewith"(Ref: Kariapper Vs. Wijesinha 1969(3) All ER 485 (494-495).

84. It was held by the Apex Court in the case Mathra Prasad and Sons Vs. State of Punjab reported at AIR 1962 SC 745(748) that no repeal can be brought about unless there is an express repeal of an earlier Act by the later Act or unless the two Acts cannot stand together. A repeal may thus be by express words in the later statute or may be implied on considerations of inconsistency or ir-reconciliability of the provisions of an earlier statute, with those of a later statute. A power to "amend or repeal" will, therefore, imply a power to amend or repeal by

implication ie by making inconsistent laws" (Ref: AIR 1969 SC 273 (275): 1969(1) SCR 464 Standard Motors vs. Kerala State.

85. However there is a presumption against repeal by implication as 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, it sets out an intention not to repeal the existing legislation.

86. In these circumstances, the continuance of an existing legislation, in the absence of an express provision of repeal, being presumed, the burden to show that there has been a repeal by implication lies on the party asserting the same(Ref: Lybye Vs. Hart 1883(29) Ch.D 8 page 15).

87. This presumption is however rebuttable and a repeal is inferred by necessary 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.

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(Re: Municipal Council, Palai vs. T.J.Joseph(supra) AIR 1963 SC 1561(1562): (1964) 2 SCR 87.

88. If the two Acts may be read together and some application may be made of the words in the earlier Act, a repeal will not be inferred.

89. In its judgment reported at (2003) 7 SCC 389 entitled **State of MP vs. Kedia Leather & Liquor**, the Supreme Court cited with approval the earlier decisions rendered in Municipal Council, Palai vs. T.J.Joseph and Delhi Municipality vs. Shiv Shankar AIR 1971 SC 215 and stated the law thus:-

> "13. 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 vs. T.J.Joseph, Northern India Caters(P) Ltd. vs. State of Punjab, Municipal Corpn. Of Delhi Vs. Shiv Shanker and Ratan Lal Adukia vs. Union of India.] 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 (ersotie vel rei) est exclusio alterius. (The expression intention of one person or thing is the exclusion of another), as illuminatingly stated in Garnett vs. Bradley. 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. (See: A.G. vs. Moore, Ratan Lal case and R.S.Raghunath vs. State of Karnataka).

14. The necessary questions to be asked are:

(1)Whether there is direct conflict between the two provisions.

(2)Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.

(3)Whether the two laws occupy the same field.

(See: Pt. Rishikesh vs. Salma Begum and A.B.Krishna vs. State of Karnataka).

15. The doctrine of implied repeal is based on the theory that the legislature, which is

presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal, unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together.(See Craies on Statute Law, 7th Edn., p.366 with reference to Berrey, Re).

To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side."

The Apex Court came to a conclusion that Section 133 of

the Code of Criminal Procedure 1973 was not impliedly repealed by the Water(Prevention and Control of Pollution) Act 1974. It was held that the area of operation in the Court and the Pollution laws in question are different with wholly different aims and objects and though they alleviate nuisance that is not of identical nature. They operate in the respective fields and there is no impediment for their existence side by side. While the provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question one replacing the other does not arise.

Thus the matter in each case is one of construction and comparison of the two enactments.

90. Upon such reading of the enactments, the Supreme Court had arrived at a conclusion that the Prevention of Food Adulteration Act 1954 and rules made thereunder relating to

vinager were held not to be impliedly repealed by the Essential Commodities Act 1955 and that the Fruit order made thereunder, although both contained regulatory provisions and laid down certain standards of quality and composition of vinagers for it was not possible to say that the two cannot stand together. It was so held by the Apex Court in Delhi Municipality vs. Shiv Shankar AIR 1971 SC 815 where the Court held as follows:-

> "If the Adulteration Act or Rules impose some restrictions on the manufacturers dealers or sellers of vinagers then they have to comply with them irrespective of the fact that the Fruit order imposes a lessor number of restrictions in respect of these matters. The former do not render compliance with the latter impossible, nor does compliance with the former necessarily and automatically involve violation of the latter.

91. The presumption against implied repeal was considered by the High Court of Australia in Shergold vs. Tanner reported at (2002)76 ALJR 808 at 814. The court approved the observations in the case reported at (1991)172 CLR (at page 17)

entitled Saraswati vs. The Queen and held as under:-

> "It is a basic rule of construction that in the absence of express words, an earlier statutory provision is not repealed, altered or derogated from by a later provision unless an intention to that effect is necessarily to be implied. There must be very strong grounds to support that implication, for there is a general presumption that the legislature intended that both provisions should operate and that, to the extent that they would otherwise overlap, one should be read as subject to the other".

92. Therefore, in view of the authoritative pronouncements of law noticed above and upon comparison of the two enactments in the instant case i.e. the Architects Act and the AICTE Act, the question to be answered is whether the two statutes are clearly and indisputably contradictory, mutually irreconciliable and suffered from such repugnancy that they could not at all be reconciled.

93. It has been urged before me that the AICTE is in the nature of an umbrella over all the institutions wherein technical education is provided.

94. However in the light of the above observations it is not possible to agree with this submission. The legislature never intend to confer on the AICTE such status or jurisdiction whereby it would override all existing statutory bodies as the Architecture Council and other areas. There is nothing in the scheme of the AICTE which would support the proposition that the legislature intended to abrogate or repeal any provision of the Architects Act 1972 or to take away the jurisdiction or power of the Council of Architecture. I find that the Architects Act is a complete code for an architects education including eligibility for admission to the course of architecture. When enacting the AICTE Act in 1987, the legislature never intended that by virtue of Section 10 of the AICTE Act, the provisions of the Architects Act 1972 would stand repealed.

95. Examination of the scheme of the enactments shows that the two enactments can be given effect to harmoniously and in fact, if applied judiciously, would further the objects sought to

be achieved, so that the authorities compliment each other.

96. In order to succeed with a plea of implied repeal it has to be established that there exists inherent inconsistency and irreconcilability rendering it impossible for two enactments covering the same subject matter to exist together. Such condition does not exist in the present case.

97. Merely because by exercise of executive fiat, an order is issued by the Ministry of Human Resources Development directing that guidelines fixed by AICTE setting out eligibility norms for the education of architecture shall govern admissions, which are at variance with statutory regulations prescribed under the Architect Act, 1972, it cannot be urged that there is implied repeal of the statute of 1972 without there being no evidence of such intention of the legislature.

98. No legislative exercise has been undertaken by the respondent nos. 1 and 2.

99. The regulations framed under the Architects Act, 1972

are in the nature of delegated legislation and are binding on the respondents which provide for the eligibility for admission to the course of architecture and have been enacted and implemented after undertaking a complete legislative exercise.

100. It was orally contended before me that there is a complete consideration in the matter of all relevant material and guidelines issued by the respondent No.1 that the consideration has been at the highest level and that the same is necessary to maintain high standards in architecture education and therefore the executive directive issued by respondent no. 1 shall prevail.

101. It is noteworthy that the AICTE in its guidelines impugned in the present petition have done away with the requirement of the qualifying marks for eligibility. Whereas the regulations framed under the Architects Act 1972 mandate the requirement of 50% qualifying marks for eligibility, to undertake the entrance examination for the architecture course, the respondent no. 1 & AICTE have done away with such requirement in its

guidelines.

102. It has been pointed out that such percentage is required in most other professional courses and is incorporated with the purpose of ensuring high standards in such professional courses.

103. There is no justification forthcoming as to how removal of such qualifying percentage is enhancing the standard of education in the course of architecture.

104. So far as the addition of physics as the other compulsory subject is concerned, the objection of the petitioner has vehement support from the Council of Architecture which is statutorily empowered to prescribe for recognition of course & qualification for courses.

105. I also find that such prescription by the AICTE works to disadvantage of candidates who are required to opt for subjects after finishing their class tenth. Students intending to pursue architectural courses make subject choices as per prescribed

eligibility requirement. In 2002, the petitioner opted for English & Maths as this is the requirement as per the Regulations. Such candidates cannot be prejudiced & bared from joining the architectural courses.

106. A submission was also made that a member of the Architect Council participated in the meetings held by the respondent nos. 1 and 2 resulting in the communication on 07.04.04. I find that same cannot in any manner effect the principles of law or the findings arrived at herein above merely because on 07.04.04 a member of the council of Architects attended the meeting.

107. I may notice that it has been urged on behalf of Council of Architecture that it had never agreed to the proposal of the AICTE & had informed its dissent by a note in writing.

108. It has also been pointed out that para materia provisions relating to constitutions of Councils exist in other enactments. Representatives of the professional bodies are their members by

requirement of statutes. By virtue of Sec. 3 (e) of the Pharmacy Act, 1948, a member of the Medical Council is part of the Council. The decisions taken by such Council cannot be urged to be either decisions of the Medical Council of India nor can existence of such provision abrogate from the statutory competence & jurisdiction to take decisions or undertake the exercise of provision of regulations.

109. I may also notice that no submission at all was laid before this Court as to which part of the Architects Act was so inconsistent with a particular provision of the AICTE Act that the two could not stand together to make good the argument of implied repeal of the provisions of the earlier enactment. I have considered at length the provisions of the two enactments. The jurisdiction and statutory functions required to be discharged by the Architects' Council cannot legally be performed by any other Authority. No such power is conferred on the All India Council of Technical Education. The Architects Act applied to

a special class, the architects and that the Council of Architects is an independent body created under statutory provisions. I have, for all these reasons and in view of the law laid down by the Apex Court and noticed hereinabove, no manner of doubt that there is no inconsistency between the two statutes that the Architects Act is a special enactment so far as architects are concerned.

110. I, therefore, hold that the provisions of the Architects Act,1972 are not impliedly repealed by the AICTE Act, 1987. The final authority for fixing the norms and standards for admission the architects course and the course content would be the Council of Architecture and that it is the Minimum Standards of Architectural Education Regulations 1983 which shall govern admission to architecture courses.

111. My attention has been drawn by the learned counsel for the parties to proceedings in this Court in WP(Civil) No.6445/2004 entitled Nandini Prabhakar Vs. Union of India

and others. It would appear that in this writ by a candidate seeking admission the issue as to whether the regulations framed by the Architecture Council would prevail over the norms prescribed by the AICTE had been raised. The prayer for interim relief of this petitioner was rejected vide an order dated 28.04.2004. WP(C) 6445/2004 was disposed of vide an order dated 23.11.2004 whereby it was held that since the petition was for the academic session 2004-2005, the same had been rendered infructuous. However, liberty was granted to the petitioner to assail the norms for the entrance examination to the Diploma/Degree courses of Bachelor of Architecture for the next academic year. This matter was carried in appeal being LPA No.6/2005. It was stated that the Division Bench also did not grant interim relief. However the main matter is pending.

So far as is this matter is concerned, there has been no adjudication of the legal issues raised and no binding pronouncement of law by this Court.

112. The decisions impugned before me were not impugned before the High Court of Judicature at Madras. No judgment deciding a challenge or upon the issues raised in the present case has been placed before this court.

113. In the field of medical education, minimum admission norms fixed by the Medical Council of India being the expert body, have been stringently enforced. Despite candidates possessing recognised medical qualifications from foreign institutes recognised by the Medical Council of India, it has been held that failure to satisfy the minimum admission norms notified by the Medical Council of India would render a candidate ineligible to appear in qualifying test in India and disentitled to get registration as a doctor. The judgment of the Single Bench of this court reported at 108 (2003) DLT 752 entitled Brijesh Ranjan vs. Medical Council of India upheld by the Division Bench vide its decision dated 25th January, 2005 in LPA 181/2004 entitled Brijesh Ranjan vs Medical Council of

India have been placed before me."

114. For all the foregoing reasons, the writ petition is allowed. The decision dated 7.4.2004 of the respondents 1 & 2 is set aside and quashed. Consequently the eligibility criteria for the entrance examination of the five year degree course of architects as prescribed in the information bulletin for the AiEEE, 2005 examination is also set aside and quashed.

115. Vide interim orders passed on 14.2.2005 and 10.3.2005 the petitioner was permitted to take the entrance examination. However it was directed that the result shall not be declared subject to further orders in the present case.

In view of the judgment passed hereinabove it is directed that the result of the petitioner shall be declared and in case she has passed the entrance examination the petitioner shall be permitted to participate in the counselling and shall be entitled to admission in the course in accordance with the procedure prescribed and as per merit.

The petitioner shall be entitled to costs which are quantified at Rs.10,000/- payable by respondent no. 4.

July 20, 2005
JK

sd/-
Gita Mittal, J

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