

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9048 OF 2012
(Arising out of SLP (C) No. 26086 of 2012)

Parshavanath Charitable Trust & Ors. ...
Appellants

Versus

All India Council for Tech. Edu & Ors. ...
Respondents

AND

CIVIL APPEAL NO. 9047 OF 2012
(Arising out of SLP(C) No.27021of 2012 @ CC No. 15485
of 2012)

Chetan Pathare & Anr. ...
Appellants

Versus

All India Council for Technical ...Respondents
Education & Ors.

J U D G M E N T

Swatanter Kumar, J.

1. IA Nos.1-2 of 2012 are applications filed by the two students of Parshavanath College of Engineering run by Parshavanath Charitable Trust for permission to file special leave petition SLP (C) No..... of 2012 (CC No.15485 of 2012) against the judgment dated 22nd August, 2012 passed by the High Court of Judicature at Bombay in Writ Petition No.460 of 2011. The applications are allowed subject to just exceptions.
2. SLP (C) No.26086 of 2012 has been preferred by the appellant-Trust against the same judgment.
3. Leave granted in both the SLPs.
4. As the challenge in both these appeals is to one and the same judgment of the Bombay High Court, it will, thus, be appropriate for us to dispose of both these appeals by this common judgment.

FACTS :

5. The appellant, Parshvanath Charitable Trust, was formed as a minority community trust in the year 1993. One of its objects was to establish educational institutions. Consequently,

it established the Parshavanath College, after obtaining approval of all the concerned authorities on 11th June, 1994 with the intake capacity of 140 students for academic year 1994-95. This college was running at the premises being Survey No.27 (part) at Kasarvadavali, Ghodbunder Road in the district of Thane. The annual approvals by the All India Council for Technical Education (for short, the 'AICTE') continued till the year 2008. On 29th April, 2008, the appellant sought a 'No Objection Certificate' from the University of Mumbai. It also applied for an 'occupation certificate' from the Municipal Corporation of Bombay for shifting the college to new premises located at a distance of barely 300 meters from the old site being Survey No. 12/1, 2, 4, 13/8, 9, 10A and 13/10B. In furtherance to this, the appellant had made an application dated 24th May, 2008 to the Regional Office of the AICTE seeking its permission to shift the college to the new premises and also submitted all the requisite documents. The appellant had also written to the Directorate of Technical Education for issuance of a No Objection Certificate for the said purpose.

6. It is not in dispute that in May, 2008, the college shifted its location to the new site. This exercise was undertaken by the college and the Trust without taking prior approval of the AICTE and without receiving "No Objection Certificate" from the University of Mumbai as well as the State Government. It is also evident from the record that no Occupation Certificate was received from the Municipal Corporation of Thane before shifting.

7. On or about 24th June, 2008, the AICTE appointed an Expert Committee to verify the infrastructure available at the new site and the Expert Committee visited the college on 28th June, 2008. It noted that No Objection Certificate of the affiliating University for change in the location had not been produced though they were informed that the same was in process. It also made certain observations with regard to the title of the land and the same, according to them, stood in the name of some other Trust which in turn had leased out the land to the appellant Trust. The Committee also noticed that all the laboratories and other infrastructure had been shifted to the new site. On 30th June, 2008, the AICTE granted an extension

of approval to the Engineering College for the academic years 2008-2011 with an intake capacity of 280 students. Clause 3 of this approval letter reads as under :-

“3. That the institution shall operate only from the approved location, and that the institution shall not open any off campus study centres/extensive centres directly or in collaboration with any other institution/university organization for the purpose of imparting technical education without obtaining prior approval from the AICTE.”

8. As is obvious from a bare reading of the letter, the appellant-college was to run its courses from the campus which was approved. Thereafter vide letter dated 20th August, 2009, AICTE granted approval to the appellant-college with increased intake from 280 to 360 students for the academic year 2009.

9. The appellant college was running its courses when the show cause notice dated 18th May, 2010 was issued by the AICTE to the Trust on the ground that the college had shifted to another location without obtaining prior approval of the AICTE. It was stated therein that an institution has to run courses only from an approved site and if it desires to shift to another site, it

has to follow the complete procedure as per the norms of AICTE.

The show cause notice reads as under:-

“Your institutions i.e. PARSHWANATH COLLEGE OF ENGINEERING and VEER MATA HIRABEN P. SHAH COLLEGE OF PHARMACY are approved by AICTE for running engineering and pharmacy course at GODBHUNDER ROAD, KASAR VADAVALI 400601 DIST. THANE as per our records as a permanent site.

As per AICTE norms, the institute has to run the courses in the approved site only. In any case, if the institute wants to shift the institute to another location, due process has to be followed as per AICTE norms to get AICTE approval for shifting.

However, it was found that you have shifted your Engineering And Pharmacy institutions to another location without obtaining approval from AICTE, which is gross violation of AICTE norms.

In the above circumstances, you are requested to show-cause as to why disciplinary action should not be initiated including withdrawal of approval or reducing your intake/stop admission. Your reply should reach AICTE headquarters and Regional Office within three working days.”

10. To this, the appellant Trust submitted its reply dated 21st May, 2010 relevant extract of which reads as under:-

“We have reason to state that after filing proposal for shifting the aforesaid colleges to

the new premises, we have applied for permission for shifting the aforesaid colleges in the new premises in the year 2008 only and accordingly we are conducting engineering and pharmacy colleges in the new premises.”

11. The matter remained in controversy, but as a result of issuance of show cause notice, the college of the appellant Trust was not included in the Centralised Admission Process (CAP) by the State Government. The appellant, thus, challenged the non- inclusion of the college in the CAP and action of the State Government by filing a Writ Petition before the Bombay High Court being Writ Petition (Civil) No. 1776 of 2010. This Writ Petition was allowed by a Division Bench of the High Court vide its order dated 11th August, 2010 wherein it directed as under:-

“17. We, therefore, allow this petition and quash and set aside the impugned communication of the Director of Technical Education and direct the respondents to permit the appellant-college to participate in the Central Admission Process when the second round has commenced.

18. In view of the submission already made by the petitioners in their reply dated 21st May, 2010 i.e. the Joint Charity Commissioner has passed the restraint against their Managing Trustee restraining him from

interfering in the administration of the college and the educational institution run by the trust, we also direct that the respondent-Municipal Corporation of Thane should consider the petitioner's application for grant of occupation certificate for the building in which the engineering college and the pharmacy college are being run without being influenced by any objection taken by Mr. Tekchand Shah against whom the order is passed by the Charity Commissioner.

19. It is clarified that it is open to the AICTE to proceed with the show-cause notice but if any order adverse to the petitioner-college is passed, the same shall not be implemented for a period of two weeks from today.

20. This order is passed in presence of the learned Assistant Government Pleader appearing for the Director of Technical Education and Mr. S.V. Kolla, officer, Admission Section from the office of Director of Technical Education who shall immediately instruct the concerned persons to place the name of the petitioner-engineering college on the website of the centralised online admission process today itself."

12. It needs to be noticed at this stage that during the proceedings before the Division Bench, the Municipal Corporation of Thane had stated that Occupancy Certificate had not been granted to the appellant-college; however, reason thereof could not be brought to the notice of the Court at that stage because of shortage of time. In the meanwhile, certain

disputes also arose among the management of the appellant-Trust.

13. Subsequent to the above order of the High Court, on 7th January, 2011, the AICTE passed an order withdrawing the approval granted to the appellant-college in terms of Clause 2.11 of the Approval Process Handbook and the Guidelines for the academic year 2008-2009 and the terms and conditions mentioned in the Letter of Approval. The basis for withdrawing the approval was shifting of the college to the new location without Occupancy Certificate, without informing the State Government and without obtaining the requisite permission from the AICTE as per regulations. The Expert Committee had also noticed in its inspection dated 28th June, 2008 that the construction was not suitable.

14. This cancellation of approval was challenged by the appellant-Trust before the Bombay High Court in Writ Petition No.460 of 2011. *Inter alia*, the principal contention before the High Court was that an application dated 24th May, 2008 was made to the AICTE for change in location. Contemporaneously, applications were also made to the University of Mumbai and

the Directorate of Technical Education for the issuance of No Objection Certificate and extension of approval by the AICTE itself showed that the site in question met the requisite standards and there was no justification for reducing the intake capacity and withdrawing the approval. The High Court noticed that there was no challenge to the Regulations or any other clause of the Handbook. Clause 9.22 of the Hand Book for Approval Process 2008 required a registered sale or gift deed in favour of the institution and only a Government lease of 30 years was acceptable as per that clause. The relevant para of Clause 9.22 reads as follows:-

“9.22. Procedure for Change of Site and Norms Concerning Land and Building on New Site.

Changing of location/Station may be permitted after getting “No Objection Certificate” (NOC) from the concerned State Govt./UT Administration and Affiliating Body, by the Competent Authority in AICTE as per laid down procedure subject to the fulfilment of Norms and Standards of AICTE. No request/representation/Proposal for change of site will be considered after submission of application/proposal for establishment of a new Technical Institution, till the completion of at least two years after a new institution is started with the approval of AICTE. No partial shifting of institution to a different site shall be permitted.

The following procedure shall be followed:

The applicant shall have to submit a Proposal along with the following documents in original in one lot to the concerned Regional Office of AICTE.

- Registration document of the Trust/Society indicating members of Society/Trust and its Objectives.
- **Land document(s) in original for the new site showing ownership in the name of Trust/Society in the form of Registration Sale Deed/Irrevocable Gift Deed (Registered)/Irrevocable Government Lease (for a minimum of 30 years) by concerned authority of Government. In case, the land documents are in vernacular language, Notarized English translation of the document must to be produced.**
- Land use Certificate/Land Conversion Certificate for the new site allowing the land to be used for educational purpose, from the Competent Authority along with Topo-sketch/Village Map indicating land Survey Nos. and a copy of city map showing location of proposal site of the institution.
- **Site Plan, Building Plan for the new site prepared by a registered Architect and duly approved by the Competent Plan Sanctioning Authority designated by the concerned State.**
- **Proof of completion of the building structure at the new site as per approved Engineering & Architectural Building Plan, in the form of Color photographs giving External and Internal views.**

- An undertaking by the Institution stating that the changes shall not affect the admission procedure and the fee that a student has to pay.”

(emphasis supplied)

15. While noticing the above Clauses, the High Court proceeded on the admitted position that the appellant-college had shifted to the new site without the necessary permission and further it had no ownership to the land in question at the relevant time. The Court also noticed that an inspection was carried out by the Municipal Corporation on 9th August, 2012 and they had still not issued the Occupancy Certificate to the appellant-college.

16. In view of the above factual matrix of the case, the Division Bench of the High Court dismissed the writ petition vide order dated 22nd August, 2012 and also passed a direction with regard to adjustment of students in other colleges keeping their welfare in mind. The operative part of the order reads as under:-

“20. In the exercise of the jurisdiction under Article 226 of the Constitution of India it would not be permissible for this Court to direct AICTE to grant its approval for conducting the engineering college at

the new location particularly in view of the fact that no Occupation Certificate has been granted; the Petitioners have not established a clear title to or ownership of land and they have not obtained the NOCs of the State government or of the University of Mumbai.

21. Learned Counsel appearing on behalf of AICTE has stated before the Court that AICTE will take all necessary steps to ensure that the welfare of the students who have been allotted to the Petitioners would be duly taken care of by making alternative allotments to other institutions in consultation with the Directorate of Technical Education of the State government.

22. For these reasons, it would not be appropriate to interfere with the decision which has been taken by the AICTE. The Petition shall stand dismissed. There shall be no order as to costs.

23. In view of the dismissal of the Petition, the Notices of Motion do not survive which shall accordingly stand disposed of."

JUDGMENT

17. Aggrieved from the dismissal of the writ petition by the High Court, the appellants have filed the present appeals.

18. As already noted, two students of Parshvanath College of Engineering have filed a separate application for leave to prefer Special Leave Petition against the same

judgment of the High Court dated 22nd August, 2012. According to the appellant-students in Civil Appeal arising out of SLP (C) No.of 2012 (CC No.15485/2012), the judgment of the High Court has adversely affected their interests. It is their contention that revocation of approval has resulted in closure of the Engineering College and it has jeopardised the future and career of the students studying in the college including those studying in pursuance of the interim orders passed by the same High Court.

19. We allow this application and, in fact, the affected appellant-students have been heard along with parties in the main appeal. Thus, as already noticed, we would dispose of both these appeals by this common judgment.

20. Before we dwell upon the merit or otherwise of the contentions raised, it is necessary for us to notice certain settled legal principles which would help in judicious disposal of these appeals.

21. The provisions of the All India Council for Technical Education Act, 1987 (for short 'the AICTE Act') are intended to improve the technical education system throughout the

country. The various authorities under the AICTE Act have been given exclusive responsibility to coordinate and determine the standards of higher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such coordinated action in higher education with proper standard is of paramount importance to national progress.

22. The provisions of the AICTE Act, including its preamble, make it abundantly clear that the AICTE has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education **in relation to** planned quantitative growth. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. The AICTE is to further evolve suitable performance appraisal system for technical institutions and universities incorporating norms and mechanisms in enforcing their accountability. It is required to provide guidelines for admission of students and has the power to withhold or

discontinue grants to such technical institutions where norms and standards laid down by it and directions given by it from time to time are not followed. The duty and responsibility cast on the AICTE implies that the norms and standards to be set should be such as would prevent isolated development of education in the country.

23. Section 10 of the AICTE Act enumerates various powers and functions of AICTE as also its duties and obligations to take steps towards fulfilment of the same. One such power as envisaged in Section 10(1)(k) is to “grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned”. It is important to see that the 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. However, 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 caused 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 AICTE Act.

24. All these vitally important aspects go to show that the Council (AICTE) created under the AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting teaching in technical education or programmes in any of their departments or units. A careful scanning of the provisions of the AICTE Act and the provisions of the University Grants Commission Act, 1956 in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and one of providing guidance, thereby subserving the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself. Reference can be made to the judgments of this Court in the case of *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* [(2012) 2 SCC 425], *State of Tamil Nadu v. Adhiyaman Educational & Research*

Institute [(1995) 4 SCC 104] and *Bharathidasan University v. All India Council for Technical Education* [(2001) 8 SCC 676].

25. From the above principles, it is clear that the AICTE has varied functions and powers under the AICTE Act. It is a specialized body constituted for the purpose of bringing uniformity in technical education all over the country and to ensure that the institutions which are recognised by the AICTE are possessed of complete infrastructure, staff and other facilities and are capable of maintaining education standards for imparting technical education.

26. It is not necessary for us to refer to various provisions of the AICTE Act in any greater detail as no controversy in relation to application or interpretation of any of its provisions is raised for consideration in the present case. The facts are primarily admitted and it is only the exercise of discretion vested in the AICTE which is the subject matter of challenge in the present appeals. In the case of *Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Anr.* [(2000) 5 SCC 231], this Court after discussing all the relevant

provisions of the AICTE Act and provisions of the Madras University Act, 1923 (for short “the Madras Act”) which required the Institute to obtain approval of the State Government before it started the academic courses, found that the provisions of the latter Act overlapped and were in conflict with the provisions of the AICTE Act in various areas and granting of approval for starting new technical institutions, inspection of technical institutions, etc. The Court held as under:-

“17. ... Thus, in the two passages set out above, this Court clearly held that because of Section 19(K) of the Central Act which vested the powers of granting approval in the Council, the T.N. Act of 1976 and the University Act, 1923 could not deal with any questions of ‘approval’ for establishment of technical institutions. All that was necessary was that under the Regulations, the AICTE Council had to consult them.

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22. As held in *T.N. case* the Central Act of 1987 and in particular, Section 10(k) occupied the field relating to “grant of approvals” for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute 9(7), they merely required the University to obtain the “views” of the State Government. That could not be characterised as requiring the “approval” of the State Government. If,

indeed, the University statute could be so interpreted, such a provision requiring approval of the State Government would be repugnant to the provisions of Section 10(k) of the AICTE Act, 1987 and would again be void. As pointed out in *T.N. case* there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities concerned. The State-Level Committee and the Central Regional Committees contained various experts and State representatives. In case of difference of opinion as between the various consultees, AICTE would have to go by the views of the Central Task Force. These were sufficient safeguards for ascertaining the views of the State Governments and the universities. No doubt the question of affiliation was a different matter and was not covered by the Central Act but in *T.N. case* it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the

University statute required “approval”, it would have been repugnant to the AICTE Act. Point 1 is decided accordingly.

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27. The so-called “policy” of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda & Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N.* which was a case relating to medical education and which also related to the effect of a Central law upon a law made by the State under Entry 25 List III, it was held (at SCC p. 35, para 34) that the

“essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone”.

(emphasis supplied)

Therefore, the State could not have any “policy” outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be

complied with, were not complied with, then the State Government could always write to AICTE, to enable the latter to take appropriate action.

Decision of University in not granting further or final affiliation wrong on merits.

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30. Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the State Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations."

27. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the

authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work *in tandem* as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system.

28. It is also a settled principle that the regulations framed by the central authorities such as the AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act. In the case of *AICTE v. Surinder Kumar Dhawan* [(2009) 11 SCC 726], this Court, while stating the principles that the courts may not substitute their opinion in place of opinion of the Council, held as under:-

“The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In *Dr. J.P. Kulshreshtha v. Chancellor, Allahabad University*: (1980) IILJ 175 SC this Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that

courts should hesitate to dislodge decisions of academic bodies.

In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth : [1985] 1 SCR 29, this Court reiterated:

..the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

18. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four year Advance Diploma holders who had passed the entry level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one time measure was extended for several years and was also extended to Post Diploma holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together

they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education.”

29. Right from the case of *Unni Krishnan, J.P. and others etc. etc. V. State of Andhra Pradesh and Others etc. etc.* [(1993) 1 SCC 645], this Court has unequivocally held that the right to establish an educational institution does not carry within it the right to recognition or the right to affiliation. Grant of recognition or affiliation is neither a matter of course nor is it a formality. Admission to the privileges of a University is a power to be exercised with great care keeping in view the interest of the public at large and the nation. Recognition has to be as per statutorily prescribed conditions and their strict adherence by all concerned. These conditions of recognition and the duly notified directions controlling the admission process are to be construed and applied *stricto sensu*. They cannot be varied from case to case. Time schedule is one such condition specifically prescribed for admission to the colleges. Adherence to admission schedule is again a subject which requires strict conformity by all concerned, without exception. Reference in

this regard can be made to *Ranjan Purohit and Ors. v. Rajasthan University of Health Science and Ors.* [(2012) 8 SCALE 71] at this stage, in addition to the case of *Medical Council of India v. Madhu Singh* [(2002) 7 SCC 258].

30. In light of the above principles, let us now revert to the facts of the case in hand. There is no dispute as to the fact that the appellant-college had shifted to the new premises without approval of the AICTE and without 'No Objection Certificate' from the State Government and Directorate of Technical Education. Undisputedly, the college had no title to the property in question inasmuch as the property had been sold in a Court auction by the bank on 8th August, 2011 and had been purchased by a firm in which the members of the Trust were partners. This partnership firm had executed a Memorandum of Understanding with the appellant Trust and given property on lease to the Trust. These undisputed facts clearly show that the appellant-college had no title to the property and, in fact, it did not even have a registered lease deed in its favour to create some recognizable interest in the property in question. The High Court in its judgment had specifically noticed the defects

pointed out by the Expert Committee. They, *inter alia*, related to some disputes within the management of the Trust, failure to obtain NOC from the State Government, Occupancy Certificate from the Municipal Corporation, Thane and NOC from the University of Mumbai, omission to seek/obtain the approval of AICTE and finally shifting to the new premises despite such non-compliance.

31. We have already noticed that the compliance with the conditions for approval as well as regulations and provisions of the AICTE Act is an unexceptionable condition. Clause 9.22 of the Handbook of Approval Process issued by the AICTE provides a complete procedure for change of location, station and the same is permissible subject to compliance with the procedure. It contemplates obtaining of 'No Objection Certificate' from the concerned State Government or UT Administration and affiliating body. The same clause also requires submission of the land documents in original and clearly provides that the same may be a registered sale deed, irrevocable government lease for a minimum period of 30 years, etc. by the concerned authority of the Government. Further, it provides that site plan,

building plan for new site should be prepared by a registered architect and should be approved by the Competent Plan Sanctioning Authority designated by the State.

32. One of the contentions raised before us is that the AICTE itself had granted approval for the academic years 2008-09 and 2009-10 both vide letters dated 30th June, 2008 and 20th August, 2009, respectively. This itself should be taken to be a deemed compliance of all the requirements. We shall separately deal with the issue with regard to the effect of these letters and whether withdrawal of approval was a step appropriately taken by the AICTE or not as well as the effect of the prescribed time schedule. As of now, suffice it to note that even these approvals for the relevant academic years had clearly stated that the institution shall operate only from the approved location and it shall not open any campus/executive centres directly or in collaboration with any other institution/university for the purpose of imparting technical education without obtaining prior approval from the AICTE. The approval for these academic years was granted to the college being run at Survey Nos.27

(part) at Lasandvali, Godbhunder Road, Kasar Vadavali, Thane, and not at any other place.

33. Thus, there is no occasion to take it as a deemed and/or implied approval for the new site of the appellant-college. Approval can hardly be inferred. It is a matter of fact and the authorities are expected to pass appropriate orders in accordance with law and upon due diligence and in compliance with the procedure prescribed under law. For these reasons, we find that the view taken by the High Court does not call for any interference.

34. Thus, the view of the High Court that the college had failed to comply with the requirements for grant of approval and had shifted to the new site without approval of the AICTE and other concerned authorities cannot be faulted with. There being no compliance to the legal requirements and binding conditions of recognition, the withdrawal of approval by the AICTE can also be not interfered with. Shifting of students is a consequential order and is in the interest of the students.

35. The sequel to the above finding is that the appellant college could not have been included in the counselling for the current year. Even otherwise, the last date for admission was 30th August, 2012, which is since over and we see no reason whatsoever to extend this date. We have already noticed various judgments of this Court stating that the Court is required to strictly construe and comply with the schedule for admission. Even on that count, the appellant would not be entitled to any other relief.

36. Another argument raised before us is that the appellant-college had applied for shifting of the college to the new premises on 24th May, 2008, but even after a lapse of two years, the AICTE had not finally disposed of said request.

JUDGMENT

37. The college had shifted to the new premises without requisite permission/approval and still permission was granted for the two years, i.e., 2008-09 and 2009-10 and the show cause notice was issued only on 18th May, 2010. We have no hesitation in observing that the AICTE is evidentiary at fault and it ought not to have granted any approval for the academic

years 2008-09 and 2009-10. There has been definite slackness and irresponsibility in functioning on the part of the AICTE. The approval itself was issued by the Regional Committee when the application for transfer was pending with the AICTE itself. It is a matter of regret that as a result of such approval granted by the AICTE, the career of these students has been jeopardised to some extent. Now, they are required to shift colleges mid-term, even in excess of specified seats of those colleges and hinder their academic courses. All this is bound to prove disadvantageous to their academic career.

38. It is the requirement of law that there should be strict adherence to the time schedule for grant of approval as well as for admissions without exception. In exercise of the powers vested in the AICTE, under sub-section (1) of Section 23 of the AICTE Act, it had made regulations namely the All India Council for Technical Education (Grant of Approvals for Staffing New Technical Institution, Introduction of Course and Programmes and Approval of Intake Capacity) Regulations, 1994. Schedule to these regulations reads as under:-

Sl. No.	Stage of processing application	Last date by which the processing should be completed
(1)	(2)	(3)
1.	For receiving proposals by Bureau RC.	31 st December
2.	For the Bureau RC to screen the application and (a) to return the incomplete applications to applicants, and (b) to forward the applications to (i) State Government concerned (ii) University or State Board concerned, for their comments (iii) Regional Officer to arrange visits by Export Committees, and (iv) Bureaus MPCD, BOS and RA for their comments.	
3.	For receiving the comments is from (i) the State Government (ii) the University or State Board and (iii) the Regional Committee based on the Expert Committee's report and (iv) from the Bureaus MPCD, BOS and RA	15 th March
4.	For consideration of the comments from the State Governments, Universities or State Boards, Regional Committees, and Bureaus of the Council by the State level Committee	31 st March
5.	For recommendations to be made by the Central Task Force	15 th April
6.	For communicating the final decision to the State Government or the University Grants Commission, under	30 th April

	intimation to the Regional office, Director of Technical Education, applicant, University or State Board	
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39. This Schedule has statutory backing. Thus, its adherence is mandatory and not directory.

40. Non-adherence of this Schedule can result in serious consequences and can jeopardize not only the interest of the college students but also the maintenance of proper standards of technical education. The authorities concerned, particularly the AICTE, should ensure proper and timely action upon the applications submitted to it. It must respond to the applicant within a reasonable time period and should not let the matter drag till the final date giving rise to avoidable speculations by all stakeholders. Thus, it would be appropriate for these authorities to bring to the knowledge of the parties concerned, the deficiencies, if any, and the defects pointed out by the Expert Committee during the inspection within three weeks from the date of such inspection or pointing out of defects, as the case may be. For better administration, the AICTE should also state the time within which such deficiencies/defects

should be removed by the applicant. This will help in building of a coherent and disciplined method of working to ensure the proper implementation of the entire formulated scheme of technical education. The AICTE will not have any jurisdiction or authority to issue approval for commencement of a new course or for additional intake of students beyond 30th April of the year immediately preceding the commencement of an academic year.

41. Apparently, there seems to be some variations in the Schedule issued under Regulation 8(15), as aforenoticed, and the dates reflected in the Handbook. Another Schedule has been printed as per the website of the AICTE according to which the letter of approval for starting new technical institutions could be issued by 10th October, if application was submitted between January to June of the relevant year and 10th April, if the application was submitted between July to December of that year. Rejection of approval is an order which is appealable to the Appellate Committee of the AICTE. If the applicant wishes to file an appeal against the order, he is expected to file the appeal and, in any case, after directions of the Appellate

Committee are complied with, the order of approval after the reconsideration/appeal has to be issued by 15th November in the first case and 15th May in the other. If one reads these two schedules collectively, it is clear that the letter of approval should be issued by 15th April or by 30th April at the maximum. It is only the Appellate Committee's order which can be issued by 15th May. If such order grants recognition, then it must specify the academic year for which it is being granted. If it falls foul of the admission schedule, then it ought not to be granted for the current academic year. It has been brought to our notice that the last date for admission to the courses and the date on which the courses should begin is 30th August of the academic year. In that event, admissions to such courses, if permitted by the appellate authority, could be made strictly in accordance with the academic Schedule and without violating the same in any manner whatsoever. This brings us to the admission schedule which again should be strictly obeyed by all concerned.

42. We must notice that admission schedule should be declared once and for all rather than making it a yearly

declaration. Consistency and smoothness in admission process would demand and require that there is a fixed and unaltered time schedule provided for admission to the colleges so that the students know with certainty and well in advance the admission schedule that is to be followed and on the basis of which they are to have their choice of college or course exercised. The Schedule for admission for the coming academic year, i.e., 2013-2014 has been submitted to the Court after the matter was reserved for judgment. The said Schedule reads as under :

Event	Schedule
Conduct of Entrance Examination (AIEEE/State CET/ Mgt. quota exams etc.)	In the month of May
Declaration of Result of Qualifying Examination (12 th Exam or similar) and Entrance Examination	On or before 5 th June
1 st round of counselling/ admission for allotment of seats	To be completed on or before 30 th June
2 nd round counselling for allotment of seats	To be completed on or before 10 th July
Last round of counselling for allotment of seats	To be completed on or before 20 th July
Last date for admitting	30 th July.

candidates in seats other than allotted above	However, any number of rounds for counselling could be conducted depending on local requirements, but all the rounds shall be completed before 30 th July
Commencement of academic session	1 st August
Last date upto which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	30 th August
Last date of granting or refusing approval by AICTE	30 th April
Last date of granting or refusing approval by University / State Govt.	31 st May

43. The above Schedule though was finalized by the Committee on 29th January, 2012 but the same appears to have been notified only on 30th September, 2012. The reasons for the same are again unknown. We are unable to appreciate that once the academic session begins on 1st August, then as to

why should admission be granted upto 30th August of the year, particularly when, as per the terms of the Schedule, beyond or after 30th April, AICTE will not issue any approval for commencement of new course for additional intakes. The Schedule, thus, introduces an element of arbitrariness and may cause prejudice to the students who might miss their classes for a period of one month without any justification. Thus, it is required that the above-stated Schedule be modified to bring it in line with the Schedule for approval as well as to prevent inequalities, arbitrariness and prejudice from affecting the students in relation to their academic courses. The order granting or refusing approval, thus, should positively be passed by 10th April of the relevant year. The appeal should be filed within one week and the Appellate Committee should hear the appeal and decide the same by 30th April of the relevant year. The University should grant/decline approval/affiliation by 15th May of the relevant year. Advertisement should be issued and entrance examination conducted positively by the end of the month of May. The appropriate Schedule, thus, would be as follows :

Event	Schedule
Conduct of Entrance Examination (AIEEE/State CET/ Mgt. quota exams etc.)	In the month of May
Declaration of Result of Qualifying Examination (12 th Exam or similar) and Entrance Examination	On or before 5 th June
1 st round of counselling/ admission for allotment of seats	To be completed on or before 30 th June
2 nd round counselling for allotment of seats	To be completed on or before 10 th July
Last round of counselling for allotment of seats	To be completed on or before 20 th July
Last date for admitting candidates in seats other than allotted above	30 th July. However, any number of rounds for counselling could be conducted depending on local requirements, but all the rounds shall be completed before 30 th July
Commencement of academic session	1 st August

Last date upto which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 th August
Last date of granting or refusing approval by AICTE	10 th April
Last date of granting or refusing approval by University / State Govt.	15 th May

44. The admission to academic courses should start, as proposed, by 1st August of the relevant year. The seats remaining vacant should again be duly notified and advertised. All seats should be filled positively by 15th August after which there shall be no admission, whatever be the reason or ground.

45. We find that the above Schedule is in conformity with the affiliation/recognition schedule afore-noticed. They both can co-exist. Thus, we approve these admission dates and declare it to be the law which shall be strictly adhered to by all concerned and none of the authorities shall have the power or jurisdiction to vary these dates of admission. Certainty in this field is bound to serve the ends of fair, transparent and judicious method of

grant of admission and commencement of the technical courses. Any variation is bound to adversely affect the maintenance of higher standards of education and systemic and proper completion of courses.

46. Having declared the confirmed Schedule for grant of approval and completion of admission process, now it is necessary for us to revert to the apparent error in exercise of power and discretion by the AICTE. Admittedly, the appellant-college had been carrying on its education courses since the year 1994. It had submitted its application for transfer to the new site on 24th May, 2008. There is no document placed before us by any party including the AICTE to show that this application was dealt with either by the Regional Office or by the main office of the AICTE. Having known the fact that the college had shifted to a new site, the AICTE accorded approval for the academic years 2008-09 and 2009-10 for which again there is no justification placed on record. It is the case of the appellant that the Expert Committee visited the new site of the appellant-college where the college was being run on 26th June, 2008. Thereafter approval for the two academic years was

granted. Strangely, on the basis of the same report, on 18th May, 2010 the show cause notice was issued and again the Expert Committee is stated to have visited the college premises on 16th July, 2010 leading to the issuance firstly of the rejection of the seats and, secondly, of withdrawal/cancellation of approval on 7th January, 2011.

47. We fail to understand why the college was granted approval for the academic years 2008-09 and 2009-10 particularly when the Expert Committee is stated to have visited the premises on 26th June, 2008 and found inadequacies in the report. It is certainly a lapse on the part of the AICTE which cannot be ignored by the Court as it had far-reaching consequences including placing the career of the students admitted during these two years in jeopardy. Even though the High Court has directed allocation of these students in other colleges, their academic course certainly stands adversely affected and disturbed, for which the AICTE is responsible. In this regard, the Court cannot overlook such apparent erroneous approach and default which can be for anything but bona fide reasons. Thus, we impose costs of

Rs.50,000/- upon the AICTE for such irresponsible working. The costs would be payable to the Supreme Court Legal Services Committee and would be recovered from the salary of the erring officials/officers involved in this erroneous approach. The recovery shall be effected in accordance with law.

48. For the reasons afore-recorded, we find no merit in both the appeals afore-referred. While dismissing these appeals, we issue the following directions :

- (i) Both grant/refusal of approval and admission schedule, as aforestated, shall be strictly adhered to by all the authorities concerned including the AICTE, University, State Government and any other authority directly or indirectly connected with the grant of approval and admission.
- (ii) No person or authority shall have the power or jurisdiction to vary the Schedule prescribed hereinabove.
- (iii) While dealing with the application for grant of approval to new colleges or additional seats, the AICTE shall inform the applicant within three weeks from the date of receipt of its

application or date of inspection, as the case may be, the shortcomings/defects, who, in turn, shall remove such shortcomings/defects within 15 days from the date of such communication or within such period as the AICTE may grant and re-submit its papers without default. The process of grant of approval has to be transparent and fair. The AICTE or the concerned University or State Government shall take disciplinary action against the person who commits default in adherence to the Schedule and performance of his duties in accordance therewith.

- (iv) The reports submitted by the Expert Committee visiting the college should be unambiguous and clear, and should bear the date and time of inspection and should be sufficiently comprehensive and inspection be conducted in the presence of a representative of the institute.
- (v) The students of the appellant-college shall be re-allocated to the recognized and affiliated colleges in terms of the judgment of the High Court; and the AICTE and the concerned University shall ensure that the academic courses of these students are completed within the

balance period of the academic year in all respects. For this purpose, if extra classes are required to be held, the concerned institute, the University and the AICTE are directed to ensure holding of such extra classes.

- (vi) If the appellate authority decides the matter prior to 30th April of the concerned year and grants approval to a college, then alone such institution will be permitted to be included in the list of colleges to which admissions are to be made and not otherwise. In other words, even if the appellate authority grants approval after 30th April, it will not be operative for the current academic year. All colleges which have been granted approval/affiliation by 10th or 30th April, as the case may be, shall alone be included in the brochure/advertisement/website for the purpose of admission and none thereafter.

.....J.
(A.K. Patnaik)

.....J.
(Swatanter Kumar)

New Delhi;

December 13, 2012

SUPREME COURT OF INDIA



JUDGMENT