

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) No.2752/2008 & CM No.5294/2008**
% **Date of Decision: 22.07.2008**

Aditya Institute of Technology Petitioner
Through: Mr. Aseem Mehrotra, Adv.
versus

Govt. of Delhi & Anr. Respondent
Through: Mr. V.K. Tandon, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J. (Oral)

1. The petitioner has filed this petition to seek a writ directing respondent No.1, i.e., the Government of NCT of Delhi to include the name of the petitioner institute in the information bulleting for the year 2008-2009 and to further direct the Chief Admission Officer, CET-2008 to make admissions in the petitioner college in the light of extension of approval granted by the All India Council for Technical Education (AICTE), i.e. respondent No.2 vide letter dated 5.3.2008 for the academic session 2008-2009.

2. The petitioner institute is run by Dr. R.N. Gupta Technical Education Society which is registered under the Societies Registration Act. The petitioner claims to be running technical colleges all over the country. Technical education falls within the domain of AICTE constituted under All India Council for Technical

Education Act, 1987. The controversy in this petition pertains to four diploma courses being run by the petitioner institute since 1995-96, viz., Diploma in Computer Engineering, Diploma in Electronics and Communication Engineering, Diploma in Medical Lab Technology and Diploma in Pharmacy.

3. The petitioner states that vide letter dated 30.7.2007 respondent No.2 granted extension of approval to the petitioner institute for making admission for the academic session 2007-2008. However, the petitioner was unable to admit students to the said courses on account of the fact that admission process had already been closed by then. The petitioner approached this court by filing WP(C) No.6536/2007 which was dismissed for the aforesaid reason. The Supreme Court also dismissed the Special Leave Petition filed by the petitioner.

4. For the current year i.e. 2008-09 the AICTE sent an Expert Committee of the North Western Regional Committee to inspect the petitioner institute. This committee consisted of Dr. Krishan Gopal, Executive Director National Institute of Technology, Kurushetra, Dr. Kharid Mohammad Professor and Head, Department of Civil Engineering, Jamia Milia, Delhi, Dr. B. Roy Chaydhary, Professor and Head, Department of Electronics, Delhi College of Engineering, Delhi and Shriom Dalal, Regional Officer, North Western Regional Office, AICTE as a convenor of the Committee. Based on the inspection report of the said Committee, respondent No.2 issued the communication dated 5.3.2008 granting extension of approval to the petitioner institute for the aforesaid four courses with maximum intake of 40 students in each course for the academic session 2008-2009.

5. The grievance of the petitioner is that despite the aforesaid approval to extension granted by the AICTE for the second consecutive year, the respondent No.1 is acting arbitrarily by not including the name of the petitioner institute as one of the institutes offering the said courses and by keeping the petitioner out of the admission process undertaken on the basis of CET, 2008. The petitioner relies on the decisions of the Supreme Court in **State of TN & Anr. v. Adhiyaman Education and Research Institute and Ors.** (1995) 4 SCC 104 and **Jaya Gokul Educational Trust V. Commissioner & Secretary to government High Education Dept. Thiruvananthapuram & Anr.,** AIR 2000 SC 1614 and **State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors,** JT 2006(4) SC 201 to submit that respondent No.1 has no authority or jurisdiction to disregard the approval granted by AICTE after due inspection by them of the petitioners institute. He submits that the respondent No.1 is being unreasonable and is bent upon somehow preventing the petitioner from running the said courses for the academic session 2008-09 by encroaching upon the authority of AICTE and disregarding the approval granted by them.

6. Learned counsel for respondent No.1, Mr. V.K. Tandon, opposes the petition primarily on the ground that the petitioner institute is not permitting it to carry out inspection of its institutional facilities and for this reason the request of the petitioner cannot be entertained. It is submitted that the inspection team of respondent No.1 has repeatedly tried to visit the petitioner's institute but on each occasion the petitioner has denied inspection to the said committee. Mr. Tandon submits that extension of approval letter

issued to the petitioner states that the “.....observations and specific conditions (if any) of the Expert Committee are annexed to this letter. The Institution shall fulfill all the conditions without any delay. Non fulfillment shall lead to withdrawal of approval”. The approval letter further states “It may please be noted that AICTE had issued interim policy regulations, which has been notified in the Gazette of India on November 28, 2005. All the provisions contained in the interim policy regulations shall be applicable for all the AICTE approved institutions.”

7. Mr. Tandon also relies on the following extract from the said letter.

“Copy to

1.The Director, Technical Education Deptt., Govt of NCT, Muni Maya Ram Marg, near TV tower, Pitampura, New Delhi.

He is requested to closely monitor the compliance of Norms and Standards stipulated by the Council and keep this Regional Office and the AICTE informed of the same.

2. The Principal Aditya Institute of Technology, 107/9 Kishan Garh, Vasant Kunj, New Delhi A request to fulfill the deficiencies as annexed (if any) to this letter and submit the compliance by the start of the session to this Regional office.”

8. The submission of Mr. Tandon is that for the purpose of mandatory compliance of the norms and standards stipulated by the AICTE and to keep the North Western Regional Committee of AICTE informed of the same, it is necessary for respondent No.1 to conduct the inspection which has been denied by the petitioner. He submits that similar inspection has been conducted by respondent No.1 for various other institutes. Mr. Tandon also relies on the revised norms and standards and approval process for diploma level technical institute circulated by AICTE on 18.9.2007. A copy of this

communication has been placed on record by Mr. Tandon. He emphasizes that in paragraph 4 of this communication the AICTE has laid down that *"The Applicant Institution to whom Letter of Intent was issued will submit necessary documents for grant of Letter of Approval to the concerned Director of Technical Education of the concerned State Govt./U.T. based on which the Director of Technical Education will arrange an Expert committee visit to verify the facilities created by the applicant institution"*. The submission of Mr. Tandon then is that from the aforesaid, it cannot be said that a clear approval has been granted to the petitioner. Mr. Tandon specifically refers to the communication dated 6.6.2008 written by respondent No.1 to respondent No.2 containing the recommendations of the State level committee for the academic session 2008-2009 in respect of the various technical institutes including that of the petitioner. He submits that the State level inspection committee has not recommended the inclusion of petitioner institute in the "admission category" since the same was found closed. Mr. Tandon further states that vide communication dated 20.6.2008 as well, the petitioner was required to grant inspection to the State level inspection committee on 25.6.2008 at 10 a.m. However, even on that occasion the same was denied.

9. Respondent no.2, AICTE has filed a short counter affidavit. Pertinently, respondent No.2 does not say anything in its counter affidavit to support the impugned action of respondent No.1 for the reasons disclosed by respondent No.1. The stand taken by respondent no.2 in its counter affidavit is that the petitioner institute is running in a rented accommodation and till date has not acquired its own land. Respondent no.2 had required all

educational institutions to shift their activities to their own premises vide notification dated 18.2.2005. It is further stated that the approval granted by respondent no.2 vide letter dated 5.3.2008 is subject to the petitioner filing a compliance report showing the removal of deficiencies mentioned in the extension of approval letter dated 5.3.2008.

10. Before proceeding further, I think it appropriate to deal with the stand of respondent no.2 at this stage itself. First and foremost, at the time of arguments, which were spread over two days, the counsel for respondent no.2 did not even appear to oppose the petition on the second day i.e. today. Secondly, as aforesaid, respondent No.2 does not sympathize with the respondent No.1 in its grievance that the petitioner is refusing inspection to the State level committee, and it does not support the decision of respondent No.1 for that reason. Thirdly, if the requirement of running the institute in its own premises was considered by AICTE of such importance as to deprive the petitioner of approval for the academic year 2008-09, it is not understood as to why in the first place, the approval was granted to the petitioner as late as on 5.3.2008. The petitioner has pointed out that the respondents have themselves not strictly enforced the said requirement of an institution running in its own premises or adhering to the norms with regard to the area that the institute should be possessed of to set up and run the institute. He refers to the information furnished by the Department of Training and Technical Education dated 10/11.4.2008 in response to the queries raised under the Right to Information Act by one Tejvir Singh. It is pointed out that six of the seven institutes who have been granted

approval by respondent No.2, and who are a part of the admission process of respondent No.1 do not meet the norms with regard to the institute being run on institutional land of an area of 1.5 acres (which was earlier 4 acres and now stands reduced to 1.5 acres).

The details of these seven institutes are as follows:

S. No.	Name of the Polytechnic	Status of land
1.	Chhotu Ram Rural Institute of Technology Kanjhawala (Ghevra), Delhi-110041	12 acres, Agricultural Land
2.	Father Agnel Polytechnic Gautam Nagar (Opp. Neeti Bagh), New Delhi-110049.	1 acre, Earmarked for polytechnic from school land of 3 acres
3.	Guru Tegh Bahadur Polytechnic (G.H.P.S. Premises), Poorvi Marg, Vasant Vihar, New Delhi-110057.	2 acres, Earmarked for polytechnic out of 8 acres school land
4.	International Polytechnic for Women 171A, Khirki Extension, Malviya Nagar, New Delhi-17.	0.5 acres, Laldora
5.	Marathwara Institute of Technology Mundka, New Delhi-110040.	Temporary site, School building/ Laldora land
6.	Rao Tula Ram Polytechnic Rao Tula Ram Marg, New Delhi-110021.	4 acres, Institutional land
7.	Subramaniam Bharati College of Science & Technology Holambi Khurd, Delhi-110082.	0.5 acres, Laldora land

11. It is also pertinent to note that the categorical stand of the petitioner that in the approval letter dated 5.3.2008, absolutely no conditions or deficiencies had been pointed out and, therefore, there is no further compliance required of the petitioner, has remained uncontroverted by respondent no.1 and respondent no.2.

12. From the aforesaid it appears that the requirement of the institute running on its own land allotted on institutional basis has not been made strictly applicable by respondent no.2 and there is no reason to discriminate against the petitioner when at least six

other institutions, who are not satisfying the said norms are being permitted to run the technical courses year after year. It appears that the Inspection Committee of respondent no.2 was conscious of the aforesaid position while issuing the approval letter dated 5.3.2008, else, either the approval letter would not have been issued or a specific condition would have been laid down by respondent no.2 in that regard before the approval letter took effect. The current is the second successive year when approval has been granted to the petitioner by the respondent no.2 even though the petitioner has continued to run the institute from rented accommodation. Though it is not necessary for me at this stage to go into this issue any further, it may also be noted that the learned counsel for the petitioner during the course of his arguments stated that it had already applied for allotment of institutional land for running its institute to the DDA which enjoys a monopoly status in Delhi for allotment of institutional lands, and that the said issue is also pending before this Court in a separate writ petition.

13. In ***Adhiyaman Educational and Research Institute*** (supra), the Supreme Court was dealing with the issue relating to the conflict between the powers and functions of AICTE on the one hand and a state legislation, namely, Tamil Nadu Private College (Regulation) Act on the other hand. The Supreme Court in paras 22, 27 and 30 of the said decision held as follows:-

“22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the

technical education system. The Council is, further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognize the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well-known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiencies but for want of opportunities to develop and contribute to the total good of the country.

Unnecessarily high norms or standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centered around the right of the States to prescribe standards higher than the one laid down by the Council. What is further

necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the Constitution and functions of the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a say in the Constitution and functions of these Committees as well. What is further important to note is the subject covered by this statute is fairly within the scope of Entry 66 of List I and Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-Second Amendment nor can it make a law under Entry 25 of List III after the Forty-Second Amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursal of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and standards for courses, physical and institutional facilities, staff pattern, staff qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions and for introduction of new courses or programmes, taking steps to prevent commercialisation of technical education, inspection of technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring the compliance of the directions of the Council, declaring technical institutions

at various levels and types fit to receive grants, the Constitution of the Council and its executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government on questions of policy etc. which matters are covered by the Central Act. What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court.

30. A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are concerned, there is a conflict between and overlapping of the functions of the council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly, to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical institutions or introducing new courses or programmes, to lay down norms or granting autonomy to technical institutions, providing guidelines for admission of students, inspecting or causing to inspect colleges, for withholding or discontinuing of grants in respect of courses and programmes, declaring institutions at various levels and types fit to receive grants, advising the Commission constituted under the Act for declaring technical educational institutions as deemed universities, setting up of National Board of Accreditation to periodically conduct evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or the Commission or other bodies under the Act regarding

recognition or derecognition of the institution or the programme conducted by it. Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering Colleges. As has been pointed out earlier, the Central Act has been enacted by the Parliament under Entry 66 of the List I to coordinate and determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of technical colleges like the Engineering Colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act.” (**emphasis supplied**)

14. In **Jaya Gokul Educational Trust** (supra), the appellant was desirous of establishing a self financing engineering college and submitted its application to the University of Kerala as well as to the AICTE. An inspection team of the university recommended favorably the case of the appellant. AICTE also granted conditional approval for establishment of engineering and technical college. The appellant applied to the State Government for grant of its permission, which was refused by the Government. The same was challenged before the Court. The Supreme Court relied upon **Adhiyaman Educational and Research Institute** (supra) and in paras 22 and 23 of the said judgment held as follows:-

“22. As held in the Tamil Nadu case (1995 AIR SCW 2179), the Central Act of 1987 and in particular, Section 10(K) occupied the field relating the '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 characterized 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 the Tamil Nadu case there were enough provisions in the Central Act for consultation by the Council of the 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, the 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 the Tamil Nadu 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 the 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."

15. In **Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya** (supra), which is a case relating to the NCTE and which relies on **Adhiyaman Educational & Research Institute and Others** (supra) and **Jaya Gokul Educational Trust** (supra), the Supreme Court in paragraphs 57 and 59 held as follows:-

“57. It is thus clear that the Central Government has considered the subject of Secondary Education and Higher Education at the national level. The Act of 1993 also requires Parliament to consider Teacher Education System “throughout the country”. NCTE, therefore, in our opinion, is expected to deal with applications for establishing new B.Ed. colleges or allowing increase in intake capacity, keeping in view 1993 Act and planned and co-ordinated development of teacher-education system in the country. **It is neither open to the State Government nor to a University to consider the local conditions or apply 'State policy' to refuse such permission. In fact, as held by this Court in cases referred to hereinabove, State Government has no power to reject the prayer of an institution or to overrule the decision of NCTE. The action of the State Government, therefore, was contrary to law and has rightly been set aside by the High Court.**

59. In accordance with the provisions of 1993 Act, final decision can be taken only by NCTE and once a decision is taken by NCTE, it has to be implemented by all authorities in the light of the provisions of the Act and the law declared by this Court. It has been so held in St. John Teachers training Institute.” (emphasis supplied)

62. Before parting with the matter, we may state that at one stage, the High Court has observed that "in so far as the University is concerned, considering the provisions of Section 15 of the NCTE Act, once permission has been granted under Section 14, the University is bound to grant affiliation in terms of the Act, Rules and Statutes. Section 83 requires the University to grant affiliation only after permission is granted under Section 82 of the Maharashtra University Act. To that extent the provisions of Section 82 and 83 are inconsistent with the provisions of NCTE Act and are null and void.

63. In our opinion, the observations that the provisions of Sections 82 and 83 of the Maharashtra University Act are "null and void" could not be said to be correct. To us, it appears that what the High Court wanted to convey was that the provisions of Sections 82 and 83 would not apply to an institution covered by 1993 Act. **As per the scheme of the Act, once recognition has been granted by NCTE under Section 14(6) of the Act, every university ('examining body') is obliged to grant affiliation to such institution and Sections 82 and 83 of the University Act do not apply to such cases.” (emphasis supplied)**

16. The Supreme Court in the aforesaid three decisions has repeatedly dealt with the scope of powers and jurisdiction of AICTE/NCTE which are organizations set up by the Parliament in exercise of its powers under Entry 66 of List-I of VIIth Schedule to the Constitution specially to provide for coordinated and integrated development of technical education/teacher education throughout the country. The Supreme Court has held that it is entirely for the AICTE/NCTE to lay down norms and in respect of areas where norms have been laid down by these Councils the field stands occupied and it is not open either to the State Government concerned, or even to the University to which affiliation is sought, to lay down any other norms whether higher or lower in contravention of norms laid down by the Council, and on that basis either to deny their consent or no objection or affiliation to the concerned university.

17. Despite the aforesaid clear rulings of the Supreme Court, I find that in various cases the tussle between the Council and the State Government/affiliating university continues, with the State Government/affiliating university trying to exercise their authority over the institutions concerned, with the result that the institutions and the students who are waiting for seeking admission to the concerned courses suffer in the process. This case also presents a similar picture.

18. As aforesaid, the petitioner institute was granted extension of affiliation on 30.7.2007 for the academic session 2007-2008. However, even for that year the petitioner could not avail of the said extension on account of the fact that the admissions had closed by then. For the current year once again the approval has been granted by the AICTE after an inspection conducted by a

team as aforesaid, and despite the said approval the petitioner is again facing obstruction at the hands of respondent no.1 in being able to undertake the said courses for the academics session 2008-2009. The reason for the aforesaid attitude of the respondent No.1 is stated to be the refusal of the petitioner to allow inspection to their team. The petitioner objects to the assertion of the right to carry out inspection by respondent No.1.

19. The right to carry out inspection is asserted by respondent No.1, inter alia, on the basis of the approval letter dated 5.3.2008. As aforesaid Mr. Tandon has relied upon the extract narrated above to derive such a right. However, I am not convinced that the respondent has a right to carry out inspection to decide whether or not to honour the recognition/approval already granted by AICTE and no such right can be asserted either on the basis of the approval letter dated 05.03.2008 or on the basis of any of the aforesaid documents. In fact, the said stand of respondent No.1 is contrary to the legal position as aforesaid. As noticed hereinabove, the definite case of the petitioner is that the Expert Committee did not make any observations or lay down any specific conditions that the petitioner was required to fulfill, at the time of issuance of the approval letter dated 5.3.2008. This position has not been controverted by either of the respondents. A perusal of the approval letter dated 5.3.2008 itself shows that the conditions, subject to fulfillment of which, the approval letter was issued were only the following:-

1. Admissions shall be made through the Central Counseling by the State/Central Govt. only.
2. If this letter of approval is received by you after the closing date of State/National Level Central Counseling for

Admissions in the concerned State/Union Territory, this Letter of approval will not be valid for making any admission during the above specified academic year, and shall be treated as withdrawn.

3. No excess admission shall be made by the Institution during any academic year.
4. The approval is valid only for the academic year as mentioned in the table. If no further extension of AICTE approval is received beyond the academic year, this Approval Letter will not be valid for making any admission for the subsequent years.
5. Name of the Institution, Name of the Society/Trust, is not allowed to change without prior approval of AICTE. The name and title of the institution should be such that "the Emblems and Names (Prevention of improper use) Act(1950)" of government of India is not violated in any manner.
6. In exercise of power conferred under 10(p) of the AICTE Act, AICTE, may inspect the institution any time it may deem fit to verify the progress/compliance of the Institution or for any other purpose.
7. Any other condition(s) as may be specified by AICTE from time to time."

20. It is also the case of the petitioner that the interim policy regulations stated to have been issued by the AICTE and notified in the Gazette of India on 28.11.2005 also do not in any way prevent the petitioner from undertaking the aforesaid courses. Once again, neither of the two respondents have disclosed as to which interim policy regulation, stated to have been notified by AICTE on 28.11.2005 has not been complied with by the petitioner. Therefore, the reliance placed by Mr. Tandon on the said interim policy regulations appears to be vague. It is also pertinent to note that the reason for placing the petitioner institute in "no admission" category by respondent no.1, as disclosed from the recommendations of the said level committee of respondent no.1 is

not that the petitioner does not fulfill the so called specific conditions of the Expert Committee of AICTE on 28.11.2005.

21. The reliance placed by Mr. Tandon, on the request made to the Director, Technical Education Department of respondent no.1 (in the approval letter dated 5.3.2008) to monitor the compliance of norms and standards stipulated by the Council and to keep the North Western Regional Office and the AICTE informed of the same, to claim a right to inspect also appears to be misplaced. Firstly, if the respondent No.1 were to be vested with such a right it would completely defeat the very object and purpose of vesting the Council with the sole power and authority to grant recognition/approval since in every case the concerned State Government would then be able to nullify the recognition/approval by insisting that it should first be granted inspection of the institute even though the institution has already obtained the recognition/approval after an inspection by the Council. The object and purpose of the request made by AICTE to the Director in the letter dated 5.3.2008 is not to inspect the institute for the purpose of grant of approval. That has already been granted. The question of closely monitoring the compliance of norms and standards would arise once the institute begins its functioning. The inspection had been conducted by the AICTE in December, 2007 and the letter of approval has been issued in March, 2008. There is nothing to suggest that AICTE has empowered the respondent No.1 to again carry out inspection afresh and on that basis to block the petitioner's move to admit students for the academic session 2008-2009. AICTE has not empowered respondent No.1 or delegated its authority/function to respondent No.1 to override the findings of its

own Expert Committee which has carried out inspection of the petitioner institute. No doubt, respondent No.1 even otherwise may be entitled to observe the progress of the courses at the petitioner institute and to report to AICTE and/or its Regional Office with regard to the compliance/non-compliance of standards and norms. However, that does not mean that the said opportunity can be exploited by respondent No.1 to override the approval granted by AICTE after inspection by its team.

22. Mr. Tandon has also relied upon the instruction issued to the Principal of the petitioner institute to fulfill the deficiencies, *“as annexed (if any) to”* the letter of approval. However, Mr. Tandon has failed to point out if, in fact, any deficiency has been communicated. Since there are no specific pre conditions set out in the said letter of approval that the petitioner is required to fulfill before the approval could take effect, in my view the submission of Mr. Tandon that the approval was conditional and could not take effect until inspection was granted by the petitioner to respondent No.1., cannot be accepted.

23. The communication dated 18.09.2007 of AICTE relied upon by respondent No.1 to assert its right to carry out inspection is also of no avail, particularly in the facts of this case. A perusal of the said letter shows that the AICTE by that letter conveyed the procedure to be adopted while dealing with an application made to seek the approval of AICTE for *“starting new diploma level technical institutions, additional courses/increase, variation in intake and existing courses”*. The relevant extract of this letter reads as follows:

- “1. The applications for grant of approval for starting new diploma level technical institutions, additional courses/increase, variation in intake and existing courses will be submitted by applicant to the concerned Directorate of Technical Education of the concerned State Govts/UT, which will be scrutinized by a Committee constituted by the Secretary dealing with technical education of the concerned State Govts/UT.
2. The State Level Committee chaired by the Secretary dealing with technical education of the concerned State Govt./UTs shall decide on the issuance of Letter of Intent or other wise based on the recommendations of Scrutiny Committee.
3. Based on the recommendations of the State Level Committee the Regional Officer of AICTE will issue Letter of Intent to Applicant Trust/Society.
4. The Applicant Institution to whom Letter of Intent was issued will submit necessary documents for grant of Letter of Approval to the concerned Director of Technical Education of the concerned State Govt./UT based on which the Director of Technical Education will arrange an Expert Committee visit to verify the facilities created by the applicant institution.
5. The State Level Committee chaired by the Secretary dealing with technical education of the concerned State Govt./UTs will decide on the issue of Letter of Approval based on the recommendations of the Visiting Expert Committee.
6. Based on the recommendations of the State Level Committee the Regional Officer of AICTE shall issue Letter of Approval.”

24. Firstly, the aforesaid procedure prescribed in the said communication does not appear to be relevant for the purpose of renewal of approval. It is not the case of respondent No.1 that any application was made to it by the petitioner, or that respondent No.1 had issued a letter of intent to the petitioner in terms of para 2 of the said letter. It is also not the respondents case that AICTE issued a Letter of Intent to the petitioner. Therefore, neither party has, at any stage, sought to rely upon or adhere to the procedure contained in the communication dated 18.09.2007. Pertinently, the

reason for placing the petitioner in “No Admission” category is not the non-adherence to the procedure contained in the letter dated 18.09.2007 of respondent No.2. Secondly, assuming that the said procedure were to apply to a case like the present, the approval already having been granted by AICTE/its North Western Regional Committee, the said procedure contained in para 4 of the letter dated 18.09.2007 became redundant. The ultimate authority to issue recognition/approval lies with the AICTE/its regional Committee. The approval in the petitioner’s case has been granted by the competent authority. If respondent No.1 has any grievance with regard to non-adherence by respondent No.2 to the procedure evolved by respondent No.2, it may take up the issue with respondent No.2, but that cannot give the respondent No.1 a handle to render the approval granted by respondent No.2 ineffective.

25. Even it were to be assumed that the petitioner ought to have allowed respondent No.1 to send its State level inspection team to the petitioner institute, the refusal of the petitioner to allow the said inspection team cannot by itself empower the respondent No.1 to place the petitioner institute in a “No Admission” category. The right course of action for respondent No.1 to adopt would have been to report the matter to the AICTE and its North Western Region Committee since the approval had been granted by the AICTE and its North Western Region Committee, and it is only the AICTE/its committee which can withdraw the said approval. The said approval cannot be interdicted by respondent No.1 in the manner that it has been done in the present case. Pertinently, the counter affidavit of respondent No.2 does not support the action of respondent No.1 in placing the petitioner institute in “No Admission”

category on the ground that the petitioner has failed to provide the inspection to the State level committee of respondent No.1. Even if it is assumed that the petitioner had granted an inspection to the State level committee and the State level committee had found any non-compliance of the norms and standards stipulated by AICTE, even then the only action that respondent No.1 could have taken would have been to immediately notify the AICTE and its North Western regional office. The respondent No.1 could not have proceeded to place the petitioner in “No Admission” category. Pertinently the respondent No.1 has ample representation both in the AICTE and in the North Western regional Committee of the AICTE.

26. During the course of hearing the petitioner has filed a supplementary affidavit with a few documents. The same have been relied upon by the petitioner without any objection from the respondents. Even otherwise, the nature of documents sought to be placed on record by the petitioner alongwith supplementary affidavit is such that there can hardly be any dispute about their veracity. I may also note that the respondents have also not controverted the documents placed by the petitioner with the supplementary affidavit. Mr. Mehrotra has pointed out by reference to the supplementary affidavit and the documents filed therewith that the petitioner institute is even now a running institute, inasmuch as, it had admitted students in the academic year 2005-2006 for the aforesaid four courses, out of which Diploma in Computer Engineering, Diploma in Electronics and Communication Engineering and Diploma in Medical Lab Technology are three years courses. These courses have, therefore, continued for 2005-2006,

2006-2007 and upto 2007-2008. The stand of respondent No.1 that the petitioner institute was found locked or closed when its inspection team visited the institute is therefore challenged. The petitioner has placed on record the semester-wise result of these courses which show the good performance of the students enrolled with it semester after semester. A large number of these students have passed with distinction. The petitioner has also placed on record documents to show that petitioner institute has been designated as an examination center by the respondent No.1 and that the Principal of the petitioner institute has also been nominated as a Central Superintendent by the respondent as late as on 10.04.2008.

27. For the aforesaid reasons I allow this petition and direct respondent No.1 to include the name of the petitioner college as one of the colleges offering the four courses, namely, Diploma in Computer Engineering, Diploma in Electronics and Communication Engineering, Diploma in Medical Lab Technology and Diploma in Pharmacy with maximum intake of 40 students for the academic session 2008-2009.

28. When the matter had come up before the Court on 13.6.2008 and the petitioner was pressing for interim relief, Mr. Tandon had made a statement that the counseling will start from 23.7.2008. In view of the said statement of Mr. Tandon made on behalf of respondent No.1 the matter had been adjourned from time to time. However, that statement has been belied. The petitioner has pointed out that respondent No.1 has required all the candidates to register themselves online from 10.7.2008 onwards upto 18.7.2008. It is further stated that it is mandatory for every

candidate to do online registration which include campus counseling (choice submission), without which the candidates would not be eligible for campus counseling. The petitioner submits that since the respondent has removed its name from the list of institutes offering the said four courses, (as is evident from the reply given by the respondent on 8.4.2008 in response to queries under the R.T.I. Act to one Mr. Tejveer Singh), no student would obviously have opted for any of the aforesaid courses in the petitioner institute and when they appear for on campus counseling from 23.7.2008 onwards, there would be no student who could be allocated to petitioner institute. The aforesaid conduct of respondent No.1, to say the least, is highly deplorable and is designed to hoodwink the Court to somehow scuttle the endeavour the petitioner from admitting students on the basis of CET, 2008. Respondent no.1 has misled the petitioner as well as this Court. The least that respondent No.1 could have done before undertaking the said process of online registration was to inform the Court as well as the petitioner about the same, so that orders could have been passed to protect the interest of the petitioner and the students who may be interested in pursuing any of the aforesaid four courses in the petitioner institute.

29. Since the petitioner institute's name was not included as one of the colleges offering the aforesaid four courses earlier, and the students could not undertake online registration in respect of courses offered by the petitioner in the petitioner institute, in the process of counseling to be held from 23.7.2008 onwards, at the time when the students appear for counseling, each of them would be made aware of the availability of the petitioner institute for the aforesaid four courses and would be permitted to opt for the

courses offered by the petitioner institute without insisting upon online registration in that regard. The respondent No.1 shall display a notice to this effect prominently at each of the counseling centers and shall also issue a notice to the same effect on its website within 24 hours without waiting for a copy of the detailed judgment. Since the judgment has been dictated in the open Court in the presence of Mr. Tandon who is representing respondent No.1 and the same will take some time for the same to be prepared, I direct respondent No.1 to proceed to implement the judgment without waiting for a copy thereof.

Petition stands disposed of.

**VIPIN SANGHI
JUDGE**

JULY 22, 2008
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