

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 09.07.2013
Judgment pronounced on : 12.07.2013

+ **WP(C) No.320/2013**

IMS ENGINEERING COLLEGE

..... Petitioner

Through: Mr Aseem Mehrotra, Adv.

versus

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

THROUGH: ITS ADVIROR-I

..... Respondent

Through: Mr Amitesh Kumar, Adv. for AICTE

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. The petitioner before this Court is a self-financing private college offering technical education and affiliated to respondent No.2 Mahamaya Technical University, Noida. For the Academic Year 2012-13, respondent No.1/All India Council for Technical Education (AICTE) issued advertisement asking colleges to submit compliance report for extension of approval for the Academic Year as also for starting new courses, 2nd shift and increase of intake capacity. On 19th January, 2012, the petitioner applied to respondent No.1 for extension of approval for the existing courses in Shift No.1 and and Shift No.2, an increase in intake in Shift No.1 in respect of B.Tech.(Electrical and Electronics), starting

B.Tech.(Civil Engineering) with 60 seats each in Shift No.1 and Shift No.2 and starting M.Tech.(Software Engineering) and M.Tech.(CAD and CAM) in Shift II with intake of 18 seats each in both the courses. The petitioner also applied to respondent No.2 Mahamaya Technical University for affiliation for the Academic Year 2012-13, in respect of the existing courses as well as the new courses which it was seeking to start and increase in the intake capacity wherever it was applied. Respondent No.1 AIECTE had accorded the facility of uploading the requisite data with respect to such approvals and verifying the status of such applications using the login ID and password of the applicant on its web portal. The status of its application, when verified by the petitioner on 10th May, 2012, showed approval for increase of intake capacity in respect of B.Tech(Electrical and Electronics Engineering) from 60 to 120, permission to start B.Tech. (Civil Engineering) in the 1st and 2nd shift with intake capacity of 60 each shift, permission to start Post Graduation in Software Engineering in 2nd shift with intake capacity of 18, permission to start Post Graduation in CAD/CAM in the 2nd shift with intake capacity of 18 as well as extension of approval in respect of the existing courses.

2. Before the petitioner downloaded the status of its application from the website of respondent No.1, an inspection of its college was carried out by the Expert Visiting Committee (EVC) on 25th April, 2012 and a number of deficiencies were found during the said inspection. Pursuant to the said inspection, the respondent No.1 issued a show cause notice dated 24th May, 2012 to the petitioner enclosing therewith the report of

the said Committee and requiring it to show cause as to why it should not be considered that AICTE was misled by the petitioner by giving manipulated or false information, there was violation of terms and conditions contained in the Letter of Approval and why appropriate action including withdrawal of approval be not initiated against it for non-observance of the terms and conditions of the approval and misleading AICTE by its self-disclosure/declaration of false information. The notice also required the Director/Principal and Secretary/Chairman of the petitioner Institute to appear before its Standing Complaint Committee(SCC) on 11th June, 2012 to present its case along with the specific reply and relevant supporting documents in original and xerox copy pertaining to the deficiencies.

3. The petitioner responded the aforesaid show cause notice on 9th June, 2012 and its representative appeared before the Standing Complaint Committee of AICTE on 11th June, 2012. Observing that though documents regarding Faculty were shown, still the gap shown by the Team was a significant one which could not be ignored, the Standing Complaint Committee recommended visit by an Expert Visiting Committee to the Institute of the petitioner. Accordingly, the Expert Visting Committee carried out an inspection on 16th July, 2012. It was reported by the Expert Visting Committee that the Institute complied with all the requirements. The report of the Expert Visiting Committee was placed before the Standing Complaint Committee in its meeting held on 22nd October, 2012. The reports dated 25th April, 2012 as well as the

report dated 16th July, 2012, recommended re-scheduling of the said Committee to verify (i) list of Faculty with salary statement and Form 16A of each faculty member; (2) dates of appointment and joining with pay scale; (3) attendance record of faculty members for last six months and other relevant documents regarding selection procedure in totality. Pursuant to the said decision, a communication was sent to the petitioner on 6th November, 2011 requiring its Director/Principal to attend the meeting of the Committee on 8th November, 2012 along with the aforesaid material. The representative of the petitioner did not appear before the Committee on 8th November, 2012. The petitioner Institute was, however, given one last opportunity to present its views along with relevant documents during the next meeting of the Committee on 17th December, 2012. The Standing Complaint Committee, after considering the matter on 17th December, 2012 decided not to recommend new courses in Civil Engineering on account of the petitioner not having Civil Engineering Faculty on its Rolls as per the list submitted by it and its not being eligible for the 2nd shift on account of 1st shift having not been approved. It was also decided not to recommend approval for 2nd shift in Post Graduation in Software Engineering and CAD/CAM since the petitioner was not running 1st shift course in the above seats and appropriate faculty was not available. It was further decided not to recommend increased intake of Electrical and Electronics as the existing faculty was sufficient only for the existing intake. Accordingly, AICTE, vide communication dated 4th January, 2013 informed the petitioner that its request for introduction of new courses and extra intake had not been acceded to. Being aggrieved from the said communication dated 11th

January, 2013, the petitioner is before this Court by way of this writ petition.

4. A perusal of the Inspection Report dated 25.04.2012 would show that the timings of the first shift being run by the petitioner were 09.00 AM to 04.00 PM, whereas the timings of the second shift were 11.00 AM to 06.00 PM, meaning thereby that between 11.00 AM to 04.00 PM, the students studying in both the shifts were required to share the same infrastructure, including the same equipment and faculty. The following other deficiencies were found during the course of the said inspection:

S. No.	Deficiencies	Remarks
1.	Out of 175 faculty members only 76 members were physically present	There may be some irregularities in faculty members.
2.	Since both the shifts are running in approximately parallel timings, faculty members almost coming in morning shift and college administration does not able to explain whether any other faculty is appointed for second shift or not.	
3.	Same faculty members are taking classes for both the shifts and there is no extra payment for II shift work.	

5. As noted earlier, vide communication dated 06.11.2012, respondent No. 1-AICTE had required the petitioner to submit (i) list of

faculty with salary statement along with Form No. 16A of each faculty member; (ii) date of appointment and joining with pay scales; (iii) attendance record of faculty member for last six months and other relevant documents, regarding selection procedure in totality. During its meeting held on 08.11.2012, the Standing Complaints Committee noted that the said documents had not been furnished. The application of the petitioner was rejected primarily on the ground that as far as new courses in Civil Engineering were concerned, it was not having adequate faculty on its pay rolls. The permission to start second shift in certain courses was declined on the ground that the institute was not running first shift in those courses.

6. This Court vide an interim order dated 13.01.2013 and with the consent of the petitioner, directed it to appear before the Committee constituted by AICTE on 07.02.2013 along with (i) List of faculty, discipline-wise/course wise; (ii) Original Selection proceedings; (iii) Approval receipts from the University; (iv) Form 16A (v) Attendance register and salary slip for the last six months. The petitioner appeared before the said Committee on 07.02.2013 through its Vice-Chairman and Director. The Committee was headed by Hon'ble Mr Justice P.C. Jain (retired) and included Professor B.B. Ahuja, Deputy Director, College of Engineering, Pune, and Professor K.Thirumaran of NIT, Trichi. When the Committee raised certain queries, the representatives of the petitioner, instead of replying to the said queries, referred to the documents produced by them and said that they had nothing to add. The Committee

found no document relating to appointment of teaching staff of various faculties and asked the petitioner to produce such documents. Thereafter, the petitioner produced its faculty recruitment policy. The Committee, noticing attempt on behalf of the representatives of the petitioner to avoid its queries, put those queries in writing, but the representatives of the petitioner refused to accept the letter containing those queries and went to the extent of saying that the Committee could send the queries to this Court. The representatives of the petitioner further went to the extent of terming the Committee as the ‘worst Committee’ and a ‘biased Committee’. After scrutinizing the documents submitted by the petitioner-institute, the Committee noted that 17 faculty members have been shown on study leave, but there was no record placed before the Committee in this regard. The details of those 17 faculty members had been given in Annexure-D to the report of the Committee. It was also noted that some of the faculty members, out of those named in Annexure-D to the report, had not been paid salary from August, 2012 to January, 2013. The Committee also found that the Director of the institute was not qualified as per the regulations. He ought to be a graduate in Engineering/Technology with post-graduate qualification also in Engineering/Technology and PhD in Engineering/Technology, whereas the incumbent was not an Engineering/Technology graduate. The Committee in order to verify the selection proceedings felt need of documents mentioned in para (ii) of its report under the heading “Original Selection Proceeding”. The Committee, on examining the matter, was of the opinion that the institute does not have any recruitment process for selection of the faculty. It was also admitted by the Director of the

petitioner-institute that no individual approval letters had been given by the Mahamaya Technical University with respect to appointment of faculty members though each faculty member had been given an ID by the said University. On clarification being sought from the University, the Committee was informed vide letter dated 07.02.2013 that none of the teachers, including Director had been approved by the said University. The Committee found the strength of the faculty on the rolls of the petitioner-institute, including its director(s):

August 2012	-	196 faculty on roll
September 2012	-	193 faculty on roll
October 2012	-	193 faculty on roll
November 2012	-	187 faculty on roll
December 2012	-	187 faculty on roll
January 213	-	218 faculty on roll

The Committee also noted that with the addition of new programmes/increased in intake, the total faculty on roll in August, 2008 should have been 228 as against 215 in January, 2013. Out of faculty members referred above, 39 had been appointed after the commencement of the Academic Term 2012-2013 and 38 out of them were appointed in January, 2013, five months after the commencement of the academic session. This would mean that prior to January, 2013, only 180 faculty members were on the rolls of the petitioner-institute, though they should have been 228 even in August, 2008.

The Committee also found that for undergraduate course in Information Technology, 24 faculty members were required for the current and applied intake of 240 (120+120), but only 18 faculty members were available. For undergraduate course in Biotechnology, 21 faculty members were found as against the requirement of 24 faculty members. For post-graduate course in Biotechnology, three faculty members were required, but none was available. For undergraduate course in Civil Engineering (Ist Shift), no faculty member was found available as against requirement of 4 faculty members. The same was the position in respect of the second shift in the said course.

7. In its affidavit, respondent No. 2 Mahamaya Technical University has stated that as per its regulations, prescribing constitution of the Selection Committee for promotion of direct recruitment of Lecturers/Assistant Professors and Professors at affiliated colleges, a nominee of the University has to be a part of the selection of faculty members in a private self-financed college, affiliated to the University. The relevant regulation in this regard is Regulation 11.02 (vi). After selection process is over, the college has to seek approval in respect of the selected candidates from the University. It is further stated in the affidavit of the University that the petitioner never approached the University for appointment of its nominee for selection of the teaching staff. It is also stated that it does not allot any ID number to any faculty member of any college affiliated to it and only for the purpose of examination, the Examination Section of the University issues a Teacher

Code and password, which is not the ID number and such Teacher Code and password is provided on the basis of information and data of the teachers provided by the Director/Principal of the affiliated college.

8. Clause 4.21 of AICTE (Grant of Approval for Technical Institution), Regulation 12, to the extent it is relevant, reads as under:

4.21	New Institutions granted Letter of Approval and the existing Institutions granted approval for introduction of new course/s division/s program/s second shift and change in intake capacity, shall comply with appointment of teaching staff and Principal/Direction as the case may be, as per policy regarding minimum qualifications, pay scales etc., norms prescribed by the Council and other technical supporting staff & administrative staff as per the schedule prescribed in the Approval Process Handbook.
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Since the petitioner-institute did not follow the selection procedure prescribed by respondent No. 2-Mahamaya Technical University with which it is affiliated, as it did not seek appointment of a nominee of the University to the Selection Committee for appointment of the faculty members, it contravened Regulation 4.21 of the aforesaid Regulations of the AICTE. Regulation 12 of the aforesaid Regulations, to the extent it is relevant, provides that if any institution contravenes any of the provisions of these Regulations, the council may, after making such enquiry as it

may consider appropriate and after giving the technical institution concerned an opportunity of being heard, withdraw the approval granted under the Regulations. Therefore, respondent No. 1 was entitled to withdraw the approval which came to be generated on its website on the basis of the data uploaded by the petitioner-institute, on account of contravention of Regulation 4.21.

9. I see no reason to reject the report of the Committee to which the case of the petitioner was referred by this Court vide order dated 13.01.2013. Though the petitioner has filed certain objections to the said report dated 10.02.2013, I find no substance in the said objections. The Committee was headed by a former Judge and none of its members held any bias against the petitioner-institute or its Management. On the other hand, the Management of the petitioner-institute went to the extent of imputing bias to the Committee without any basis and also tried to evade the queries of the Committee. Not only did they exhibit non-cooperation, they also tried to ridicule the Committee members by saying that the Committee could send its queries directly to this Court. The conduct of the Management of the petitioner-institute cannot be approved by this Court and is totally unacceptable. As noted earlier, the faculty members on the rolls of the petitioner-institute prior to January, 2013 was only 180 as against the requirement of 228. In fact, during the course of inspection on 25.04.2012, only 76 faculty members were found present in the institute. It is, therefore, quite evident that the overall faculty strength of the petitioner-institute was much less than the required strength.

Obviously, AICTE cannot be expected to grant approval for start of a new course or for increasing new course/ second shift or for increasing the intake in the existing courses when the faculty members employed by the institute were found to be grossly inadequate. This is the second ground for which respondent-AICTE was justified in withdrawing the system generated approval granted to the petitioner for increasing the intake, introducing new courses and starting second shifts.

10. Even in January, 2013, the Committee headed by Hon'ble Mr Justice P.C. Jain (retired) found that as against requirement of 24 faculty members each for undergraduate course in Information Technology and Biotechnology, the available faculty members were only 18 and 21 respectively. This, by itself, was sufficient reason to withdraw the increased intake in the aforesaid branches. As regards Post Graduation in Biotechnology, since no faculty was available as against requirement of 3 faculty members, withdrawal of permission for post graduation in Biotechnology was also justified. As regards under graduation in Civil Engineering, no faculty member was found available as against requirement of 4 faculty members each in the first shift and the second shift. Therefore, AICTE was justified in withdrawing the permission to start the aforesaid courses.

11. The learned counsel for the petitioner tried to explain the shortage of faculty members by saying that since the subjects in the first year are common in all the branches, the specialized faculty for each branch is not required in the first year. I, however, find no merit in this contention.

AICTE is a regulatory body set up under an Act of Parliament and has been entrusted with the responsibility of proper planning and coordinated development of technical education throughout the country. Besides framing the regulations to ensure maintenance of prescribed norms and standards in the technical education system, the functions assigned to AICTE under Section 10 of the aforesaid Act, *inter alia*, include laying down norms and standards for courses, curricula physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examination. It is, therefore, for AICTE and not for the Courts to examine the number of faculty members required to impart instructions for a particular technical course and assess their quality and qualification. It is not open to this Court to examine the contentions made by the learned counsel for the petitioner and take a view different from the view taken by AICTE as regards requirements of faculty for the courses for starting new courses, for increased intake in the existing course or starting a new shift in the new course is the decision taken by AICTE in such matters. Regulation 4.28 of 2010 Regulations framed by AICTE require the institutions to provide true and complete information and documents required for various purposes and if the information given and/or the documents provided are found to be false or it is found that factual information had not been disclosed by a technical institution or it had suppressed material facts or misrepresented to the Council, it is entitled to withdraw the approval accorded by it. As noted earlier, Regulation 12 provides for withdrawal of approval if a technical institution contravenes any of the provisions of the said Regulation. Therefore, in the facts and circumstances of this case, as discussed in the

preceding paragraphs, I find no ground to interfere with the order dated 4.1.2013 passed by AICTE declining the application for starting new courses in Civil Engineering, Post-Graduate Courses in Software Engineering and CAD/CAM in the second shift and increasing the intake in Electrical and Electronics.

12. The next question which arises for consideration in this case is as to what happens to the students who were admitted by the petitioner for the academic year 2012-2013 on the strength of the system generated approval dated 10.5.2012. The learned counsel for the respondent drew my attention to Regulation 4.31 of AICTE Regulations which provides that the affiliated Universities shall transfer the students of the institutions, whose programmes/ courses have been discontinued by the Council or approval is withdrawn or suspended, to other nearby AICTE approved technical Institutions affiliated to it and the Council shall allow supernumerary seats in such institutions to accommodate the transferred students appropriately till they complete the programs/ courses. The learned counsel for AICTE assured the Court that it would accord due approval for creation of supernumerary seats in such nearby AICTE approved technical institutions, affiliated to Mahamaya Technical University, where the students admitted in the academic session 2012-2013 are accommodated in terms of the aforesaid Regulations.

13. In view of the above, the writ petition is hereby dismissed. It is, however, directed that within four weeks from today, the respondent-Mayamaya Technical University shall transfer students who were admitted by the petitioner institute for the academic year 2012-2013 and

are affected on account of the order dated 4.1.2013 passed by AICTE to the nearby AICTE approved technical institution affiliated to it. AICTE shall allow supernumerary seats in the institutions in which the said students are accommodated, till they complete the programmes/ courses for which they were admitted. The supernumerary seats for this purpose shall be approved by AICTE within two weeks of such institutions seeking its approval to create supernumerary seats for the purpose of accommodating such students. The details of the students affected by the order of AICTE dated 4.1.2013, who were admitted by the petitioner institution for the academic year 2012-2013 shall be submitted by the petitioner to respondent no.2 within two weeks from today under intimation to respondent no.1 – AICTE.

The writ petition stands disposed of accordingly. There shall be no order as to costs.

V.K.JAIN, J

JULY 12, 2013/bg/ks/rd