

\$~

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

+ W.P.(C) 4007/2014 & CM APPL. 8061/2014 AND 9405/2014

GURU PREMSUKH MEMORIAL
COLLEGE ENGINEERING & ANR. Petitioners

Through: Mr. Kirti Uppal, Senior Advocate with
Mr. Soayib Qureshi and Mr. Anshumaan
Sahni, Advocates.

versus

ALL INDIA COUNCIL FOR
TECHNICAL EDUCATION & ORS. Respondents

Through: Mr. Amitesh Kumar, Advocate for
respondent No.1/AICTE.
Mr. Mukul Talwar, Advocate with
Mr. Sradhananda Mohapatra and
Mr. Vipin Singh, advocates for GGSIPU.
Ms. Bandana Shukla, Advocate for
Ms. Ruchi Sindhwani, Advocate for
respondent No.3.

% Reserved on : 3rd September, 2014
Date of Decision : 15th September, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the order dated 24th June, 2014 whereby respondent-All India Council for Technical Education (for short 'AICTE') decided to place the petitioner-institute under

"withdrawal of approval status" for 2014-15 and requested the Principal Secretary (Higher and Technical Education) Delhi and also Registrar, GGSIP University to shift affected students of the institute to other AICTE approved institutes affiliated to their University in consultation with the State Government.

2. The relevant facts of the present case are that Petitioner No.1-Institute has been functioning under the aegis of petitioner No.2 since 2000. In 1999-2000, petitioner No.1 was granted approval for establishment of a college.

3. On 13th March, 2000, petitioners applied to Delhi Development Authority for five acres of land for construction of a college building at a permanent site in accordance with the norms of respondent-AICTE. Though the petitioners were allotted three acres of land in Rohini by Delhi Development Authority, yet the same was subsequently cancelled in 2004-2005.

4. In 2005, petitioners approached this Court by way of a writ petition being W.P.(C) 2459/2005 seeking a direction to Delhi Development Authority to give effect to the recommendation of allotment as well as a direction to AICTE not to withhold the approval to the petitioners for running the Engineering Degree College for the Academic Year 2005-2006.

5. On 09th February, 2005, a Coordinate Bench of this Court passed an interim order that respondent-AICTE could not unreasonably withhold approval to the petitioner for its undergraduate Engineering Course for the Academic Year 2005-2006 only on the ground that it did not possess a permanent site.

6. Between 2006-2011, petitioners approached this Court before the start of each academic session and were granted relief inasmuch as the interim

order dated 05th February, 2005 was continued for subsequent academic years.

7. By a detailed order and judgment dated 25th March, 2011, petitioners' writ petition along with a batch of matters was dismissed by a Division Bench of this Court. However, extension of approval for two Academic Years 2011-12 and 2012-13 was granted to the petitioners.

8. In the meantime, on 29th January, 2010, the SP, CBI, vide its letter informed the Chief Vigilance Officer, AICTE that from 1999, petitioner-institute had been continuing to operate from temporary accommodation despite significant shortage of area and marginal shortage in built-up area, students cadre ratio, computer, internet etc. The relevant portion of the CBI letter is reproduced hereinbelow:-

"Since, the year 1999, when approval at the first instance was granted at the outset, the institute continued to operate from temporary accommodation till date. There is significant shortage as regards the area but there is marginal shortage as regards the built up area, students cadre ratio, computer, internet etc. were pointed out to be deficient by various Expert Committee that visited the College."

9. In pursuance to the aforesaid CBI letter/report, respondent-AICTE issued a show cause notice dated 14th June, 2013 to the petitioner-institute. After receipt of petitioner's reply dated 27th June, 2013 and after hearing the representatives of the petitioners, the Standing Complaint Committee of respondent-AICTE furnished its report dated 12th July, 2013.

10. The Standing Complaint Committee recommended that petitioner-Institute be asked to expedite its shifting to a permanent campus and an Expert Visiting Committee be sent to the petitioner-Institute to ascertain the

infrastructural requirement.

11. After receipt of the report of the Expert Visiting Committee dated 29th July, 2013, respondent-AICTE issued another show cause notice dated 24th September, 2013 to the petitioner-Institute pointing out deficiencies and violation of norms. Petitioner-Institute furnished its reply dated 4th October, 2013.

12. After giving the petitioner's representatives a detailed hearing, respondent-AICTE vide its order dated 30th October, 2013 placed the petitioner-institute under "*no extension of approval 2013-2014 status*".

13. Since the order dated 30th October, 2013 has a significant bearing on the present petition, the same is reproduced hereinbelow:-

- “1. The Institute was approved in 1999-2000 in the name and style of “Guru Prem Sukh Memorial College of Engineering, GT Karnal Road, Delhi”.*
- 2. On receipt of Complaint against the Institute, CBI New Delhi investigated the matter and sent the Report to CVO AICTE for taking appropriate action as deemed fit in the matter. Crux of the CBI report is that since the year 1999 when approval at the first instance was given the Institute continued to operate from temporary accommodation till date.*
- 3. CBI Report reveals that significant shortage as regards the area but marginal shortage as regards the built up area, student ratio, computer internet etc. were pointed out by various Expert Committees that visited the college (01-11-1999, 2000-2001, 25-07-2002 and 18/01/2006). As per the report of the CBI, No Admission status was granted to the institute vide letter dated 04-07-2002 of AICTE.*

4. *Show Cause Notice was issued to the Institute vide letter dated 14/05/2004. On the orders of the Hon'ble High Court of Delhi, Extension of Approval for the session 2005-06 was granted to the institute and EOA is being granted every year till 2013-14.*
5. *The Institute applied for site change in the A.Y. 2012-13 which was not recommended by RC and its application was rejected on account of deficiencies reported by the Scrutiny Committee dated 27/03/2013.*
6. *The Institute failed to shift the site even after lapse of more than 13 years and thereby violated the rules and regulations of Approval Process. The Institute has also failed to comply with the direction of the Hon'ble Delhi High Court in C.M. No.6159/2011 in WP (c) No.2459-60/2005 which gave relief to the Institute for EOA upto 2012-13 in the light of EC decision in para 68.03.26.*
7. *The Institute was granted only EOA 2013-14 which was issued to the Institute since 2012-13 was issued as per Court Order, there were overall deficiencies reported in the online deficiencies status, hence only EOA was issued.*
8. *As action on the CBI report needs to be finalised and the Institute failed to shift the College to the Permanent location, note dated 08/05/2013. Show Cause Notice to the institute was issued since it has not shifted till date despite AICTE instructions as well as Court's order. The Institute vide letter dated 27/06/2013 submitted its reply.*
9. *The CBI report, Show Cause Notice and the reply of the Institute with the above facts were placed before the Committee alongwith reply of the Institute. The Committee after examining entire case and after hearing the submissions of the Institute, recommended as (i) The Institute to expedite its shifting into a permanent campus,*

(ii) EVC be conducted.

10. *Accordingly, EVC was conducted on 29/07/2013 and EVC reported deficiencies. Based on the deficiencies the institute was issued Show Cause Notice on 25/09/2013 and the Institute submitted its reply on 04/10/2013. Accordingly the matter was placed before the SAC on 21/10/2013. The Committee Recommended as follows “In v view of the deficiencies that exist, No Extension of Approval is recommended, EOA Not Recommended”*
11. *In the facts and circumstances as mentioned above, it has been decided to place the institute under “NO EXTENSION OF APPROVAL 2013-14 STATUS”*

This has the Approval of the Competent Authority at Page 23/N of File No/.NWRO/DL/1-6654021/2013-14 dated 29/10/2013.”

14. It is pertinent to mention that the aforesaid order dated 30th October, 2013 has not been challenged and has attained finality.

15. Thereafter, the petitioner-institute filed an application for extension of approval for the Academic Year 2014-2015. Since the petitioner-institute had not been given extension of approval for the Academic Year 2013-2014, the application for Academic Year 2014-2015 was considered as per the procedure for restoration against punitive action as provided under Clause 11 of Chapter IV of AICTE Approval Process Handbook. The procedure prescribed under Clause 11 of Chapter IV of AICTE Approval Process Handbook is reproduced hereinbelow:-

11		<i>Procedure for restoration against punitive actions.</i>
	11.1	<i>Applicant makes an application for restoration on the Web Portal along with the application for extension of approval of the next academic year.</i>
	11.2	<i>The restoration is subject to Expert visit</i>
	11.3	<i>The expert Visit Committee shall verify all the requirements as per the approval process hand book.</i>
	11.4	<i>Expert Visit Committee report shall be placed before Standing Complaint</i>
	11.5	<i>Recommendations of the Standing Complaint Committee shall be placed before Executive Committee for necessary Approval/ratification.</i>
	11.6	<i>The Institute may appeal as per the procedure of appeal in Chapter I if the status quo on punitive action is maintained.</i>

16. Accordingly, the Expert Visiting Committee conducted an inspection of the petitioner-institute on 23rd May, 2014.

17. The Expert Visiting Committee in its report pointed out not only shortfall in building area and qualified faculty as well as cadre ratio, but also small size of boys' common room, girls common room, cafeteria, classrooms, tutorial rooms, computer centre, libraries, seminar halls etc. The Expert Visiting Committee under the heading 'Recommendation Summary' observed as under:-

- “1. Originally the building seems to have constructed for a hotel. Therefore, the room sizes are not as per norms marginally.
2. Infrastructure & neatness needs to be improved.
3. Faculty Cadre ratio is to be maintained. More Doctorates in Domain areas are required.
4. College may be shifted to own Building.”

18. Thereafter, respondent-AICTE vide its letter dated 02nd June, 2014 issued a show cause notice and provided an opportunity of hearing to the petitioner-institute to present its case before the Standing Appellate/Complaint Committee.

19. On 05th June, 2014, two representatives of the petitioner-institute appeared before the Standing Appellate/Complaint Committee. After considering the matter, the Standing Appellate/Complaint Committee observed as under:-

<i>S. No.</i>	<i>Deficiencies noted by EVC</i>	<i>Observation of SAC/SCC</i>
1.	<i>No own land and lease</i>	<i>No document submitted – not accepted.</i>
2.	<i>PCS to students ratio 220-fall short by twenty</i>	<i>Do</i>
3.	<i>Language laboratory – not available</i>	<i>Do</i>
4.	<i>Titles – falling short by 144</i>	<i>Do</i>
5.	<i>National Journals – falling short by 09</i>	<i>Do</i>
6.	<i>Multimedia PC – not available</i>	<i>No document submitted. Not accepted.</i>
7.	<i>Language laboratory – not presented</i>	<i>No document submitted. Not accepted.</i>
8.	<i>Availability of portable water supply – not presented</i>	<i>No document submitted. Not accepted.</i>
9.	<i>A certificate by an architect giving details of sewage system – not presented</i>	<i>No document submitted. Not accepted.</i>
10.	<i>Barrier free environment and</i>	<i>No document</i>

	<i>toilets created for physically challenged – (Ramp or working lift etc) – not accepted</i>	<i>submitted. Not accepted.</i>
11.	<i>General Insurance provided for assets against fire, burglary and other calamities – not presented</i>	<i>No document submitted. Not accepted.</i>
12.	<i>E-Journal subscription/international Journals – Only Delnet is available. The college did not subscribed the e-journal packages listed in Appendix 10 of the Handbook – (2013-14)</i>	<i>No document submitted. Not accepted.</i>
13.	<i>Boys Common Room – small in size</i>	<i>No document submitted. Not accepted.</i>
14.	<i>Girls Common Room – small in size</i>	<i>No document submitted. Not accepted.</i>
15.	<i>Cafeteria – Small in size</i>	<i>No document submitted. Not accepted.</i>
16.	<i>Computer center – small in size</i>	<i>No document submitted. Not accepted.</i>
17.	<i>Class room – UG Short by six meters each class room</i>	<i>No document submitted. Not accepted.</i>
18.	<i>Laboratories UG Short by above fifty per cent</i>	<i>No document submitted. Not accepted.</i>
19.	<i>Seminar Hall – short by three rooms.</i>	<i>No document submitted. Not accepted.</i>
20.	<i>The EVC also observed as follows:</i> • <i>Land area should be 2.5 acres.</i> • <i>The college is running in a</i>	<i>Deficiencies are not rectified.</i>

	<i>rented building situated in Budhpur Village.</i> • <i>College may be advised to shift to the own land and building.</i> • <i>Originally the building seems to have constructed for a hotel. Therefore, the room size are not as per norms marginally.</i> • <i>Faculty list of 64 members is submitted. About 45 area approved by University.</i> • <i>The faculty available for interaction is only 47.</i> • <i>Faculty cadre ratio is to be maintained. More doctors in domain areas are required.</i> • <i>Infrastructure & neatness needs to be improved.</i> • <i>Class rooms labs should be 66 m2 each.</i>	
--	--	--

Present Status: No EOA for 2013-14. Operating on Temporary Location since the year 1999.

RECOMMENDATIONS OF THE STANDING APPELLATE COMMITTEE.

EVC was conducted on 23.05.2014 and pointed out the deficiencies and they are not rectified. The institute is running in the temporary premises for more than 14 years. In view of the above mentioned deficiencies that exists, "withdrawal of approval is recommended".

20. Upon receipt of the impugned order dated 24th June, 2014, whereby petitioner-institute was placed under "withdrawal of approval status", present writ petition was filed.

21. Mr. Kirti Uppal, learned senior counsel for petitioners contended that the impugned order dated 24th June, 2014 had been passed by respondent-AICTE in violation of principles of natural justice inasmuch as neither the petitioners' reply dated 04th June, 2014 had been taken on record nor any opportunity of hearing had been given to the petitioners. Since Mr. Uppal laid considerable emphasis at page 18 para 'Z' of the writ petition, the same is reproduced hereinbelow:-

"Z. That the Petitioners, reached the office of the AICTE on 05.06.2014, but they were not afforded any hearing. The Petitioners then requested the Respondent No.1 to atleast take their reply dated 04.06.2014 on record. However, the Respondents with a pre-determined mind, did not accede to the request of the Petitioners and informed the Petitioners that necessary orders will be passed."

(emphasis supplied)

22. Mr. Uppal stated that the impugned order was also in violation of principles of natural justice inasmuch as it was based on a CBI report that had not been referred to or relied upon in the show cause notice dated 02nd June, 2014 and, therefore, petitioners had no knowledge of the same.

23. Mr. Uppal further contended that the primary ground relied upon by respondent-AICTE not to grant approval for extension of affiliation for the Academic Year 2014-2015 was that the petitioners did not own land and the college was being run from leased premises. He stated that the aforesaid ground was misconceived on facts and untenable in law as respondent-AICTE itself on 08th February 2011 had given two years to colleges to shift from temporary sites to permanent sites. He also pointed out that the Executive Committee of respondent-AICTE in its meeting held on 17th

March, 2012 had extended the time for shifting to a permanent site till 31st December, 2014.

24. According to Mr. Uppal, the rest of the discrepancies pointed out by respondent-AICTE in the impugned order were minor in nature and had been rectified. Mr. Uppal contended that as there was substantial compliance with all rules and regulations of respondent-AICTE, petitioner should have been granted approval for extension of affiliation for the Academic Year 2014-2015 for its engineering course. In this connection, he relied upon the judgment of the Supreme Court in *Al-Karim Educational Trust & Anr. vs. The State of Bihar & Ors., JT 1996 (2) S.C. 662* wherein it has been held as under:-

"11. In the matter of grant of affiliation, it is ordinarily for the State Government after consulting the Medical Council of India to arrive at a decision. However, if it is found that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, this Court would, though reluctantly, be constrained to exercise jurisdiction. We must make it clear that we are not diluting the importance of fulfilling the essential pre-requisite set by the Medical Council before granting recognition. The facts of this case are very special and exceptional. In the present case, we take note of the following aspects:

xxx xxx xxx

(g) *The appellants, claim to be a minority institution and the difficulties or even the imponderables to start a new institution cannot be gainsaid. To insist on fulfilling all requirements at a stretch in modern conditions, is not a practical proposition and ordinarily only those aspects or requirements which in the minimal will give a good start for effectively imparting educational, with ancillary requisites may be considered sufficient, in the extra-ordinary circumstances of this case.*

xxx xxx xxx

(i) *It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view in the light of the latest tabular statement filed along with the affidavit dated 4.9.1995. Material placed before the Court goes to show that there has been "substantial" though not literal compliance with the deficiencies pointed out in the latest report dated 28.6.11995."*

25. Mr. Kirti Uppal also relied upon the interim order dated 09th February, 2005 passed in W.P(C) 2459-60/2005 wherein it has been held as under:-

".....Having regard to the peculiar facts, I feel that the unyielding and rigid insistence by AICTE on the condition for relocating the college at a permanent site cannot prima facie be countenanced. It is needless to say that requirements of different institutions have to be dealt with on a case basis having regard to the individual factors and circumstance. The stand of AICTE, in my prima facie opinion, would operate harshly; it cannot therefore be supported. The facts presented, prima facie, show that the applicant has been vigilant in taking steps to secure land and comply with the requirements prescribed by AICTE. I therefore, feel that the AICTE cannot unreasonably withheld an approval to the petitioner (on its application) for the undergraduate engineering course, for the academic years 2005-06 only on the ground that does not possess a permanent site....."

26. Mr. Uppal lastly stated that respondent-AICTE could not be allowed to apply different standards and norms to similarly placed institutions. He pointed out that respondent-AICTE had accorded approval for Academic Year 2014-2015 to Amity School of Engineering and Technology located at village Biswasan, Delhi, even though it was running on a temporary site and on a smaller piece of land than the petitioner-institute. Mr. Uppal stated that

petitioners had come to know that the said institution had received a total score of 57.6% in the inspection conducted by the Joint Assessment Committee of Delhi Government, whereas petitioner-institute had received a score of 69.33% in the inspection report. In this connection, he relied upon the order dated 14th July, 2014 passed by the Division Bench of Bombay High Court in ***W.P.(C)6021/2014, Mahatma Education Society's Pillai's Institute of Information Technology vs. All India Council for Technical Education (AICTE)*** wherein it had been held as under:-

“15. There is no material that, out of 1800 such institutions in Maharashtra, only these are the defaulting institutions. The complainant also unable to justify their restrictions and insistence to proceed only against these institutions. There is also nothing on record to show that all other 1800 institutions are without deficiencies.

16. We are not suggesting that institutions should not remove the deficiencies. But, this is not the way to deal with such institutions on the basis of private complaint by giving unilateral hearing to them thereby adopting a pick and choose policy. It is an admitted position that for the academic year 2014-15 because of the time constraints, AICTE has not made site visits in case of other institutions seeking extension of approvals or for that matter additional courses/increase in intake capacity. Timely and proper opportunity should have been given before passing such orders and paucity of time can be no reason for not following due procedure of law. Timely action should have been taken. The impugned orders are in breach of natural justice, fair-play and equity and therefore, required to be tested also on the anvil of Article 14 of the Constitution of India. The Respondents discriminately selected the Petitioners' old established institutions some of which are of high repute and passed the impugned orders. We have also noted that the High Power Committee never recommended and/or directed to take such drastic action at this stage of academic year 2014-2015.

17. We have gone through the deficiencies so alleged and referred to by the Counsel appearing for the respective Petitioners. We find that some of the deficiencies are curable. Other deficiencies relate to land, play-ground, occupation certificate, nature of occupancy with permission and/or without permission, common playground, sharing of premises, less area, running by the institutions from campus, less land/insufficient land or built-up area, class rooms or laboratories, the multiple use of same premises and requisite staff/faculty/less staff are required to be dealt with as per the norms prescribed in AICTE handbook. We have gone even through those basic norms para 9.1.5 about land area requirements, para 9.1.6 classification of building areas norms para 12.2 and para 10 which deal with the multi use of facilities shows that the interpretation and submissions of Petitioners if accepted, there will be no deficiencies. The authorities before passing order based upon their understanding of those norms, though permitted the Petitioners to run the institutions/colleges/courses for so many years suddenly took U-turn and discarded the submission/explanation so given by the respective Petitioners without giving reasons on those issues. Those norms and standards including regulations of grant of approval for technical education itself provide for relaxation/exemptions. We fail to understand that if there were indeed some area/land deficiencies, how the letters of approval were issued to the Petitioners at the threshold. We are not here to give decisions on the respective deficiencies at this stage, but as submitted by the learned counsel appearing for the Petitioners that those norms and standards and regulations/rules unless interpreted and/or considered by this Court and/or even by the supreme authority under AICTE Act and/or other Act, such drastic action would definitely cause injustice and hardship to all the concerned. There is nothing on record to show that any findings and/or reasons have been given by the Council, while interpreting these regulations. It is relevant to note that there is power to relax, whereby the Council may in exceptional cases for removal of any hardship and/or other reasons to be recorded in writing, relax any of the deficiencies of this kind of any classes or categories of

institutions. No proper opportunity was given to the Petitioners to put up their case before taking such drastic action. The decision, therefore, so taken is arbitrary and not in consonance with the various norms and regulations of AICTE. Due to time constraints, as the impugned orders are passed at the eleventh hour just before the admission process was to begin, the Petitioners have had no opportunity to remove the deficiencies and/or file Appeals before the Appellate Authority.

xxx

xxx

xxx

24. It is not in dispute that it was AICTE itself has granted extension of approval to these institutions for last many years. It is an admitted position that AICTE has acted merely on the complaints filed by the Citizens Forum of Fairness in Education. AICTE in its Affidavit-in-reply has averred that that it was based on the complaints of the Citizens Forum of Fairness in Education that a CBI enquiry was conducted and the then AICTE Chairman and Secretary were arrested in 2009. We are not intending to interfere with the pending investigation or inquiry, if any."

27. Consequently, according to Mr. Uppal, the impugned order was also vitiated by bias and liable to be set aside.

28. On the other hand, Mr. Amitesh Kumar, learned counsel for AICTE stated that AICTE Regulations, 1994 read with 1997 and 2000 amendments require every institute to have requisite area of land in its possession for use of the proposed institution by clear title or ownership as well as a building with duly approved building plan from Local Authorities. He pointed out that AICTE (grant of approval for the technical institution) Regulations, 2012 require the promoter society of a Technical Education Institution to have land as prescribed in its lawful possession with clear title in the name of promoter society on or before the date of submission of application.

29. Mr. Kumar stated that even the petitioner-institute had been granted its initial approval by AICTE in 1999-2000 subject to the condition that the institute would shift to a permanent site by June 2000 and other deficiencies would be removed.

30. Mr. Kumar contended that since even after many years of establishment of the institution, the petitioner did not shift its functioning to a permanent site, AICTE issued show cause notice dated 04th May, 2004 pointing out various deficiencies. But in the light of interim order dated 05th February, 2005 passed in Writ Petition (C) No.2459-60/2005 and further interim orders dated 02nd July, 2008 and 21st May, 2009, the extension of approval of the Institute was continued. He pointed out that it was only on 25th March, 2011 that this Court dismissed the said writ petition and subsequently by order dated 13th May, 2011 passed in CM No.6159/2011 noted that “.....In our considered view, prayer (c) was a sequitur to the relief claimed in prayer (a) and prayer (b).”

31. Mr. Kumar contended that as the petitioner-institute had failed to shift to its permanent site even after fifteen years of its functioning and in spite of order dated 13th May, 2011 passed by this Court as well as CBI report, AICTE issued Show cause notice dated 14th June, 2013.

32. Mr. Kumar stated that after giving full opportunity of hearing in accordance with Clause 12 of AICTE 2012 Regulations and after complying with principles of natural justice, AICTE vide its letter dated 30th October, 2013 placed the petitioner-institute under “No Extension of Approval 2013-14 status”.

33. Mr. Kumar further stated that upon an application for the academic session 2014-15, the petitioner-institute was considered as per the procedure for restoration against punitive action as provided under Clause 11 of Chapter IV of AICTE Approval Process Handbook. He pointed out that the Expert Visit Committee in its report referred to various deficiencies in respect of rented building, approval of faculty by University, availability of faculty for interaction, language laboratory, potable water supply, sewage disposal system, barrier free environment and toilets created for physically challenged, general insurance, PCs to student ratio, language laboratory, library facility, boys and girls common room, cafeteria, computer centre, classrooms UG laboratories, UG Seminar hall.

34. Thereafter, the AICTE provided an opportunity of hearing to the institute before the Standing Appellate/Complaint Committee.

35. Mr. Kumar stated that though representatives of the petitioner-institute and petitioner-society had appeared before the Standing Appellate Committee on 05.06.2014, yet they did not furnish any document in support of their claim. According to him, the petitioners had deliberately suppressed this material fact from this Court and made an incorrect averment in para Z at page 18 of the writ petition that they were not afforded any hearing on 05th June, 2014. He stated that the petitioners had also made an incorrect statement that they had made a request to AICTE to take their reply dated 04th June, 2014 on record they were required to present documents and evidence in original before the Appellate Committee and the Appellate Committee had recorded in its report that the representatives of the petitioner institution had not submitted any document.

36. Mr. Kumar contended that there was no breach of principles of natural justice and the impugned order had been passed by AICTE in accordance with provisions and procedure contained in AICTE Regulation and Approval Process Handbook. He stated that petitioners had neither alleged bias or malafides against any member of the hearing committee nor had impleaded them as parties to the present proceeding. Consequently, according to him, it was not open to petitioners to dispute the observation of hearing committee that no documents had been filed by petitioners. He submitted that AICTE while deciding to grant approval or not to grant approval was not functioning as a quasi-judicial authority, but only as an administrative authority and thus, rigid rules of natural justice need not be complied with.

37. So far as the contention of petitioners regarding deficiency in the case of Amity School of Engineering and Technology was concerned, he stated that assuming without admitting that petitioners' argument was correct, then also it could not claim parity for continuing a deficiency.

38. Mr. Kumar submitted that the Policy of the State Government dated 02nd April, 2014 did not override the condition of approval and Norms and Standards laid down by the AICTE in terms of its Regulations of 1994 and 2012 and also the policy decision of AICTE which mandated all institutions to shift to a permanent site.

39. Mr. Kumar also stated that there was no indication much less any undertaking or assurance given by the petitioners in the writ petition regarding shifting to permanent site by 31st December, 2014.

40. After the arguments were over, Mr. Kirti Uppal, learned senior counsel for the petitioner handed over an additional affidavit dated 13th August, 2014 enclosing a copy of the Academic Audit Report dated 16th June, 2014 prepared by the representative of the respondent-University. Mr. Uppal contended that the contents of the said report contradicted the objections raised by various inspection teams constituted by AICTE.

41. Thereafter, respondents were given liberty to file additional affidavits.

42. Mr. Mukul Talwar, learned counsel for respondent-University stated that the petitioner's contention was incorrect as the Academic Audit Report dated 16th June, 2014 was purely an annual exercise carried out by the respondent-University to evaluate academic standards and teaching methods at the institute and such an exercise was carried out for all affiliated institutes. He further stated that this was not an inspection for evaluating the infrastructure and other physical parameters pertaining to the respective institutes for which separate inspections are carried out by the Joint Assessment Committee for consideration of grant/continuation of affiliation of the institute.

43. Mr. Amitesh Kumar, learned counsel for AICTE stated that University Visiting Report had neither been forwarded to AICTE nor the same had been taken into consideration while passing the impugned order as AICTE had followed only the process prescribed in its Approval Process Handbook which contemplates visit by its own expert committee. He pointed out that the report of the University dated 16th June, 2014 did not deal with the deficiencies found by AICTE as mentioned in the Expert

Visiting Committee Report dated 23rd May, 2014 and the report of the Standing Complaint Committee dated 5th June, 2014.

44. Having heard learned counsel for the parties, this Court is of the view that it is first essential to outline the scope of judicial review in such matters. In the opinion of this Court, judicial review is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

45. In ***Tata Cellular Vs. Union of India, AIR 1996 SC 11*** the Supreme Court has held as under:-

“89. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

90. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself.

91.....It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal.....

100.....It is not function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.

217.....Since the power of judicial review is not an appeal from the decision. We cannot substitute our decision since we do not have the necessary expertise to review.....

219.....Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere.”

46. In ***Ex. Naik Sardar Singh Vs. Union of India & Ors., AIR 1992 SC 417*** the following statement of law by Lord Diplock in *Civil Service Unions Vs. Minister for Civil Service* (1984) 3 ALL E.R. 935 was cited with approval by the Supreme Court:-

“5.....Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds, on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety!’”

47. Consequently, the only three grounds for invoking judicial review in such like matters are illegality, irregularity and procedural impropriety.

48. Petitioner's argument that the impugned order has been passed without affording any hearing is contrary to facts. This Court finds that the impugned decision has been taken by AICTE after following a very

elaborate procedure. Firstly, the decision dated 30th October, 2013 to place petitioner in "no extension of approval category for 2013-2014" was taken after considering petitioner's reply letter dated 27th June, 2013 to the show cause notice dated 14th June, 2013, hearing before the Standing Complaint Committee on 12th July, 2013 as well as issuance of the Expert Visit Committee report dated 29th July, 2013 and another show cause notice dated 24th September, 2013 to the petitioner as well as its reply dated 04th October, 2013 and hearing before Committee on 21st October, 2013.

49. Secondly, after receipt of petitioner's application for extension of approval for Academic Year 2014-15, the procedure prescribed under Clause 11 of Chapter IV of AICTE Approval Process Handbook was scrupulously followed inasmuch as the Expert Visiting Committee conducted an inspection on 23rd May, 2014 and after issuance of Show Cause Notice dated 2nd June, 2014, Standing Appellate/Complaint Committee gave a hearing to two representatives of petitioner on 5th June, 2014. It was only thereafter that the impugned order dated 24th June, 2014 was passed.

50. It is pertinent to mention that the Standing Appellate/Complaint Committee comprises a retired High Court Judge, a Principal and a Professor. It does not comprise any serving officer or employee of AICTE. It is the independent Standing Appellate/Complaint Committee that has stated that neither any document nor any reply was filed by the petitioner. No allegation of bias or malice has been levelled against any member of the Standing Appellate/Complaint Committee. Consequently, this Court is unable to accept the contention of petitioner-institute that neither its reply

nor its documents were taken on record.

51. Further, to say that petitioner was unaware of CBI report prior to issuance of the impugned order is not correct. It was extensively referred to in Show Cause Notices dated 14th June, 2013, 24th September, 2013 and AICTE's order dated 30th October, 2013.

52. In any event, CBI's report dated 29th January, 2010 was only a starting point of enquiry as the impugned decision is based on deficiencies pointed out by the AICTE's Expert Visiting Committee's report dated 23rd May, 2014.

53. The interim order dated 14th July, 2014 passed by Bombay High Court in *Mahatma Education Society's Pillai's Institute of Information Technology* (supra) offers no assistance to the petitioner as it proceeds on "non grant of proper opportunity of hearing to institutions and violation of principles of natural justice". In this case, petitioners have been given full opportunity of hearing and consequently, this Court is of the view that principles of natural justice have been complied with. Thus, the aforesaid Bombay High Court order is not applicable to the facts and circumstances of this case.

54. Petitioners' reliance on the interim order dated 9th February, 2005 passed in W.P.(C) 2459-60/2005 is also misconceived as the said order has been vacated and the said writ petition has been dismissed. Further, the dismissal order has attained finality.

55. The petitioners' argument that the deficiencies pointed out in the report of the Expert Visiting Committee dated 23rd May, 2014 are minor or the only major deficiency is that it lacks ownership of land, is incorrect. The report of the Expert Visiting Committee dated 23rd May, 2014 refers to at

least eighteen other deficiencies like shortfall in building area and qualified faculty as well as cadre ratio, small size of boys' common room, girls common room, cafeteria, classrooms, tutorial rooms, computer centre, libraries, seminar halls etc.

56. In the opinion of this Court, the aforesaid deficiencies are certainly not minor but major in nature. Consequently, the judgment of the Supreme Court in *Al-Karim Educational Trust & Anr.* (supra) has no application to the facts of the present case.

57. Reliance of petitioners on University's inspection report dated 16th June, 2014 is misplaced as AICTE has taken a decision in accordance with the procedure prescribed in its regulations and the same did not contemplate inspection by an affiliating university. It is to be noted that the respondent-University before this Court has admitted that its inspection was purely an annual exercise to evaluate academic standards and teaching methods at the institute and not for evaluating the infrastructure and other physical parameters pertaining to the respective institutes. Thus, the University's inspection report cannot be taken into account while deciding the issue of grant of approval to petitioners.

58. The contention of petitioner regarding deficiencies in the case of Amity School of Engineering and Technology cannot be adjudicated upon in view of its non-impleadment. It is to be noted that it is AICTE's case that while Amity college was granted permission on self assessment basis, petitioner's application was rejected after the Expert Visiting Committee inspected petitioners' premises in accordance with the procedure prescribed under Clause 11 of Chapter IV of AICTE Approval Process Handbook.

59. Moreover, the equality concept in Article 14 of the Constitution is a positive concept and petitioners cannot claim parity for continuing a deficiency. In a catena of judgements it has been held that negative equality is not a valid legal ground. In ***Union of India and Others vs. M.K. Sarkar, (2010) 2 SCC 59***, the Supreme Court has held as under:-

"26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

(emphasis supplied)

60. From the aforesaid facts, it is apparent that the petitioner-institute suffers from several deficiencies pointed out by the Expert Visiting Committee. Despite various notices issued by AICTE to petitioner-institute to shift to a permanent site, it has been conducting engineering course from temporary premises for more than fifteen years. While it is true that the time to shift premises has been extended till 31st December, 2014, yet this Court finds that no steps have been taken by petitioners for shifting their college to a permanent site. After all a building cannot be constructed overnight!

61. Consequently, this Court of the view that the impugned order dated 24th June, 2014 suffers from no illegality, irregularity and/or procedural impropriety. Accordingly, the writ petition as well as applications are dismissed and the interim order dated 3rd July, 2014 is vacated.

SEPTEMBER 15, 2014
js/rn

MANMOHAN, J.