

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4586 OF 2015

Saraswati Education Society's
Saraswati College of Engineering
established and run by the above mentioned
Trust registered under the Bombay
Public Trust Act, 1950, and Societies
Registration Act, through its
Secretary Mrs. Varushali Deshmukh,
having its office at Plot No.46,
Sector 5, Kharghar, Navi Mumbai,
Dist. Raigad – 410 210.

.... Petitioners

vs

- 1 All India Council for Technical Education (AICTE), through its Advisor-II (Approval), Member Secretary, a statutory Body under the Ministry of HRD Govt of India, 7th Floor, Chandralok Bldg., Janpat, New Delhi 110 001.
- 2 The Regional Officer, AICTE, Western Region Office, 2nd Floor, Industrial Assurance Building, Veer Nariman Road, Opp. Churchgate, Railway Station, Mumbai-400 020(M.S.)
- 3 The Secretary, Higher & Technical Education, Government of Maharashtra, Mantralaya Annex Building, Mumbai 400 032.
- 4 The Director of Technical Education,

The Government of Maharashtra,
3, Mahapalika Marg,
Dhobi Talao, Mumbai 400 001.

- 5 The Pravesh Niyantran Samiti,
having its office at 305,
Govt. Polytechnical Building,
Kherwadi, Ali Yavar Jung Marg,
Bandra (East), Mumbai 400 051

- 6 The Registrar,
University of Mumbai,
University Campus, Fort,
Mumbai 400 032.

.... Respondents

Mr Rafiq Dada, Senior Advocate with Mr. C.K. Thomas i/by M/s. C.K. Thomas & Associates.

Mr. Mihir Desai, Senior Advocate with Mr.Swaraj Jadhav and Ms. Sadhana Sariputta, Advocates for Respondent Nos.1 and 2-AICTE.

Mr. M.M. Vashi, Senior Advocate with Ms. Aparna Devkar and Mr.A.I. Patel, Special Counsel for Respondent Nos. 3 and 4/DTE.

Mr. R.A. Rodrigues with Ms. Pranali Dixit, Advocate for Respondent No.6.

**CORAM: ANOOP V. MOHTA AND
V. L. ACHLIYA, JJ.**

**CLOSED FOR JUDGMENT ON : July 17, 2015.
PRONOUNCED ON : August 3, 2015/
August 14, 2015.**

JUDGMENT (Per Anoop V. Mohta, J.):-

Rule. Rule is made returnable forthwith. Heard finally by

consent of parties.

2 The Petitioners reliefs are based upon the following events :-

The Petitioners is an institution established in the year 1997 and administered by the Trust viz. Saraswati Education Society. The Petitioners' Engineering College is conducting the U.G. (Under Graduate) Courses since year 2004 and P. G. (Post Graduate) Courses, from the year 2011 after the inspection conducted by LIC and Directorate of Technical Education (DTE) of the State of Maharashtra, and after the scrutiny by the Expert Visit Committee (EVC) as approved by Respondent No.1-All India Council for Technical Education (AICTE). All these years, no major deficiency of any nature has been pointed out by any of the Respondents regarding the Petitioners' Engineering College. The State of Maharashtra has issued GRs to that effect to the Petitioners' aforesaid courses and College. The University of Mumbai, Respondent No.6 has time to time granted continuation/affiliation to the Petitioners' Engineering College including the affiliation for the academic year 2014-15.

3 On 20.02.2015, pursuant to Respondent No.1's Notification dated 24.01.2015, the Petitioners have submitted the application on-line for extension of approval for the academic year 2015-16. The Petitioners submitted the copy of the application along with the process fees and the requisite documents to the office of Respondent No.2.

4 On 24.06.2014, Advisor-I (Approval Bureau) of Respondent No.1. Issued a partial Extension of Approval to the Petitioners' College as mentioned in paragraph (7) of the impugned Order dated 24.06.2014 for the academic year 2014-15 on the basis of some alleged complaint from the Citizen Forum. However, Respondent No.1 has reduced 25% intake capacity for the academic year 2014-15 from the available intake capacity. The Petitioners challenged the order. On 11.09.2014, by a Judgment/Order this Court in Writ petition No.6468/2014 directed Respondent No.1, to grant an extension of approval of all existing engineering courses, with full intake capacity, as granted for the academic year 2013-14.

5 On 25.03.2015, EVC conducted inspection at the

Petitioners Engineering College and submitted a report to SCC (Standing Compliant Committee). No report was handed over to the Petitioners. A letter dated 17.4.2015 from Respondent No.1, directing the Petitioner to attend the meeting before SCC. On 20.04.2015, Petitioners' made a detail representation of compliances before the SCC meeting held on 22.04.2015. No intimation was given as to who will decide the grant of Extension of Approval to the Petitioners' Engineering College.

6 On 30.04.2015, by the impugned order Respondent No.1's Advisor II (Approval), has reduced 25% intake capacity for the academic year 2015-16. No reason has been given for further reduction in the intake capacity by Respondent No.1. In effect, 55% of the original intake capacity has been reduced, despite there being no deficiency pointed out by the Competent Authority in the impugned order.

7 The Petitioners, therefore, have filed the present Petition on 5 May 2015 and prayed as under:-

“a.

(i) direct Respondent No.1 to forthwith grant extension of approval for the academic year 2015-16 for all the existing Engineering Courses with full intake capacity as granted to the Petitioners in the academic years 2013-14/2014-15 i.e.

For 1st Shift UG Programmes:

Civil Engineering	-	120;
Mechanical Engineering	-	120;
Electronics and Telecommunication	-	120;
Computer Engineering	-	60;
Automobile Engineering	-	60;
Information Technology (1 st Shift)	-	60;
Civil Engineering (2 nd Shift)	-	60;
Mechanical Engineering (2 nd Shift)	-	60.

For 1st Shift PG Programmes:

Computer Engineering	-	18;
Civil Engineering (Structural)	-	18;
Mechanical Engineering (Manufacturing System)	-	18;
Electronics & Telecomm. Engg.	-	18.

(ii) direct Respondent Nos. 1 to 4 and 6 to forthwith permit the Petitioners to participate in CAP admission for all the existing Engineering courses (as was approved in the previous academic years 2013-14/2014-15) for the current academic year 2015-16.

(iii) direct Respondent Nos. 1, 3 and 4 to forthwith upload in their website in the list of 'Eligible Colleges' with the existing intake capacity as that of the academic years 2013-14/2014-15 and to participate in the Centralized Admission Process (CAP) for the academic year 2015-16 as per schedule published by Respondent No.4."

Prayers are also made for interim reliefs.

8 This Court, in view of urgency so expressed, on 6 May 2015, has granted an ad-interim reliefs:-

- “a) We direct Respondent Nos. 4 and 6 to forthwith permit the Petitioners to participate in CAP admission for all the existing Engineering courses (as was approved in the previous academic year 2013-14/2014-15) for the current academic year 2015-16.*
- b) It is also clarified that non-listing of the Petitioners institute/name on the AICTE Website will not affect the admission process and implementation of prayer clause.*
- c) However, this will be subject to the further orders of this Court.*
- d) The Petitioners will not claim any equity on the basis of this order.*
- e) It is also made clear that the Officer of Respondent Nos. 3 and 4-Directorate of Technical Education, Mumbai, is present in the Court and therefore, non-availability of the present order should not be the reason not to implement the order passed by this Court today.*
- f) The Respondents to file reply affidavit on or before the next date.*
- g) The Petitioners to file rejoinder and/or additional affidavit, if any before the next date.*
- h) Stand over to 10 June 2015 for final disposal.*

The parties to act on the basis of an authenticated copy of this order.”

9 Respondents 1 and 2 (AICTE) have also filed reply affidavit dated 9 July 2015 and resisted the prayers of the Petitioners. The Petitioners have filed affidavit rejoinder dated 6 July 2015 and reiterated their case. Reference is also made to the current All India Council for Technical Education Approval Process Handbook (2015-2016) (the Handbook), apart from the Supreme Court and High Court judgments. Respondents 3 and 4 (The State and the DTE) have also resisted the case and claim of Petitioners on various grounds and referred and relied on various Judgments in defence affidavit dated 9 June 2015. Respondent No.6- University of Mumbai (The University) is also added as party Respondent, being affiliation granting authority. Their affiliation is a must to start the course. Respondent No.5- Pravesh Niyantran Samiti (PNS), now abolished and replaced by authority under Maharashtra Ordinance No. VII of 2015 [The Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Ordinance, 2015], dated 12 May 2015. There was no adverse communication from the University for last year deficiencies, about the staff and/or the faculty issues.

10 Both the parties have read and referred to various Supreme Court and High Court judgments which are as under :

Judgments cited by the Petitioners' Senior Counsel:

- (1) Rasid Javed and ors v. State of Uttar Pradesh¹
- (2) Gullapalli Nageswara Rao and ors v. Andhra Pradesh State Road Transport Corporation and anr.²
- (3) Union of India and ors v. Mohd. Ramzan Khan³
- (4) Institute of Chartered Accounts of India v. L.K. Ratna and ors⁴
- (5) Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research v. All India Council for Technical Education (AICTE) & ors., in Writ Petition No.6021 of 2014⁵ and also order dated 27.08.2014 in this matter.
- (6) Dental College & Hospital of the Vidarbha Youth Welfare Society v. Government of India and ors⁶.

1 (2010) 7 SCC 781

2 AIR 1959 SC 308

3 AIR 1991 SC 471

4 AIR 1987 SC 71

5 2014 (6) All M. R. 341 = 2015 B.C.R. 63

6 2013 BCI (O) 841

Judgments cited and relied by the Respondents' Senior Counsel:

- (1) Sopan Maruti Thopte and anr v. Pune Municipal Corporation and anr and Shaikh Abdul Aziz and ors. v. Bombay Municipal Corporation and ors⁷.
- (2) The Secretary, A.P. Social Welfare-Residential Educational Institutions v. Sri Pindiga Sridhar and ors⁸
- (3) Suresh Koshy George v. University of Kerala and ors⁹.
- (4) Sunil Kumar Banerjee v. State of West Bengal and ors¹⁰.
- (5) Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court¹¹
- (6) Order dated 9.5.2014 in SLP (Civil) No.7277/2014-Orissa Technical Colleges Association v. AICTE and anr¹².
- (7) Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM Bed College v. National Council for Teachers' Education and ors¹³.
- (8) Parshavanath Charitable Trust and ors. v. All India Council for Tech. Edu and ors¹⁴
- (9) All India Council for Technical Education v. Surinder Kumar Dhawan¹⁵

7 MANU/MH/0053/1996

8 AIR 2007 SC 1527 : (2007) 13 SCC 352

9 AIR 1969 SC 198

10 AIR 1980 SC 1170 : (1980) 3 SCC 304

11 AIR 1956 SC 285

12 Order dated 9.5.2014 by Supreme Court in SLP(C) No.7277/2014
13 (2012) 2 SCC 16

14 Judgment dated 13.12.2012 in Civil Appeal No.9048/2012 with
Civil Appeal No.9047/2012 by Supreme Court

15 Order in Civil Appeal No.4349/2004 by Supreme Court dated

- (10) Adarsh Shiksha Mahavidyalaya and ors v. Subhash Rahangdale and ors¹⁶.
- (11) Khalapur Taluka Shikshan Prasarak and anr v. All India Council for Technical Education and ors¹⁷.
- (12) G.H.R. Education Foundation Society, Shradha House, Nagpur and anr. v. The State of Maharashtra and ors. With companion matters¹⁸

Supreme Court Schedule for AICTE/the State/The DTE/ The University:-

11 The Supreme Court, in Parshvanath (Supra) provides the following schedule in para 38.

Sl. No.	Stage of processing application	Last date by which the processing should be completed.
(1)	(2)	(3)
1.	For receiving proposals by Bureau RC.	31 st December
2.	For the Bureau RC to screen the application and (a) to return the incomplete applications to applicants, and (b) to forward the applications to (I) State Government	

18/02/2009 by R.V. Raveendran J.

- 16 Judgment dated 6.1.2012 in Civil Appeal No.104/2012 of Supreme Court.
- 17 Judgment dated 1.8.2013 in Writ Petition No.4999/2013 of Bombay High Court.
- 18 Judgment dated 21.10.2013 in Writ Petition No.8646/2013 by Aurangabad Bench of Bombay High Court.

	concerned (ii) University or State Board concerned, for their comments (iii) Regional Officer to arrange visits by Export Committees, and (iv) Bureaus MPCD, BOS and RA for their comments.	
3.	For receiving the comments is from (I) the State Government (ii) the University or State Board and (iii) the Regional Committee based on the Expert Committee's report and (iv) from the Bureaus MPCD, BOS and RA.	15 th March
4.	For consideration of the comments from the State Governments, Universities or State Boards, Regional Committees, and Bureaus of the Council by the State Level Committee.	31 st March
5.	For recommendation to be made by the Central Task Force	15 th April
6.	For Communicating the final decision to the State Government or the University Grants Commission, under intimation to the Regional office, Director of Technical Education, applicant, University or State Board.	30 th April

And also provides following schedule in para 43:-

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

2 nd round counselling for allotment of seats	To be completed on or before 10 th July
Last round of counselling for allotment of seats	To be completed on or before 20 th July
Last date for admitting candidates in seats other than allotted above	30 th July. However, any number of rounds for counselling could be conducted depending on local requirements, but all the rounds shall be completed before 30 th July
Commencement of academic session	1 st August
Last date upto which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 th August
Last date of granting or refusing approval by AICTE	10 th April
Last date of granting or refusing approval by University/State Govt.	15 th May

12 It is observed in para 48 (ii) that “No person or authority shall have the power or jurisdiction to vary the Schedule prescribed hereinabove”. This is to be followed by all, being mandatory. There is nothing on record to show and supported by the Respondents that they have followed and complied with the schedule steps in time, from beginning to end, as declared by the Supreme Court. There are

breaches at every stages by the Respondents, apart from delay.

13 The Supreme Court on 15 December 2014 in Orissa Technical Colleges Association Vs. AICTE & Ors. (Special Leave Appeal (C) No(s). 7277 of 2014 directed that prior approval of AICTE is compulsory and mandatory for conduct of a technical course for academic session 2015-16. Public notice for approval process of 2015-16 accordingly, advertised based upon All India Council for Technical Education (Grant of approval for Technical Institution) Regulation, 2012. The filing of on-line application for the session 2015-16 commenced from 24 January 2015 and ended on 2 March 2015, (as per public notice of AICTE). The process should have ended on 10 April 2015. The scheduled/steps and the dates, itself were not followed inspite of the judgments/orders. The basic unreasoned order was passed on 17 April 2015 and another same type order on 27 April 2015 and final non-speaking order on 30 April 2015. All these orders are in breach of their own rules and elements of natural justice.

Similar Objections decided earlier:-

14 This Court (Anoop V. Mohta & A.A. Sayed, JJ.) on 14 July

2014 in Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research (supra), has considered similar objections/issues in view of last academic year (2014-15) order/decision of AICTE revolving around the “no Extension of Approval” and/or “No Admission” category and/or reduction of intake capacity of Undergraduate, Degree and/or Post-graduate Degree and the Diploma Courses. It is observed as under:

“3 “Technical education” and related aspects are controlled and governed by the All India Council for Technical Education Act, 1987 (For short, “AICTE Act”). The aim and object by the AICTE Act is to co-ordinate and integrate the development of technical education system at all levels throughout the country to provide and promote qualitative technical education in planned manner. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. It also involves regular performance appraisal for technical institutions and Universities. The AICTE, therefore, is under obligation to control the norms and standards for common development of such education in the country.

4 The Act itself provides for grant of extension of approval to existing institutions, for starting new technical institutions, for adding of new courses in existing institutions and variation in intake capacity in consultation with the other Respondents/Authorities. On the basis of this Act, therefore, various authorities, Board, Council have been created to control and supervise technical education and all its related aspects. This itself means, AICTE is having various functions and powers and being a specialized body is empowered to

ensure that all the institutions recognized by the AICTE are possessed of complete infrastructure/staff and other facilities and have capacity of maintaining quality education standards for imparting technical education.

6 In view of judgment in Association of Management of Private Colleges Vs. All India Council for Technical Education & Ors.¹⁹ dated 25 April 2013, the role of AICTE was curtailed. The Supreme Court has held that no such approval of AICTE is necessary, once the University has given its affiliation to start such technical course. However, by order dated 9 May 2014, the Supreme Court directed that for the present academic year 2014-2015, AICTE would be the approval granting authority. We are informed that the issues in Association of Management of Private Colleges (supra) are referred to a Larger Bench and the same is pending in the Supreme Court. It is clear that for the academic year 2014-2015, the AICTE, in view of the provisions of law and the judgments is the supreme authority to grant approvals.

7 The Supreme Court by order dated 9 May 2014 referred to above, in Petition for Special Leave to Appeal (Civil) No. 7277 of 2014, (Orissa Technical Colleges Association Vs. AICTE & Anr.), extended the date for AICTE to grant approval/sanction to 10 June 2014 by referring to earlier order dated 17 April 2014, whereby the Supreme Court has directed the AICTE to proceed in accordance with the approval process for the academic year 2014-2015. This itself means the time table/schedule so fixed in the case of Parshvanath Charitable Trust vs. All India Council for Tech. Edu.²⁰ was re-scheduled. April 30 of the respective year was the date fixed by the Supreme Court to complete all formalities and to grant approval by the AICTE and/or its Appellate Authority.

19 (2013) 8 SCC 271

20 (2013) 3 SCC 385

11 There are about 1800 private/aided and non-aided institutions in Maharashtra imparting technical education. There are about 11,000 institutions throughout the country. Admittedly, since 2009 the institutions in Maharashtra and particularly the present institutions have not been inspected by AICTE within the time frame prescribed. The respective institutions, as per the procedure, submitted and provided the details to AICTE for extension of approval for the academic year 2014-2015. For the earlier years, as per the procedure, on making the on-line Application, AICTE used to grant them approval from time to time. Further, in the year 2014-2015, as recorded above, at the fag-end i.e. on 9 May 2014 they invited applications. Therefore, they themselves were not in position to comply with their own rules and adhere to the cut-off dates. AICTE has not inspected the institutions since 2009. It has not given opportunity to defaulting institutions, to remove deficiencies, if any, or put on record their justification in time before taking action to withhold the extension of approval. The situation appeared to be beyond the control of AICTE to manage and to take inspection and/or pass adverse orders after giving show cause notice and hearing the parties concerned for the present academic year 2014-15.

12 It appears that on the basis of Complaints filed by some organizations and/or individuals, AICTE constituted a High Power “Fact Finding Committee” (for short, the Committee) to examine the complaints and to make its recommendation. The Committee after holding their respective meetings initially heard only one complainant viz. Citizens Forum for Sanctity in Educational System and not the representative of the Petitioners. Admittedly, though their Complaint was against 32 institutions, the Complainant for undisclosed reasons, restricted their Complaint to 13 institutions only. Most of them are the Petitioners in this group of

Writ Petitions. It is contended that no show cause notice and/or hearing was given to the Petitioners before taking action of withholding extension of approval.....

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 any 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 discriminatingly 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 play-ground, 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 had no opportunity to remove the deficiencies and/or file Appeals before the Appellate Authority.

22 *The scope of writ jurisdiction is wide and so also its restrictions. It depends upon facts, circumstances and situations specifically when dealing with the expert body's decision. The time schedule fixed in Parshvanath (supra) has been re-scheduled by the Supreme Court. If case is of perversity, illegality in following due procedure of law, it is settled that any decision/order passed in breach of principles of natural justice, fair play and equity and which causes injustice, hardship and prejudice and specially when it relates to students and higher education and which affect the people at large, High Court in writ jurisdiction, may interfere with the same, to test the validity, illegality of such action. A Division Bench of this Court in Dental College & Hospital of the Vidarbha Youth Welfare Society vs. Government of India & ors²¹ while dealing with the provisions of Dentists Act, 1948 and the power of supreme Authority under the Act referring to the establishment of New Dental College and courses held that apart from others "There is no bar to interfere in expert body's decision.". There also similar objection was raised by the Respondents and opposed for the grant of any relief in favour of the institutions. The Division Bench, based upon the facts, even directed the respective Council to reconsider the representation made by the Petitioners and further ordered to have fresh inspection and to pass order in accordance with law by giving an opportunity to the Petitioners. It is also noted in the said judgment as follows :*

“32 *The peculiarity of the fact in the present case which the Court just cannot overlook merely because the impugned decision is taken by the expert body. As noted above, the expert and/or expert body and/or institution and their power just cannot be decided by the Court so far as the matter pertained to and/or related to the students and/or academic sessions. Any Tribunal/body even of experts, if takes certain quasi judicial or administrative decisions by which they take away and/or infringe the rights of any person and/or institution and if there is breach of principles of natural justice, we are inclined to observe that the High Court need to test the decision/oder if case is made out. There is no bar whatsoever that the decision of the expert body in such a situation cannot be interfered with and/or the High Court has no power to test the decision.*”

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.*”

15 We had granted an interim reliefs in favour of others also being similarly situated Petitioners. The interim reliefs ultimately had attained finality as those Writ Petitions were allowed. The SLP (Special Leave Petition) filed by the Petitioners for non-compliance of the Judgment was also disposed of in their favour. The Respondents

never challenged the above Judgments and orders and/or any reasons so quoted.

16 The Petitioners' last year's case was also finally allowed by referring to the above reasons and the Judgments. *Writ Petition No.6468/2014, Saraswati Education Society's Saraswati College of Engineering vs. All India Council for Technical Education (AICTE) and ors. by order dated 11 September 2014 (Anoop V. Mohta and F. M. Reis, JJ.)*.

17 The Petitioners' infrastructure and the other conditions as required by AICTE as noted have been same. There is no substantial change so far as the existing requisite infrastructure and facilities are concerned, except the same last year deficiencies and its justification on record. We have never restricted the power and the authority of Respondents to deal with the deficiencies. This Court, after hearing both the parties, considering the deficiencies so read and referred, by reasoned order, had allowed the Petitioners' prayers. Those deficiencies and respective explanation/clarification so given by the Petitioners' ought to have been re-considered before

passing/recommending 25% reduction in intake capacity in all the courses, (as per the last approval of the year 2014-2015) for the year 2015-2016.

18 We have noted the regular reduction from academic year 2013-2014 to 2015-2016 as under :-

Year	UG	DTE Allotments/ Students admitted.	PG	DTE Allotment/ Students	Reduction AICTE
2013-14	660	660	72	72	
2014-15	480	660 (as per Court order)	36	72 (as per Court order)	25.00%
2015-16	360		28		30.00%

19 For the academic year 2015-2016, Respondent No.1 has reduced the intake capacity by 30% which comes to 55% total intake of 2013-14, though there was no substantial change in the alleged deficiencies and they have sufficient infrastructure and facilities to conduct Engineering courses with the claimed capacity. No specific reasons are assigned for such reduction, though there is a clear judgment of this Court and direction to Respondents 1 and 2 to approve intake capacity as prayed. The Petitioners have been admitting the students as referred above since 2013-14. The

reduction was uncalled for.

20 We had considered the overall deficiencies raised by AICTE and explanation put-forth by the Petitioners, while considering the grant of interim relief for admitting students in current academic year 2015-16. Instead of considering the earlier decision in the matter, the AICTE has pointed out same deficiencies and in addition, raised some additional deficiencies, which according to us not of substantial in nature to reduce the intake capacity to admit students. Such decision must be based upon sound reasons and too the larger objective to be achieved to maintain high standard of technical education by the expert body like AICTE.

AICTE- Approval and appeal process-Handbook-

No Occupation Certificate:-

21 Respondent No.1-AICTE, every year issued a Approval Process Handbook of All India Council for Technical Education. We are concerned with the handbook of 2015-2016. There are prescribed Committees of the General Council, which is a final Authority under AICTE Act. There is an Executive Committee, Standing Appeal

Committee, Regional Committee, Scrutiny Committee for Scrutiny of applications under Chapter I and II of Handbook for approval process. There is an Expert Visit Committee (EVC). The Standing Complaints Committee, before whom EVC normally submits report, after receipt of application for restoration/extension of approval of the next academic year. The Standing Complaints Committee recommends the respective case before the Executive Committee, for a necessary approval/ratification. There is an Appellate Authority available under Chapter I.

22 Normal practice of making on-line Application in the prescribed form for extension/approval including for additional seats, is followed every year. The grant of approval is based on self disclosure of facilities and infrastructures. An affidavit is required to be filed by the institution about the facilities and infrastructures as per the Handbook. The procedure is provided to invoke the provisions both for the Civil and Criminal actions. The procedure is prescribed for processing the applications, so also the action in case of violation of regulation of non fulfillment in faculty, Student ratio, not adhering to Pay-Scales and/or qualifications prescribed for teaching staff and

non fulfillment of other required facilities. The built up area can be another issue. The land requirements for Technical Institutions is prescribed and so the faculty requirements and cadre ratio. It is necessary for the Institution to submit documents in support of their case, including a certificate of the Competent Authority that has allowed the use of land on which the concerned Institution is located for the education purpose and/or for establishment of Institution. Building plans approved by the Competent Authority mentioning additional carpet area fulfillment for additional intake applied are to be submitted. There is no requirement of submitting Occupation Certificate. So far as the occupation certificate is concerned, though discussed in the judgment last year, the Respondents by overlooking the same, again treated the same deficiencies to reduce 25% intake capacity, as recorded above. The Respondents failed to take note of getting occupation certificate from the local authorities/Government and various reasons behind it. There is no case that the Petitioner's occupation is illegal and/or unauthorized. The formality of getting the occupation certificate ought not to have been the reason to take such drastic action specifically when the Petitioners have also applied for occupation certificate and the same is pending because of change of

policies of local authorities and the Government. The statement is made that it will be made available as early as possible. The steps which the Petitioners have been taking to get the same is also elaborated in additional affidavit dated 15.07.2015.

23 Therefore, insistence of Occupation Certificate, in the present case, though other documents are sufficient to accept the case of fulfillment of requisite infrastructures and facilities, was uncalled for and the decision on that ground of reduction of intake capacity in spite of existence of legally and fully authorized structures, is bad in law. That should not have been reason to reduce the seat numbers. There is no specific reason provided to make such reduction in the intake capacity for the academic year 2015-16, specifically in the background of the Division Bench Judgment/order passed by this Court, dealing with the same situation for academic year 2014-15 whereby, directed AICTE to grant the approval, which according to the Petitioners, AICTE granted last year. The Petitioners having infrastructures and requisite facilities and completed the faculty requirements and cadre ratio, there was no reason to take such action. The Petitioners have been, as recorded, imparting the technical

education since so many years with requisite permission/affiliation from the State/University/Technical Board, apart from approval from AICTE regularly. This year also AICTE has granted the approval, but reduced the number of seats, inspite of having legal and valid infrastructures and facilities. The reduction of seats, in the present facts and circumstances, therefore unsustainable and so also the last day decision.

Illegal Structure-Still approved by Respondent No.1-

24 It is relevant to note that a stated illegal structure of the institutions, in Andhra Pradesh, does not prevent AICTE from granting such approval. The Minutes reproduced hereunder:-

“Minutes of the 78th meeting of the Executive Committee of Respondent No.1 held on 17.09.2012 at their office at New Delhi reads as under: (Item No. 78.03.08-page 4)

“To consider action requested by Principal Secretary to Government of Andhra Pradesh, Municipal Administration & Urban Development (M) Department against Engineering Institutions (46 colleges) functioning in Unauthorised Buildings in Hyderabad Metropolitan Development Authority, Hyderabad (HMDA) Jurisdiction.

The Executive Committee deliberated on the letter of Principal Secretary to Government of Andhra Pradesh. It was noted that the existing institutions were granted approval in the preceding years based on the rules applicable in the respective year and hence will not be

reviewed by AICTE in the light of revised norms. However, approvals to new institutions will be granted based on the guidelines of HMDA.....”.

Deprived of Appeal provisions-stated cut off date:-

25 The Respondents have passed impugned order on 30 April 2015. This date is the last date, as per the guidelines framed by the Hon’ble Supreme Court in Parshvanath (Supra). The Appeal before the Appellate Committee, is the available provision under the handbook. The Institution, aggrieved by the decision of the Executive Committee of the Council, is entitled to file an Appeal before the Appellate Committee, which required to be constituted by the Chairman, AICTE. The recommendation/decision of the Appellate Committee required to be placed before the final Authority, General Council of AICTE. There is a prescribed procedure whereby, a representative of the Institution is invited to place their point of view. The decision of the Council of rejection and/or approval against such Appeal, is also required to be communicated. Admittedly, in the background so referred above, by impugned communication dated 30 April 2015, deprived the Petitioners and/or such Institution to file Appeal within a prescribed period, so that their entitlement and/or right to pray for approval and/or grant of the approval as prayed

could not be heard and decided prior to 30 April 2015. The Petitioners and/or such Institution, because of inaction of AICTE lost their rights to Appeal. The question is not of rejection of their Applications on 30 April 2015. AICTE, being a statutory authority, by not taking timely action though prescribed by the Supreme Court, takes away and denied the rights of hearing Appeal and final decision from the highest Authority of AICTE. To say that there no prejudice caused, though AICTE has passed order on 30 April 2015, is unacceptable. Timely action, including inviting applications as per the scheduled if not complied with, the Petitioners and/or such person have been denied of their entitlement, as prayed. This amounts to rejection of their legal rights on 30 April 2015 by passing such orders, knowing fully its effect. This itself is unjust, impermissible, arbitrary and reflects consideration other than legal. The submission, therefore in this background, of the learned counsel appearing for the Respondent- AICTE, as well as, the State, that this Court now cannot pass any order after cutoff date, so prescribed by the Supreme Court, in the facts and circumstances, is unacceptable. It is not the case that the Respondents initiated the action in time, as guided by the Supreme Court and/or by this Court. Timely action, could have

allowed the Petitioners to challenge the whole process and/or by challenging such decision before the Appellate Authority and they could have reiterated and re-submitted their stand with supporting documents that there are no deficiencies. They could have pointed out that the deficiencies are not the major deficiencies to deny the approval so sought by the Petitioners. The mechanism so adopted by the Respondents, thereby denying the legal rights of the Petitioners and now submitted their defence on the basis of cut-off date, though already deprecated earlier by the Division Bench, the repetition of the same, therefore, required to be interfered with. The contentions of the Respondents of cut-off date and that this Court cannot pass any order of extension of approval for full intake capacity as prayed, are also liable to be rejected, at the instance of the Respondents at least, in the background of the specific cases and the Judgments/orders of this Court.

26 In Asha Vs. Pt. B.D. Sharma University of Health Sciences &

Ors.²² the Apex Court observed that:-

“32. *Though there can be rarest of rare cases or exceptional circumstances where the courts may*

22 (2012) 7 SCC 389

have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru v. State of J & K, (1981) 2 SCC 484: 1981 SCC (L&S) 398, Chavi Mehrotra v. DG, Health Services, (1994) 2 SCC 370, and Aravind Kumar Kankane v. State of U.P., (2001) 8 SCC 355.]”

The person who hears must decide:-

27 So far as the submission advanced that the person who hears must decide, was raised and decided by this Court in the judgment so referred above. The Division Bench of this Court (Coram:- Anoop V. Mohta and A. A. Sayed, JJ.) in the judgment *Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research (Supra)* by referring to the Supreme Court judgments in *Rasid Javed and ors v. State of Uttar.*

Pradesh (supra) and Gullapalli Nageswara Rao and ors v. Andhra Pradesh State Road Transport Corporation and anr. (supra), by noting the Supreme Court observation that “the person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted”. This Court, in paragraph 14, has observed thus:-

“14 Therefore, at this stage we are definitely concerned with the way and manner by which AICTE has taken the decisions. AICTE after collecting information did not grant reasonable time and opportunity to the Petitioners' institutions and passed the impugned orders. From the record, it is apparent that the Petitioners were heard by the Standing Complaints Committee and the impugned orders were passed by another Authority viz. Competent Authority (i.e. Chairman of AICTE). Normally, the authority who hears the parties must pass orders. (See Rasid Javed & Ors. Vs. State of Uttar Pradesh & Anr.²³ and Gullapalli Nageswara Rao Vs. A.P. SRTC²⁴) In the present cases, prima-facie, it appears that authorities/ bodies, invoked their respective powers at different stages and ultimately the impugned orders were passed against the Petitioners without giving proper and reasonable opportunity, in breach of the principles of natural justice as well as the respective provisions/ procedures declared by AICTE. These orders will cause great injustice and hardship to the institutions, staff and the students. The investments so made by the Petitioners also just cannot be overlooked.”

23 2010(7) SCC 781

24 AIR 1959 SC 308

Natural Justice- No straight jacket formula:-

28 Both the learned counsel appearing for the parties have read and referred the doctrine of natural justice. There is no issue that the principle of natural justice is not a straight jacket formula. We have to consider the facts and circumstances of each case. The law so read and referred by the parties in this regard, as settled, need no further discussion, but the basic elements of natural justice and its principles need to be followed by all, unless there is a clear mandate to exclude the same. [*Institute of Chartered Accounts of India v. L.K. Ratna and ors (supra)*, *Swamy Devi Dayal Hospital and Dental College Vs. Union of India and Ors.*²⁵]. We have also noted the same principles recently in Writ Petition No. 5378 of 2013 – *Jayshree Vijay Mundaware vs. The Principal/Head Mistress of Ashoka Universal School Chandsi/wadala, Nashik and ors.*, on 21 July 2015, which read as under:-

“27 We have already elaborated such aspects in similar situation (*Preeti Mulji Sondarwa Vs. The Controller of Examinations, Writ Petition No. 3776 of 2015, dated 10 July 2015 (Coram - Anoop V. Mohta*

and V.L. Achliya, JJ) though by an interim order, but considering the settled position of law revolving around the principles of natural justice and its elements which we want to rely upon in this matter also while deciding this Petition finally. We are reiterating in the present matter the following points-

“33 The basic principle of natural justice again reiterated by the Apex Court in Anand Brothers Private Limited Vs. Union of India & Ors.²⁶ and Gorkha Security Services Vs. Government (NCT of Delhi) & Ors.²⁷. In Gorkha Security Services (Supra) the principle of natural justice even considered in administrative law, including covering proper show cause notice, purpose and reasoned orders are elaborated though not in education matter, but principle just cannot be denied as referred in other connected and supreme Court Judgments in the matter. Academician and/or expert body's decision are bound by such principle, when it goes to taking adverse decision and/or passing any order affecting the legal rights of the parties. Duty to give reasons and/or recording reasons and/or passing speaking order, is essential not only the Court, Tribunal, Judiciary but to all who takes decision, covering the rights of the parties.

34 The Apex Court in Gorkha Security Services (Supra) has further observed as under:-

29. No doubt, rules of natural justice

26 (2014) 9 SCC 212

27 (2014) 9 SCC 105

are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.

35 The elements of “natural justice”, “Show-cause notice”/“notice”, “disclosure of material”, “opportunity of all kind including of rebuttal”, “aspects of burden of proof”, “oral or personal hearing”, “pre-decisional and post-decisional hearing”, “reasoned order”, “decision” “speaking order”. This also includes, “Appellate Authority and powers of applying same principles, hearing and reasoned order.” All these cannot be just read and/or need to be a “empty formality”. This is in the background of duty to act judicially and to act fairly, keeping in mind the elements of bias, prejudice and influence of various kind. The effect of such elements and/or breaches of principle of natural justice are all interlinked and interconnected, the order of action is null and void and unsustainable in view of settled position of law declared by the Supreme Court and/or various High Courts. In the present facts and circumstances, and for the reasons so recorded above, we are also inclined to declare so.

36 In Anand Brothers Private Limited (Supra), the Apex Court has further dealt with the aspect of importance of findings and conclusion and the reasons on the facts and law and/or mixed question of law and facts. It is also observed as

under:-

11.

“33.A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

“The elements of natural justice are still available to/for all.”

Unreasoned and non-speaking order by the Respondents.

29 In the present case, we have noted that no specific reasons are provided by the deciding Authority before passing such order of reduction specifically when this Court has dealt with various such aspects of deficiencies and directed them to grant intake

capacity/permission as prayed last year. The Respondents/Authority, inspite of the clarification so issued by the Petitioners, apart from the reasons, so mentioned in the judgments, if wanted to take other view and/or contrary decision, the opportunity of hearing ought to have been given to the Petitioners', apart from the reason in support of the same. The speaking order is a must even for the Respondents/Authorities to pass any adverse order. The impugned orders, as noted, are non-speaking orders.

Earlier decisions and orders on similar issues, bind the Respondents:-

30 It is relevant to note that in Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research (Supra), based upon the academic year 2014-15 in similar decision of AICTE, this Court has dealt with, specifically the issue of re-schedule of time table of the Supreme Court, in para 7. “About 1800 private/aided and non-aided institutions in Maharashtra”, “not inspected the institutions in Maharashtra since 2009 except so referred above”, “no opportunity to remove the deficiencies given” and “overlook the justification before passing the impugned order of withholding of extension”, “nothing on record to show that all other

1800 institutions are without any deficiencies, whether complaints and/or no complaints. Last year also, the action was initiated based upon the complaints against the Petitioners and other 12 Petitioners, are dealt in para 11 and 12. The observations are clearly made of no hearing and exclusive hearing to the complainant “Citizen Forum for Sanctity in Educational System”, no show cause notice and hearing was given to the Petitioner before taking action of withholding the action of approval in para 12. The aspect of discrimination and breach of principle of natural justice, fair-play has specifically dealt with in paragraph 16. Specific issues relate to land, play-ground, occupation certificate, nature of occupancy, common play-ground, sharing of premises, less area, insufficient land and/or built-up area have been dealt with in para 17, referring to the norms prescribed in AICTE handbook. The observation with regard to the required interpretation and relaxation/execution are also dealt with and considered with clear findings that “there is nothing on record to show that any findings and/or reasons have been given by the Council, while interpreting these regulations. No opportunity was given to the Petitioners to put up their case. The action, therefore, was in consonance with the various norms and regulations of AICTE. (para

17). Depriving the Petitioners to file Appeals before the Appellate Authority is also specifically dealt with in paragraph No.17. Considering the scope of Writ jurisdiction and interference in the decision of such expert body have been specifically dealt with in paragraphs 22 and 24.

31 AICTE, therefore, before passing any order and taking any decision, as done in the present matters, ought to have taken note of the specific findings given and ought to have interpreted the clauses and decided the issues separately and individually by giving hearing at all the stages, instead of passing such order at the eleventh hour and again denying the right of Appeal to the Petitioners, apart from non-following the time table so fixed, which ought to have been commenced in the month of December itself. Admittedly, initiation therefore, definitely gives time and opportunity to the Petitioners and such institutions to put up their case with sufficient and reasonable time to challenge the same in Appeal also. Having overlooked and not followed the same schedule, apart from principle of natural justice, this is a clear breach of their own norms and the orders so passed by the Supreme Court and in clear breach of reasoned decision given by

this Court after hearing AICTE in Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research (Supra). This Court, in last year, specifically dealt with the aspect of passing order by the person one who hears.

The role and the approach of State Government/DTE only for academic year 2015-16-

32 The DTE has no role to play in the procedure so prescribed, when the Petitioner and/or such institution seeks extension of approval. The DTE officers only facilitate the Centralize Admission Process. Therefore, the role of the State and the DTE, is restricted. The handbook so read nowhere provides any role of DTE, except the initial stages so recorded in the schedule by the Supreme Court in Parshvanath.

33 The role of the State Government, in view of AICTE supremacy is limited. Once AICTE grants the approval/sanction, university affiliation is necessary to admit student/s and/or to run the courses. In this year, 2015-16 the State has contested and made supportive arguments with AICTE - opposed the prayers of the

Petitioners' Institution. Having once dealt with AICTE, all the contentions, the submission of the State on same grounds, are not acceptable. The contentions of State are also liable to be rejected. The Judgments so referred by the State Counsel, so far as the settled law is concerned, need no elaboration. The ratio needs to be extended, subject to considering the facts and circumstances of the respective case. We are dealing with these cases in the background so recorded.

The cases cited by the Respondents are also distinguishable on facts and circumstances:-

a) *Shri Morvi (supra)* – The submission is made that it is the case of withdrawal of affiliation/recognition as the inspection teams found several deficiencies, including inadequacy of space, under-qualified teachers and institutions not having its own land and buildings. This was a case of de-recognition of institution and irregular/illegal admissions. We are not concerned with the situation as admittedly, the AICTE/Respondents have been granting permission since long and this time only reduced number of seats and/or added new deficiencies of faculty and/or cadre ratio. The reason for fluctuation on these deficiencies, ought to have noted, specifically

when handbook itself provides 18 months to bring the situation stable. These are every year problems of all the institutions in Maharashtra.

b) Order in Civil Appeal No.4349/2004 by Supreme Court dated 18/02/2009 by R.V. Raveendran J. - All India Council for Technical Education v. Surinder Kumar Dhawan (supra) - It is observed that without any prior statutory and/or affiliation or assessment, granting approval for a new course or programme by the Court by overlooking the expert body like AICTE's function, is unacceptable. The contentions are not in view of the earlier orders passed by this Court and the facts and circumstances of the present case.

c) Adarsh Shiksha Mahavidyalaya (supra) - This was a case under AICTE Act. The observation that insistence of various compliances of conditions in the statute cannot overlooked, need no further elaboration as it is settled. However, facts and circumstances and actual compliances and/or no compliances and/or nature of objections, need to be tested and considered by the Court, if supporting materials are on record. We are not concerned, in the

present case, about the declaration of results of the unauthorized institutions and/or further study.

d) Khalapur Taluka Shikshan Prasarak (supra) – This was a gross case of inadequate faculty ratio/cadre and the appointment of faculties were on ad hoc basis. As recorded, in the present case, apart from earlier orders, Respondents' own defaults and/or non-application of mind to the explanation so given and without assigning the reasons, rejected the claim/case of the Petitioner though infrastructure and facilities have been available. The Court, under Article 226, is required to consider the case on its own merits.

e) G.H.R. Education Foundation Society, (supra)– This was a case where institutions, without any affiliation, admitted the students for un-affiliated courses, but ultimately the Court permitted the students to appear for the examination. The facts are distinct and distinguishable.

f) Sopan Maruti Thopte (supra) – This was a case of demolition of unauthorized construction where debated issue was the

scope of personal hearing. In view of Supreme Court judgment read, referred and relied and for the reasons so recorded, in the present case and in view of the settled principle of natural justice, this judgment is of no assistance to the Respondents.

g) The Secretary, A.P. Social Welfare-Residential Educational Institutions (supra)- In this case, the principle of natural justice was discussed to the extent that the complaint of violation cannot be sustained unless prejudice is established and further prior show cause notice not called for terminating appointment secured on compassionate ground by playing fraud of these principles, are not in dispute. However, in the present matter, for the reasons already recorded and so also the prejudice so shown and as there is no case of any fraud, this judgment is also of no assistance to the Respondents.

h) Suresh Koshy George (supra)- This was a case of mal practice in examinations. The issue was about show cause notice before taking any action. The law that the Court shall quash and set aside the order after following procedure established by law in fact supports the case of the Petitioner.

i) Sunil Kumar Banerjee (supra)– This was a case of taking disciplinary action without following the requirement, unless prejudice established. This is also of no assistance to the Respondents, in view of settled position of law as declared by the Supreme Court in favour judgments referring to the power and authority of such supreme body and the requirement of hearing at every stages. (Swamy Devi Dayal Hospital & Dental College (supra)].

j) Pradyat Kumar Bose (supra)– This was a case, where the question was whether the Chief Justice passed the dismissal order, without consulting Public Service Commission even though he deputed responsible and competent person, to prepare a report by conducting an inquiry. The facts and circumstances are distinguishable in view of the specific provisions of Articles 229, 311 and 320. This judgment, therefore, is of no assistance to the Respondents to deny the relief so claimed in view of earlier judgments passed by this Court, based upon the principle “The person who hears must pass the order”.

DTE Report:-

34 So far as the State Government's submission through affidavit so placed on record referring to report dated 14.03.2014 based upon a complaint, followed by the surprise inspection by the Joint Director (Technical Education), Regional Office, Mumbai, itself. The Respondent/State, are fully aware that the Division Bench of this Court by judgments dated 14/07/2014 and 27/08/2014, considering the position and/or similar objections and allowed the Petitioners and/or such other Petitions, as were based upon the complaints so referred, and as the AICTE refused to grant approval so prayed by the respective Petitioners last year also. The issues with regard to the running of college/institution in one campus, the land requirement, no occupation certificate, lease agreement, deficiencies of 0.3 acre land for degree and diploma engineering college, leave and licence agreement, CIDCO approval not provided for development plan, total built up area and occupation certificate and pendency of O.C. Issue and it's follow up as was in progress had been noted and dealt with. The situation/facts and the issues again mentioned and referred by the Expert Visit Committee's (EVC) inspection 25.03.2015 and specifically

- (i) Engineering College has occupancy certificate for 3 floors only.
- (ii) Occupancy Certificate for 4th & 5th Floor is yet to be received.
- (iii) Two colleges are running on same land (Plot No.46) but in different buildings.
- (iv) There is a deviation (Balcony) in original building plan approved by CIDCO on dt. 16/10/2007.
- (v) Cadre ration with reference to professor cadre is not maintained.
- (vi) Assistant Professor cadre ration is not maintained.

35 The explanation so given on earlier occasion and on this occasion also referring to above objections and the stated deficiencies in the EVC report itself shows arbitrariness of Respondents and prejudged attitude and without assigning any contra reasons, mechanically passed the impugned orders. The submissions, therefore, of the Petitioner that the whole action of Respondents is unjust, contrary to the judgments so passed, apart from the provision so prescribed and specifically by not giving reasons and not considering the interpretation so placed on record by the Petitioner along with the supporting documents, thereby have acted arbitrarily, discriminatory by not applying mind to the case and record, and to just to prejudice the matter, so that being an expert body, they can pass any order and the Court should not interfere with the said decision, are acceptable. This is the case where the action/decision of

the body is contrary to law, apart from non-compliance of the procedure so prescribed, therefore, a case is made out to interfere with the decisions being discriminatory, arbitrary and nothing but misuse of power. There is no point even remanding the matter for reconsideration in view of the actions to initiate and the final decisions so taken on last date, as recorded. The State Government's submission, therefore, supporting the AICTE's action in the background, for the first time, as there was no such objection raised last year, in similarly placed circumstances also shows predetermined attitude to pass order for consideration other than law.

36 The Supreme Court in Swamy Devi Dayal Hospital and Dental College (Supra), though not granted reliefs in view of typical facts, has reiterated the basic similar provisions of Medical and Dental College for new courses, referring to Section 10-A of the Dentists Act, 1948, while granting the hearing at appropriate stages, apart from the elements of natural justice has observed that:-

“22.2. It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under Sub-section (2) of Section 10-A of the Act. Once it is found by DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme

to the Central Government. In case a Scheme is found to be deficient, Sub-section (3) (a) of Section 10-A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by the DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by DCI. This requirement of hearing is stipulated in proviso to Sub-section (4) of Section 10-A, in the event the Central Government is proposing to disapprove the scheme.

22.3. The expression "opportunity of being heard" occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of DCI itself can be supplied or at least the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal hearing should also be accorded.

23. As in the present case, since no such opportunity of being heard, the requirement of proviso to sub-section (4) of Section 10-A of the Act, was not afforded to the Petitioner, the decision dated 30-3-2013 of the Central Government warrants to be set aside on this ground alone."

37 In the present case, there are various breaches committed at every stage, which are against their own rules and elements of

natural justice. However, in Swamy (Supra) no permission granted for the academic year 2013-14 for new courses, as session already started on 15 July 2013. The necessary admissions were already given in colleges. The decision was given on 27 August 2013 by the Supreme Court. These are institutions, which are providing technical education since many years. Strikingly, the requisite approval has been granted also, but reduced the seats, the reduction is illegal and arbitrary. In the present case, apart from earlier judgments and the explanation given, the old deficiencies are treated again as new and reduced the seats/intake capacity. We have by interim order, already listed the colleges on the website. The students must have acted accordingly. The last counseling is over on 27 July 2015, pending the Petition. Therefore, as case is made out for the reasons so recorded, we are inclined to grant the final order, as prayed, but subject to additional conditions.

38 Furthermore, in the case in hand, inspite of earlier judgments, the Respondents not acted promptly, timely and overlooked the specific observations about the deficiencies and the Petitioners explanation, but as noted, granted approval also but only

reduced the seat illegally, contrary to their rules and guidelines, apart from breach of natural justice. Therefore, the major deficiencies itself, are not in existence. The explanation for deficiencies about cadre and faculties so given, need to be dealt with, as there are removable deficiencies. The whole action of the Respondents in this case is arbitrary, discriminatory, in violation of own rules/guidelines, apart from the principles of natural justice, therefore, liable to be quashed and set aside, being illegal and bad in law. The consequential order, therefore is to allow the Petition as prayed, however, on certain conditions, in the interest of all. The case of no deficiencies of major nature, as made out, the illegal rejection/reduction therefore, we are inclined to pass order as prayed.

Faculty-qualified Staff-Deficiencies in Students/Teacher ratio-Cadre

39 After going through the impugned order and the respective deficiencies and the explanation so provided, we are also of the view that there is no shortage of any faculty. There is no deficiency in student/teacher ratio. The Petitioners have maintained the cadre ratio as required by the University. The Petitioners have sufficient and qualified staff. The procedure of recruitment has

already initiated in order to appoint qualified staff. The draft advertisement has been approved by the University and various other paper advertisements have been published. The Committee has been constituted for the interview and the interview are already scheduled on respective dates. The same is supported by additional affidavit dated 15.07.2015. The statement is also made that the Petitioners are paying salaries as per Sixth Pay Commission.

40 After hearing the learned counsel appearing for the parties, including the learned counsel for the University and after going through the provisions referring to appointment of faculty and the qualified staff, there are various consistent and regular problems for retaining the same qualified staff and/or faculty permanently. This ratio also always changes because of various circumstances as the staff and/or faculty themselves resign and/or leave the job. The Government reservation policy and the requisite advertisement and to maintain the reservation is every year problem of the area. The Petitioners and/or such institutions are required to maintain and follow the reservation policy, as well as, the University Rules/Regulations for appointment of qualified staff. The submission is

made by the Senior counsel referring to other Government run Engineering Colleges that faculty, as well as, staff ratio is quite low and not upto the mark. That may not be the reason for the Petitioners not to provide adequate and requisite staff and/or faculties, but that is definitely a point which required to be noted from the point of view of AICTE and/or from the point of view of State Government, one who insists for such compliances from the Petitioners and/or such other institutions. They have even passed the impugned order by overlooking the practical difficulties and without considering the reason for shortage of faculty and qualified staff, when they inspected the premises/institution. The Respondents, have acted mechanically and passed the unreasoned orders by overlooking the earlier orders by this Court and the explanation/clarification so issued by the Petitioners referring to individual deficiencies so referred above.

Land area deficiencies

41 The deficiencies with regard to the land area requirement was also the issue of last year. The statement is made and as recorded that there is sufficient land earmarked for the Petitioners' Engineering College i.e. 2.5 acres of land. So far as the Lease Deed execution is

concerned, a Registered Lease Deed has been furnished. The same is part of additional affidavit dated 6.7.2015 filed by the Petitioners in the matter.

Rain Water Harvesting:-

42 The rain water harvesting deficiency has been raised for the first time by the Competent Authority of Respondent No.1. EVC and/or SCC, at no earlier point of time pointed out the said deficiency. The statement is made that necessary and requisite steps will be taken, but the fact that this deficiency raised for the first time by the Authority also cannot be overlooked.

43 The issues, even if so raised for the first time, revolving around the cadre and faculties, ought to have been considered in view of their own provisions of the Handbook by giving opportunity and hearing. These are every year recurring and fluctuating issues. There was “no zero deficiency” on the date of passing of impugned order, is also the submission. When it is a mass problem of the area and as it requires certain formalities to be completed even by the Universities and/or authorities, after taking due timely steps by the Petitioners or

institutions, and specifically when rule itself provides reasonable time to complete the procedure and remove deficiencies, these actions were uncalled for. The issue of non-fulfillment of faculty, student ratio, qualification, pay-scales, if any, need to be considered from the point of view of the respective years requirement. The 18 months period so prescribed to fulfill the vacancies, or to remove the deficiencies, just cannot be overlooked by the Respondents. In view of above, these deficiencies ought not to have been the foundation to deny the approval so claimed by the Petitioners without giving timely hearing and the reasons for this year also. This, in no way, read and mean that the Petitioners should not remove the deficiencies in respect of cadre and/or facilities and/or related aspects. Therefore, we are inclined to direct the Petitioners to take steps even with regard to the deficiencies, if any, about the cadre and/or faculties and/or related aspects, as early as, possible and the concerned authorities and the Respondents to deal with the same by giving the opportunity of hearing and by passing reasoned order within the prescribed period, so that the students should not suffer. The impugned action of reduction of seats, therefore, on this ground, apart from the institutions, is nothing but depriving the students, who have opted

and/or desire to have college of their locality and of their choice, specifically when the institution has been imparting the technical education since so many years.

44 Taking overall view of the matter as the Respondents themselves failed to comply with the guideline, dates and their own rules and deliberately passed the unreasoned order on last cut-off date of grant of extension of approval, we are inclined to pass the final order as done by this Court in the last year and as passed by the various Courts including Hon'ble Supreme Court, specifically in view of casual and arbitrary manner in which by overlooking the Judgments and not decided the issues with reasons, the Respondents have taken unsustainable decisions.

45 Therefore, in view of above reasons, this is not the case where the matter required to be remanded for re-consideration before the same authority, who have in prejudice mind and by pre-judging the issue, by overlooking the judgments so passed by this Court, passed the same order, this year also. The order/action therefore, is illegal, impermissible and liable to be quashed and set aside, that

would result into granting the permission. In the present facts and circumstances and in view of the earlier orders which we have passed, we are inclined to grant reliefs in this year also as prayed by the Petitioners.

Conclusion-

46 In view of the discussion made in the foregoing paras, we record our conclusion as to the issues raised in the petition as under:-

(i) Considering the over all facts of the case, rival contentions and decision taken by AICTE to reduce the intake capacity of petitioner-Institution, is not sustainable in law for the reason that the decision is not based upon the on application of mind, overall assessment and nature of deficiencies and same is found to be perverse and arbitrary.

(ii) We are of the view that, under the facts and circumstances of the case such decision could not have been reasonably taken by body of experts as that of AICTE in exercise of its discretion as over all deficiencies were not of substantial in nature and have no correlation with over all impact over standard of education and main objective to

be achieved by AICTE in exercise of its powers as a regulating authority.

(iii) The exercise of powers u/s 226 of Constitution of India, as against the decision as that of AICTE, the High Court is not expected normally to interfere unless the decision of such expert body is found to be arbitrary, perverse and based upon extraneous circumstances or consideration and such decision could not have been reasonably taken by such body of experts in exercise of its discretion.

(iv) In the instant case, we are of the view that the decision taken by AICTE i.e. the expert body, is without application of mind and could not have been taken looking to the nature of deficiencies, which according to us, otherwise curable in nature and not affect the high standard of education to be maintained.

(v) So far as the contention raised in the petition about the principle of natural justice has not been followed and hearing is expected at all stages of decision making by AICTE, we are of the view that, in this regard no straitjacket formula can be laid down. The

aspect of adherence of principles of natural justice needs to be examined depending upon the facts and circumstances of each case. In absence of the mandatory requirement laid down in the procedure prescribed making it obligatory on the part of the decision making authority to strictly adhere the principles of natural justice, the observance of such principle depends upon facts and circumstances of individual case. However, we are of the view that, in the process of decision making, if any, order to be passed against the interest of any individual or institution, then before passing such order normally such persons or the institution must be given an opportunity to explain its stand as to the accusation made or adverse material to be relied against them. The adherence of principles of natural justice not always to be inferred in the sense that, a personal hearing must be given by an authority concerned to a person against whom the order to be passed. Opportunity to put up written submissions and the documents, if any, in support of contention/defence of the person to dispel those allegations or material normally to be treated as sufficient compliance of the adherence of the principles of natural justice. So also, the over all prejudice caused to the person on account of decision in absence of hearing to such person also to be taken into

consideration in case based on non-adherence of principles of natural justice. In case serious miscarriage of justice has resulted due to non-adherence of such principle, then only, such action of the authority may be interfered in exercise of writ jurisdiction.

(vi) When a decision making authority as that of body of expert takes the decision then such decision must be supported with some reasons though not in detail.

(vii) In the process of grant of permissions to start technical and professional course or to increase, reduce the intake capacity, extension of approval, cancellation of approval and all other related issues, the powers of decision making authority solely vest with AICTE and the State Government has no role to play in such matters except to communicate its view or referring the complaints or outcome of any enquiry/investigation conducted by the State Government or its technical department to the authorities of the AICTE for taking appropriate decision in the matter at their level. The State Government have no independent power either to sanction, grant permission to technical course, increase or decrease the intake

capacity and all such incidental matters.

(viii) So far as the submissions advanced that the person who has personally heard the matter must decide the same, we are of the view that in ordinary course such principle to be observed but, observance of such principle depends upon the facts and circumstances of each case and cannot be treated to be observed in each and every case.

47 In view of above, the following order:-

ORDER

- a) Writ Petition is allowed in terms of prayer clause (a).
- b) Interim order passed by this Court on 6 May 2015, is confirmed.
- c) The Respondents are directed to consider the representation/case of the Petitioners, specifically on the issue of cadre and faculty and related aspects by giving opportunity and hearing and pass the reasoned order, at the earliest.
- d) The Respondent-University is directed that in order

to avoid the delay in appointments of teaching faculty in the institution like the Petitioners, the proposals received for approval of draft advertisement, roaster, nomination of the subject experts, nomination of nominee of the Vice Chancellor and approval of the candidates selected through duly constituted Selection Committee, such proposals be decided in expeditious and time bound manner so as to avoid deficiencies in respect of the same being shown by AICTE in the proposals of such institution for extension of approval.

- e) The Petitioners to take steps to remove the deficiencies, even if any, as early as possible.
- f) Writ Petition is accordingly allowed.
- g) Rule made absolute accordingly.
- h) There shall be no order as to costs.

(V.L. Achliya, J.)

(Anoop V. Mohta, J.)