

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5442 OF 2016

The Vice President,
Technical and Medical Education
Society's J.T. Mahajan Polytechnic,
Nhavi Marg, Tq. Yawal, Faizpur,
District Jalgaon (M.S.) ..Petitioner

Vs.

- 1) The Secretary,
Technical and Higher Education
Department, Government of
Maharashtra, Annex Building,
Mantralaya, Mumbai 400 032
- 2) The Regional Officer,
All India Council for Technical
Education, (Western Regional
Office), Industrial Assurance
Building, Churchgate,
Mumbai 400 020 (M.S.)
- 3) All India Council for Technical
Education (A.I.C.T.E.),
(A Statutory Body under the
the Ministry of HRD), Govt. of
India, 7th floor,
Chandra Lok Building,
Janpath, New Delhi 110 001
- 4) The Director of Technical Education,
Maharashtra State, 3, Mahapalika Marg,
Dhobi Talav, Mumbai – 400 001
(P.B.No.1967, Mumbai)

5) The State of Maharashtra,
through Secretary,
Technical and Higher Education Dept.,
Government of Maharashtra,
Mumbai – 400 001

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Mr.V.T.Choudhary and Mr.S.D.Kulkarni, Advocates
for petitioner

Mr.S.D.Kaldate, AGP for respondent nos.1, 4 and 5

Mr.S.V.Adwant, Advocate for respondent nos.2 and 3

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CORAM : S.S. SHINDE AND

SANGITRAO S. PATIL, JJ.

RESERVED ON : JUNE 30, 2016

PRONOUNCED ON : JULY 05, 2016

JUDGMENT (Per Sangitrao S. Patil, J.) :

Heard. Rule. Rule made returnable forthwith.

Heard finally with consent of the parties.

2. Respondent no.1 is the Secretary, Technical and Higher Education Department, Government of Maharashtra, respondent no.4 is the Director of Technical Education, Maharashtra State, Mumbai, respondent no.5 is the State of Maharashtra, respondent no.3 is the All India Council for

Technical Education ("AICTE" for short), a statutory body under the Ministry of Human Resource Department, Government of India, New Delhi), while respondent no.2 is the Regional Officer of AICTE, for the Western Region, Mumbai. AICTE has been given statutory powers by the AICTE Act, 1987 with a view to ensure the proper planning and coordinated development of Technical Education System throughout the country. Technical Education in this context includes Engineering and Technology. AICTE is the Apex Body under the provisions of AICTE (Grant of Approvals for Technical Institutions) Regulations, 2012, which superseded the Regulations of 2010 and the (1st Amendment) Regulations of 2011, empowered to grant approval for starting new Technical Institutions, introduction of courses or programs and increase/variation of intake capacity of seats for the courses or programs and extension of approval for the existing Technical Institutions,

as per the norms and procedure laid down in the Regulations. Broadly speaking, the Technical Institution concerned has to send the application for approval, as prescribed in the Approval Process Handbook published by AICTE from time to time, detailing the conditions of approval and the procedure to process the applications of Institutions and/or promoters of the Technical Institutions.

3. Undisputedly, the petitioner-Institution was granted approval by respondent no.3 for Second Shift for the academic years from 2008-2009 to 2015-2016 to conduct Diploma Level Courses in Engineering with an annual intake as given below:

Sr. No.	Course(s)	Annual intake	Duration (years)
1	CIVIL ENGINEERING	30	3 YRS.
2	COMPUTER TECHNOLOGY	60	3 YRS.
3	ELECTRONICS AND TELE-COMMUNICATION	60	3 YRS.

4	ELECTRICAL ENGINEERING	60	3 YRS.
5	MECHANICAL ENGINEERING	60	3 YRS.
	TOTAL	270	

4. The petitioner applied for extension of approval for the academic year 2016-2017 for conducting Second Shift Diploma Level Courses in (i) Civil Engineering, (ii) Electrical Engineering and (iii) Mechanical Engineering with annual intake capacity of 30, 60 and 60 students, respectively, and further sought approval for closure of the Diploma courses in (i) Computer Technology and (ii) Electronics and Communication Engineering. As per the letter dated 25.04.2016, the Vice-Chairman of AICTE granted the approvals sought for by the petitioner. However, as per the Corrigendum dated 01.05.2016, the Member-Secretary of the AICTE, withdrew the approval granted to the petitioner vide letter dated 25.04.2016 for conducting Second Shift for Diploma Courses in (i)

Civil Engineering, (ii) Electrical Engineering and (iii) Mechanical Engineering. It is this Corrigendum and confirmation thereof by AICTE vide order dated 11.05.2016 which have been assailed by the petitioner in this Writ Petition filed under the Article 226 of the Constitution of India.

5. The learned Counsel for the petitioner based on the contents of the petition and the rejoinder submits that initially, as per the notice dated 13.04.2016 issued by respondent no.4, the petitioner was called upon to show cause as to why the Diploma Courses in Engineering conducted in the Second Shift by the petitioner should not be recommended to be stopped from the academic year 2016-2017, on the following three grounds :

1) Lab. Assistant, Instructors, Supporting Staff and Administrative Staff are not appointed separately as per AICTE Norms.

2) First Shift and Second Shift timings are overlapping by 5.25 hours

3) There are few students admitted in CM and ET Second Shift. Therefore, Theory lecture and Practical are conducted with the students of First Shift.

6. The petitioner appeared before the Standing Complaint Committee, at VJTI on 19.04.2016 and submitted reply explaining the deficiencies. In respect of deficiency no.2, the petitioner gave an undertaking that it would correct the timetable of 1st shift and 2nd shift in conformity with the norms of AICTE i.e. no overlapping exceeding 3 hours. So far as the first deficiency was concerned, the petitioner submitted the appointment orders of the requisite Teaching as well as Non-teaching staff. Since the petitioner had sought closure of Diploma Courses in (i) Computer Technology and (ii)

Electronics and Communication Engineering, the third discrepancy stood removed. The learned Counsel further pointed out to the order dated 11.05.2016 passed by the AICTE closing the Engineering Courses conducted by the petitioner in the Second Shift on the sole ground that there was overlapping of 5.25 hours in Second Shift. He submits that the said order, which has been passed after filing of this petition, does not speak of other two grounds for withdrawing approval of the petitioner for conducting the Engineering Courses in the Second Shift. He submits that if the approval is so withdrawn, even after the petitioner undertook to bring down the overlapping from 5.25 hours to 3.00 hours, it would cause irreparable loss to the petitioner in as much as the petitioner would have to retrench the present staff, the newly appointed staff would be jobless, which might create legal complications for the petitioner and the students from the area nearby

the petitioner-Institution, would adversely suffer in their academic career. He submits that the impugned Corrigendum dated 01.05.2016 and the impugned order dated 15.05.2016 are *malafide*, arbitrary and unconstitutional. He, therefore, prays that the same may be quashed and set aside and the approval order dated 25.04.2016 may be ordered to be restored.

7. On the strength of the reply filed on behalf of respondent nos.2 and 3 through Mr.Ramesh Unnikrishnan, Regional Officer (i.e. respondent no.3), the learned Counsel for these respondents submits that the petitioner did not remove the deficiencies which were noticed during the inspection and by submitting wrong information, tried to obtain approval for conducting Engineering Courses in the Second Shift. He submits that the approval process is completed as per the procedure laid down in the "Approval

Process Handbook 2016-2017" published by the AICTE. There was overlapping of 5.25 hours in the First Shift and the Second Shift. Therefore, respondent nos.2 and 3 have rightly withdrew the approval granted in favour of the petitioner for conducting the Diploma Level Engineering Courses in the Second Shift by issuing Corrigendum on 01.05.2016 and order dated 15.05.2016. He supports the said Corrigendum and order. He prays that the Writ Petition may be dismissed.

8. Mr.Anil Vasantryao Pawar, Assistant Director (Technical) filed reply on behalf of respondent nos.1, 4 and 5 and opposed the petition. Based on the contents of his reply, the learned AGP submits that the Inspection Committee sent by the Joint Director of Technical Education, Regional Officer, Nashik and Maharashtra State Board of Technical Education, Mumbai, found the deficiencies as mentioned in the report Exhibits 'R-1' and 'R-2'

which constrained the AICTE, the Apex Body having final authority in the matter of grant of approvals to the Technical Education Instructions, to withdraw approval of the petitioner for conducting the Engineering Courses in the Second Shift for the academic year 2016-2017 by way of punitive action. Relying on an unreported common judgment of this Court delivered on **21.10.2013** in **Writ Petition No. 8646 of 2013** in the case of **G.H.R. Education Foundation Society, Nagpur and another Vs. The State of Maharashtra and ors.**, and other companion Writ Petitions, he submits that in the absence of University Affiliation, the name of the Institution cannot be included in the Centralised Admission Process (CAP) for admitting the students. He supports the impugned Corrigendum and order.

9. As per the Show Cause Notice dated 13.04.2016 referred to above, in all three deficiencies were

noticed by the Inspecting Committee in respect of Diploma Level Engineering Courses proposed to be conducted in the Second Shift by the petitioner in the academic year 2016-2017. The petitioner appeared before the Standing Complaint Committee and furnished its explanation on 19.04.2016. After considering the said explanation, the impugned Corrigendum came to be issued on 01.05.2016. However, it does not contain any specific ground for withdrawal of approval. It simply states "Corrigendum for-closure of courses under punitive action". It is only in the order dated 11.05.2016 that the ground for withdrawal of approval has been stated. It is mentioned that the Standing Complaint Committee observed overlapping of 5.25 hours in Second Shift and recommended for closure of all courses in Second Shift from academic 2016-2017. It is further mentioned that the recommendations of the Standing Complaint Committee were considered by the AICTE and it has

decided to grant closure to all the courses in the Second Shift from the academic year 2016-2017 to the petitioner. From this order, it is clear that the approval of the petitioner has been withdrawn on the sole ground of overlapping of 5.25 hours in the Second Shift. It follows that the remaining two grounds were non-existent for considering the question of withdrawal of approval of the petitioner vide the impugned Corrigendum and order. Consequently, the reply of respondent nos.2 and 3 which is more informative than defensive, to the extent it has no bearing on the sole ground of withdrawal of approval of the petitioner and the case law, which has no relevance to the controversy as to the specific sole ground of withdrawal of approval, needs no consideration.

10. As defined at Item No.29, paragraph No.18 of the Approval Process Handbook 2016-2017 published by AICTE "Two Shift Working" means where

educational activities of the Technical Institution are conducted in two spells of time i.e. First Shift, generally, between 8.00 a.m. to 4.00 p.m. and Second Shift, generally, between 1.00 p.m. to 9.00 p.m. That means there should be overlapping in these two shifts for a maximum period of three hours. The petitioner had prepared the time tables of the First Shift and Second Shift from 7.45 a.m. to 3.15 p.m. and 10.00 a.m. to 5.30 p.m. respectively, having overlapping of 5.25 hours. It was not in conformity of the norms of overlapping between the working hours of two shifts as fixed by AICTE. Therefore, respondent no.4 issued notice dated 13.04.2016 calling upon the petitioner to show cause as to why the Diploma Level Engineering courses conducted by it in the Second Shift should not be recommended to the AICTE for their closure. There were three deficiencies mentioned in that show cause notice. However, ultimately only one deficiency i.e.

overlapping of 5.25 hours, only was considered for closure of the Second Shift of the petitioner. The petitioner received an e-Mail communication from respondent no.2 on 13.04.2016 whereby it was asked to appear before the Standing Complaint Committee at VJTI Mumbai on 19.04.2016 from 12.00 noon onwards to submit the status report of compliance of the discrepancies pointed out in the show cause notice.

11. The petitioner appeared before the Standing Complaint committee as directed in the e-Mail dated 13.04.2016 and furnished status report in respect of overlapping of time by 5.25 hours, the petitioner tried to justify it on the ground that most of the students admitted for the courses hail from the villages scattered within the radius of 25 to 30 kms. They are from poor families. Though the petitioner has purchased four buses for bringing the students, still some of the students

come by State Transport buses, which are not available while going back to their native places after 7.00 p.m. However, the petitioner further assured that if such timings are not permissible as per the norms of AICTE, it would make the timings as per the norms only. Accordingly, the petitioner furnished an undertaking in writing on a stamped paper assuring to follow the time tables for the First Shift and Second Shift as per the norms of AICTE, before respondent No.2 on 21.04.2016. It seems that thereafter, i.e. on 25.04.2016, the AICTE extended approval to the petitioner to conduct Diploma Level Engineering Courses in Civil, Electrical and Mechanical Engineering in the Second Shifts in the academic year 2016-2017.

12. It is strange to note that after hardly about five days of extending approval on 25.04.2016, the AICTE issued Corrigendum dated 01.05.2016 to

withdraw the said approval, closing the Second Shift of the petitioner under punitive action. The AICTE further passed final order dated 11.04.2016 on the sole ground that there was overlapping of 5.25 hours in the Second Shift. As contended by the learned Counsel for respondent nos.2 and 3 as well as the learned AGP appearing for respondent nos.1, 4 and 5, it is true that the AICTE is the Apex Body and final authority in the matter of grant or refusal of approvals to the Technical Institutions. However, such Apex Body is not expected to take decisions arbitrarily, capriciously and contrary to the object for which it has been established. As per Regulation No.11 of the AICTE (Grant of Approvals for Technical Institutions) Regulations, 2012, it may in exceptional cases, for removal of hardship or such other reasons to be recorded in writing, relax any of the provisions of these Regulations in respect of any class or category of Institutions. The

AICTE could have considered the reasons given by the petitioner in respect of overlapping of 5.25 hours and could have relaxed the norms of overlapping hours, if it would not have adversely affected the academic interests of the students. Even otherwise, there was no reason for the AICTE to totally ignore and discard the written undertaking given by the petitioner on 21.04.2016 to bring down the overlapping from 5.25 hours to 3.00 hours as per the norms of AICTE. It was always open to the AICTE to inspect the functioning of the petitioner to verify whether the norms of overlapping hours were being strictly followed by the petitioner and in default, to order closure of the Second Shift courses conducted by the petitioner. The closure of the Second Shift courses, in our opinion, was not the only option in the circumstances of the present case. As a matter of fact, such a punitive action should have been the last option, keeping in view

the country-side students taking education in the Polytechnic Institution run by the petitioner. The job of the AICTE, in our opinion, is not just to work as fault finding agency and direct closure of the courses, without extending any opportunity to the Technical Institutions to remove the deficiencies.

13. The petitioner undertook in writing to bring the overlapping hours in the First and Second shift in conformity to the norms of the AICTE. The petitioner has been successfully and effectively conducting the courses in the Second Shift since 2008-2009 with the approval of AICTE as is evident from the approval orders produced on record. In the circumstances, the decision of the AICTE for closure of Second Shift courses of the petitioner in the academic year 2016-2017 vide order dated 11.05.2016, that too, after extending approval vide order dated 25.04.2016, has to be

characterised as arbitrary exercise of powers and accordingly is liable to be quashed and set aside.

14. In the case of **G.H.R. Education Foundation Society, Nagpur** (supra), this Court has emphasized the need of having affiliation prior to admitting students in the Technical Institutions. The observations made in this judgment have no bearing on the facts of the case in hand.

15. In the ultimate analysis of the facts and circumstances discussed above, we hold that the Corrigendum dated 01.05.2016 and the order dated 11.05.2016 are arbitrary and unreasonable. They are liable to be quashed and set aside. The approval order dated 25.04.2016 issued by respondent no.3 is liable to be restored. Because of the impugned Corrigendum and order, the petitioner could not proceed with the admission process even after getting approval vide order

dated 25.04.2016. Therefore, the latest cut-off date fixed by the respondents, so far as the petitioner is concerned, will have to be directed to be extended by five days so as to facilitate the petitioner to complete the centralised admission process for the academic year 2016-2017.

16. In the result, we allow the Writ Petition with the following order :-

O R D E R

(i) The Corrigendum dated 01.05.2016 and the order dated 11.05.2016 closing the Diploma Level Courses conducted by the petitioner in the Second Shift, are quashed and set aside.

(ii) The order dated 25.04.2016 issued by respondent no.3 extending approval to the Second Shift Courses of the petitioner for the academic year 2016-2017 stands restored.

(iii) The respondents shall include the petitioner in the Centralised Admission Process for the Second Shift Diploma Courses for the academic year 2016-2017 in pursuance of the order dated 25.04.2016 and extend the latest cut-off date for the petitioner only by five days from today, so as to enable it participate and complete admission process.

(iv) The respondents shall publish extended cut-off date of the petitioner on their official Websites for information of all the concerned.

(v) Rule made absolute in the above terms.

(vi) The Writ Petition stands disposed of.

(vii) The parties shall bear their own costs.

(viii) The parties to act on authenticated copies of this order.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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