

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.1420 OF 2016  
WITH  
CHAMBER SUMMONS (L) NO.184 OF 2016**

1. Hyderabad (Sind) National Collegiate Board,  
Mumbai.

2. Watumall Institute of Electronics, Engineering  
and Computer Technology, Mumbai.

Petitioners

versus

1. All India Council for Technical Education  
(AICTE), New Delhi.

2. Western Regional Office (WRO),  
All India Council for Technical Education,  
Regional Office, Mumbai.

3. The Directorate of Technical Education,  
through its Secretary, Mumbai.

4. State of Maharashtra through  
Secretary, Department of Higher and Technical  
Education, Mumbai.

5. University of Mumbai, at Mumbai.

6. The Commissioner and Competent Authority,  
State CET Cell, Government of Maharashtra,  
Mumbai.

7. Municipal Corporation of Greater Mumbai,  
at Mumbai, through Assistant Commissioner,  
G-South Ward, Mumbai.

Respondents

Mr.Jaiwant S. Chandnani with Ms.Minal Chandnani for Petitioners.

Ms.Meena H. Doshi for Respondent no.1.

Mr.Amar Mishra, AGP, for Respondent nos.3,4 and 6 State.

Mr.Rui A. Rodrigues with Mr.Asadullah Shaikh for Respondent no.5 University.

Ms.Shobha Ajitkumar with Mr.Sagar Patil for Respondent no.7 MCGM.

**CORAM : SHANTANU S. KEMKAR AND  
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgement : 30<sup>th</sup> November 2016

Date of Pronouncing the Judgment : 14<sup>th</sup> February 2017

**JUDGMENT - (Per : Prakash D. Naik, J.) :-**

1. Heard learned counsel for respective parties. Taken up for hearing and final disposal in view of the order passed by Hon'ble Supreme Court requesting to dispose of the petition.

2. The Petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and seek to challenge the letter dated 30 April 2016 and the order dated 30 April 2016 issued by Respondent no.1 whereby the Petitioner no.2 institution is placed in "No Admission Category" for the academic session 2016-17. The Petitioners have also challenged the communication dated 8 April 2016 issued by Respondent no.1

rejecting the proposal of the Petitioners for change of site of the Petitioner no.2 institute.

3. The petition was initially heard by this Court and by order dated 13 June 2016, Rule was issued. By way interim relief, it was directed that till next date of hearing, the operation of order dated 30 April 2016 by which Petitioners' application for extension of approval has been rejected, shall remain stayed and the Respondents shall allow the college to participate in the Centralized Admission Process ('CAP' for short) for the academic session 2016-17 in respect of engineering courses conducted by the Petitioners, except Bio-Medical Engineering. It was further directed that the Petitioners shall execute an undertaking to the effect that they will apply, if not already applied, for occupation certificate before the Municipal Corporation of Greater Mumbai ('MCGM' for short), which application was to be decided by the MCGM as expeditiously as possible and shall pass appropriate order within a period of two months from the date of receipt of application. The Petitioners were further directed to give an undertaking to the effect that the Petitioners will inform the students that Petitioners' application for grant of extension has been rejected by Respondent no.1 and on the basis of an interim order of this Court the admissions are being allowed, and that neither the students nor the Petitioners' college shall be entitled to claim any equity on the basis of admission of students, on the basis of said interim order. The Petitioners were further directed to make it clear on the portal that present petition is pending with regards to the grant of extension of approval before this Court. Further, with reference to the prayer for shifting of college

from present place to Ulhas Nagar, this Court observed, *prima facie*, that no case for grant of interim relief is made out since as per the norms, relaxation can be granted only up to 20 kilometers from the present place, whereas the Petitioners were seeking extension up to 46 kilometers. However, it was made clear that rejection of prayer for interim relief qua shifting of place, will not preclude the Petitioners from applying afresh in the next academic session and the Respondents shall be free to consider and decide the same afresh. Respondent no.5 University and the State Government were directed to process the admissions and to take consequential steps so as to include the Petitioners' institution in the CAP.

4. Pursuant to the aforesaid order, the Petitioners had pointed out to this Court that the Petitioners had preferred an application for grant of occupation certificate in the year 1984, however, on receipt of communication dated 12 September 2016 from MCGM, the Petitioners had again submitted an application on 3 October 2016 before the MCGM for grant of occupation certificate.

5. The interim order dated 13 June 2016 passed by this Court was challenged by Respondent no.1 before Apex Court by preferring Special Leave Petition No.25141 of 2016. The Apex Court by order dated 14 September 2016 passed an order directing this Court to dispose of the writ petition by the end of November-2016. In view of the aforesaid order, as stated, the petition was taken up for final disposal. The Respondent nos.1 and Respondent nos. 3 and 4 have tendered respective affidavit-in-reply along with documents annexed therein. Petitioners have also submitted short synopsis, written

submissions and compilation of documents in support of the petition. Respondent no.1 has also submitted a brief synopsis of the submissions.

6. The relevant facts necessary to adjudicate the issues involved in this petition are as follows :

(a) Petitioner no.2 college is a minority educational institution established by Petitioner no.1. Petitioner no.2 institute was established on 16 November 1981 with post graduate diploma course affiliated to Board of Technical Education, State of Maharashtra. In the year 1982, the Petitioners applied to the University of Mumbai ('University' for short) for affiliation of B.Sc. (Tech.) course in Electronic Engineering, Computer Technology and Electronic Instrumentation. The University granted affiliation vide letter dated 17 February 1983;

(b) Petitioners sought approval from State of Maharashtra to conduct four years Bachelor of Engineering degree course on unaided basis. From the academic year 2001-02, the grant-in-aid was discontinued by the State of Maharashtra in a phase manner. An application was submitted by Petitioner no.1 for grant of approval, which was granted by Respondent no.1 vide letter dated 14 June 2002 to conduct three courses with the stipulated in-take. After the grant of approval by Respondent no.1 in 2002, Petitioner no.1 college has been granted extension of approval and increased in-take capacity from time to time and thus the Petitioners' college has been granted extension by Respondent continuously up to 2013-14. Vide

letter dated 19 March 2013, Respondent no.1 granted extension of approval to in-take/courses for the academic year 2013-14;

(c) Petitioner no.2 submitted an application dated 21 May 2014 to Respondent no.1 seeking extension of approval for the academic year 2014-15. However, Respondent no.1 issued a show cause notice dated 22 May 2014 stating that an Expert Visit Committee ('EVC' for short) of Respondent no.1 has conducted a surprise visit of Petitioner no.2 college on 17 February 2014 and that they had noted certain deficiencies in respect to plot area, staff-student ratio and cadre ratio. The said show cause notice was replied by letter dated 3 June 2014 by Petitioners. In the reply it was stated that there was no mis-representation or concealment of the factual position by the Petitioners in respect of plot area and in every application for extension of approval, they have disclosed plot area to be 6 acres. It was also pointed out that Petitioner no.2 institute was established in 1981 and at that point of time, there was no restriction on the plot area. It was also stated that in the past the management had voluntarily tried to acquire additional land in the vicinity, however, they could not succeed. The extension was also sought in respect to the staff-student ration and cadre ratio. Respondent no.1 was requested not to take any adverse action including withdrawal of approval against Petitioner no.2 institute;

(d) However, vide letter dated 24 June 2014, Respondent no.1 decided to place Petitioner no.2 under no admission category for the academic session 2014-15. The said decision was challenged by Petitioners by filing Writ Petition No.1844 of 2014 before this

Court. By way of an interim order dated 15 July 2014, the impugned communication was stayed. It was further directed that the name of Petitioner no.2 be uploaded on CAP and Petitioner no.2 be allowed to participate in CAP and also in minority admission procedure for the academic year 2014-15;

(e) The Respondents did not take any action on the reply submitted by Petitioners requesting shifting of the Petitioner no.2 college to Ulhas Nagar. The Petitioners, therefore, preferred Writ Petition No.557 of 2015 before this Court. Vide order dated 15 September 2015, the said petition was disposed of by directing Respondent no.1 to decide the representation of Petitioners dated 12 November 2014 for seeking permission to shift the college at Ulhas Nagar. The Petitioners thereafter submitted another application seeking extension of approval for the academic session 2015-16. However, Respondent no.1 once again passed an order dated 20 April 2015 and placed the Petitioners under no admission category for the academic session 2015-16. The said order was passed primarily on account of shortage of faculty and cadre ratio;

(f) The Petitioners preferred Writ Petition No.4807 of 2015 before this Court challenging order dated 30 April 2015. By interim order dated 13 May 2015, the Respondent no.3 State of Maharashtra and Respondent no.4 Director of Technical Education, were directed to upload the name of Petitioner no.2 college for CAP and to allow it to participate in CAP for the academic year 2015-16 for engineering courses conducted by Petitioner no.2 at its institute. It was also stated that non-listing of the name of Petitioner no.2 institute on the

website of Respondent no.1 will not affect the admission process and implementation of the said interim order. The said petition was subsequently finally heard and vide judgment and order dated 24 August 2015, the same was allowed and interim order dated 13 May 2015 was confirmed. Respondents were directed to consider the representation of the Petitioners on the issue of cadre and faculty and related aspects;

(g) As far as academic session 2016-17 is concerned, the Petitioners attempted to submit its online application but the Petitioners were not being given access to the web portal of Respondent no.1 for submitting such application. Petitioner no.2, therefore, forwarded a letter dated 27 January 2016 with a request to Respondent no.1 to open web-portal with a view to submit approval process online application for the academic year 2016-17. However, Respondent no.1 forwarded an e-mail dated 1 February 2016 stating that the Petitioner no.2 institution has been included in no admission category and they were requested to send the request through e-mail on or before 14 February 2016. On 15 February 2016, the Petitioners sought permission of shifting of college for the reasons mentioned therein. The request was rejected by Respondent no.1 vide letter dated 25 February 2016. The correspondence continued on the same issue. In furtherance to the aforesaid correspondence, the Principal of Petitioner college submitted an affidavit dated 17 March 2016 to the regional officer of Respondent no.1 in respect to the deficiencies pertaining to land area dealing with the issue of deficiencies pertaining to land area. The Principal thereafter forwarded a letter dated 19 March 2016 and submitted

the institution's proposal to the University and the Respondent no.2 for change of site, closure of Bio-Medical Engineering course and extension of approval. However, the Re-scrutinizing Committee once again pointed out the deficiencies stated hereinabove. Subsequently, vide letter dated 8 April 2016, Respondent no.1 rejected the request for change of site/location. The University, however, issued no objection certificate dated 6 April 2016 for closure of Bio-Medical Engineering degree course from the academic session 2016-17. The said no objection certificate was forwarded to Respondent nos.1 and 2. Vide letter dated 13 April 2016, the Principal of the Petitioner no.2 college once again reiterated the request for issuance of no objection certificate to be submitted to Respondent no.1 for change of site/location;

(h) The Apex Court in case of **Parshawanath Charitable Trust Vs. AICTE and others**<sup>1</sup>, has observed that "10 April" will be the last cut off date for granting or refusing the approval by AICTE for the concerned academic year. Respondent no.1 vide letter dated 10 April 2016 informed the Petitioner no.2 college about deficiencies noted by the Expert Committee and directed them to submit their explanation. Respondent no.1 also issued a letter dated 10 April 2016 mentioning "Restoration of in-take for the academic year 2016-17 in non-compliance of the orders passed by this Court for academic session 2014-15 and 2015-16". It was stated that Petitioner no.2 institute was placed under "Non E.O.A. category for the academic year 2014-15 and 2015-16";

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<sup>1</sup> (2013)3-SCC-385

(i) The representatives of Petitioner no.2 college appeared before the Standing Complaint Committee of Respondent no.1 on 15 April 2016. However, in spite of the reply and the explanation tendered by the Petitioners, adverse observations were made by Appellate Committee in the report dated 15 April 2016. The representatives of Petitioner no.2 college appeared before the said Committee on 20 April 2016 and presented their case that the deficiencies noted by the Committee are non-existent. However, Respondent no.1 vide its impugned letter dated 30 April 2016 addressed to Respondent no.2 has placed the Petitioner no.2 in no admission category for the academic session 2016-17. However, there were no reasons contained in the said letter. By another communication dated 30 April 2016, the Petitioner no.2 college was kept in no admission category for the academic session 2016-17 in the light of the recommendations of the Standing Complaint Committee dated 20 April 2016.

7. Learned counsel for Petitioners submitted that Respondent no.1 is not justified in placing the Petitioner no.2 institution in no admission category for the academic session 2016-2017, particularly when the Petitioner no.2 is an old existing minority educational institution from 1981, with a post graduation diploma course affiliated to the Board of Technical Education, State of Maharashtra. It was submitted that the Petitioner no.2 was receiving grant-in-aid from the State of Maharashtra to conduct three years degree course in Electronic Engineering, Computer Technology and Electronic Instrumentation. It was also submitted that

Respondent no.1 had granted approval to the Petitioner no.2 in the year 2002 which has been extended from time to time up to 2013-2014. It was further submitted that the order placing the Petitioner no.2 in no admission category on the ground of deficiency of staff, is devoid of merit, particularly when the Petitioners have requested for closure of the course of Bio-Medical Engineering. The Standing Complaint Committee has taken into consideration the requirements of faculty for Bio-Medical Engineering also. It was further submitted that the explanation and reply tendered by the Petitioners, have not been considered by the authorities in proper perspective and there was no deficiency. It was submitted that from time to time it was categorically mentioned that the Petitioners occupying land admeasuring 0.602 acres and in a metropolitan city like Mumbai, it is not possible to acquire more land; and therefore, a request was made for shifting of the institution. It was further submitted that in the reply dated 18 April 2016, the Petitioners had informed the Respondent no.1 that they have a cafeteria of 150 sq.meters at the existing site catering to the needs of students, staff and guests of college. It was submitted that the Petitioner no.2 college fulfills all the norms and standards, particularly which are essential for imparting technical education in any college. It was submitted that the impugned order will tarnish the image of Petitioner no.2 college and will cause tremendous loss and hardship to the Petitioners. Respondent no.1 has failed to take into consideration the hardships which will cause to the students, faculty, supporting staff etc.. There are several students who want to pursue their engineering degree course in various streams in the Petitioner no.2 institution.

8. Learned counsel for Petitioners further submitted that Petitioner no.2 had applied for closure of Bio-Medical Engineering course and received no objection certificate from University on 6 April 2016, which was communicated to Respondent no.1 on 12 April 2016 as well as to Respondent no.2. In view of the closure of Bio-Medical Engineering course, the staff which was utilized for teaching in Bio-Medical Engineering course, was shifted to other faculty. Therefore, there was no deficiency with regard to teaching staff. The said communication has been annexed to the petition vide Exhibit-JJ1 and Exhibit-KK. He submitted that in view of the closure of said faculty and in view of shifting of the staff, there was no deficiency with regard to teaching staff. The said communication was made before passing of the impugned order, which shows that the same was not considered by Respondent no.1. Learned counsel also submitted that requirements of cafeteria and laboratories are being fulfilled and the same was pointed out in their reply to the Respondent no.1. He further submitted that land requirement is supposed to be 1.5 acres and Petitioner no.2 has land of 0.6 acres since the year it was established. He submitted that approvals were granted to Petitioner no.2 from the year 2002 till 2013 and that there was no mis-representation in respect to the area by the Petitioners to Respondent no.1. Hence, Respondent no.1 was made aware about the position of said area by Petitioner no.2 and in spite of that approvals were granted from time to time. There was no reason to change the stand in the year 2014 and place the Petitioners in no admission category. The authorities ought to have appreciated that. Petitioner no.2 is located at Worli, Mumbai and it was difficult to acquire additional land and Respondent no.1 was aware about the

said aspect. The said fact was also pointed out to Respondent no.2 from time to time. He further submitted that Petitioners had filed Writ Petition No.4807 of 2015 in this Court and in spite of land deficiency, no direction for removal of the same was given. The only other way to resolve the issue about land deficiency, was to apply for shifting of the institution which request was also rejected on account of regulation of distance of 20 kilometers. He further placed reliance on letter dated 30 March 2016 addressed by Director of Technical Education to Respondent no.1 forwarding list of colleges thereby mentioning the deficiencies relating to degree engineering institutions in the State of Maharashtra under Right to Information Act, 2005. He tried to point out from the said letter that the institute at Sr.No.88 is also in possession of land in contrast with the AICTE norms and there was no occupation certificate and yet extension of approval was granted by Respondent no.1 to the said institution. He also pointed out the deficiency qua institution at serial nos.63, 70 and 86 in the said letter vis-a-vis the land and institutions at sr.nos.79, 92, 107, 108, 116 and 105 which were having deficiencies, yet were granted extension of approval. Learned counsel further submitted that occupation certificate is mandatory for new institutions as per Approval Hand-book of 2016-17. As per Chapter-1, Clause 2.4(b), the certificate of occupancy/completion from the competent authority is required to be obtained for setting up a new technical institute. He submitted that as per Appendix-17, the existing institutes shall submit final building and floor plans duly approved by the competent authority and, therefore, as per the said Hand-book, the occupation certificate is not required to be submitted. He further submitted that as per Circular dated 19 July

2016 issued by Respondent no.1, it is compulsory for the existing institutes to submit occupation certificate for academic year 2017-18. He submitted that an application has been filed for issuance of occupation certificate on 3 October 2016 with MCGM which is pending.

9. Learned counsel for Petitioner relied upon the decision of this Court in case of **Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies and Research Vs. AICTE and others**<sup>2</sup>. He also relied upon a decision of this Court in case of **Saraswati Education Society's Saraswati College of Engineering Vs. AICTE and others**<sup>3</sup>. He further relied upon a decision of Apex Court in case of **Parshawanath Charitable Trust and others Vs. AICTE and others (supra)**. It was, therefore, submitted that prayers in the petition be allowed.

10. Learned counsel appearing for Respondent no.1 vehemently opposed the submissions made by learned counsel for Petitioners and submitted that the petition is devoid of merits and the same may be dismissed. It was submitted that the impugned order does not require interference as the Petitioners have not fulfilled the requirements to extend approval. In affidavit-in-reply tendered at the instance of Respondent no.1, the submissions of the Petitioners were countered. It was also contended that Petitioners have alternate remedy, although the said point was not seriously agitated. It is submitted that several deficiencies were noted in respect of the application for E.O.A. for academic year 2016-17

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<sup>2</sup> Writ Petition No.6021 of 2014 and batch, decided on 14 July 2014

<sup>3</sup> Writ Petition No.4586 of 2015 decided on 14 August 2015

which were considered and the AICTE by its final order dated 30 April 2016 put Petitioner no.2 in no admission category. It was submitted that the approvals were conditional which is evident from the letters dated 14 May 2004, 28 June 2005, 20 June 2006, 14 May 2007 and 14 May 2007. The said letters show that between the years 2002 and 2014, the Petitioners were informed of the conditional approvals granted from time to time. The said letters were annexed to the affidavit-in-reply of Respondent no.1. It was further submitted that a show cause notice was issued to the Petitioners on 22 May 2014 on the basis of a complaint received from Citizens Forum. The Petitioner no.2 was informed that an EVC would conduct a surprise visit at Petitioner no.2 college. After the visit, the deficiencies were noted by the EVC. The Petitioners submitted its reply to the show cause notice. Despite ample opportunity given to the Petitioners to remove the deficiencies from 2004 onwards, the same were not removed. It was submitted as regards the application for E.O.A. for the academic year 2016-17 that the process of scrutinizing the application was done after rejection of the application for change of site. Notice dated 10 April 2016 was issued by Respondent no.1 informing the Petitioners that EVC report showed deficiencies which were communicated by letters. The report along with observations of EVC was placed before the Standing Complaint Committee in the meeting held on 20 April 2016 wherein the representatives of the Petitioners had participated and presented their case along with documents. The Standing Complaint Committee after considering the contentions and documents put forth by the Petitioners, found that the institute did not have requisite land i.e. 1.5 acres and also did not have occupancy

certificate and land use certificate from the competent authority. The Committee, therefore, recommended that the Petitioner no.2 institution should be placed under no admission category. Several other deficiencies as regards cafeteria, laboratory and faculty were also noted by Standing Complaint Committee. The recommendations and the observations of EVC as well as SCC were placed before the AICTE and after considering the same, AICTE decided to place Petitioner no.2 institute in no admission category vide order dated 30 April 2016. It is submitted that the Petitioners cannot be permitted to seek waiver of conditions stipulated in Approval Process Handbook-2016-17 ('APH' for short). The deficiencies noted were mandatory in nature.

11. It was submitted on behalf of Respondent no.1 that for the academic year 2015-16, the Petitioner no.2 was placed in no admission category. The said decision was challenged by filing Writ Petition No.4807 of 2015 before this Court in which an interim order was passed on 13 May 2015. The said petition was finally allowed on 24 August 2015. However, certain deficiencies were required to be removed by Petitioner no.2. The same were not cured. Respondent no.1 has challenged the said order in Apex Court and the special leave petition in that regard is pending. It is submitted that the requirement of occupancy certificate is mandatory even under municipal laws. No college can be permitted to raise a contention that since occupancy certificate is not specified in the Approval Process Hand-book, it was not mandatory to obtain such certificate. Learned counsel placed reliance on the judgment of Apex Court in case of **Parshwanath Charitable Trust and others Vs. AICTE and**

**others (supra).** Reliance was placed on the observations of Apex Court in the said decision in paragraphs 5, 6, 34 and 36. It was submitted that the Apex Court found that since there was no compliance to the legal requirements and binding conditions of the recommendation, withdrawal of the approval by AICTE cannot be interfered with and that the shifting of the students was a consequential order and in the interest of students. It was, therefore, submitted that the judgment of Apex Court will prevail over the judgments relied upon by the Petitioners. It was further submitted that the Petitioners have not produced any land use certificate or even occupancy certificate by local authority prevailing at the time of sanction of building. It was further submitted that the documents relied upon by the Petitioners alleging discrimination on the ground that several other colleges having similar deficiencies have been granted EOA by Respondent no.1, were not shown to the Respondent no.1 nor the same were relied upon nor the same were annexed to the petition; and, therefore, the same could not be dealt with. Reliance was also placed on the chart showing number of colleges which were put in no admission category during the year 2015-16 and that had subsequently complied with necessary conditions. It was further submitted that in terms of policy and standards which are required to be set up, is a decision which cannot be judicially reviewed unless mala fides are shown. In the present case, there is non compliance for several years on the part of Petitioners and no equity can be claimed by the college or students.

12. In the affidavit-in-reply filed on behalf of Respondent nos.3 and 4, it was stated that Respondent no.1 is the apex body for

issuing extension of approval to professional colleges. Respondent no.3 had informed the Joint Director of Technical Education vide letter dated 10 April 2015 to inquire about the deficiencies; such as, class rooms, laboratories, teaching staff etc. and the professional colleges coming under their purview and to submit their report. The Joint Director had deputed an Inspection Committee for inquiring about Petitioner no.2 institution and submitted a report. The said Committee submitted report pointing out the deficiencies about Petitioner no.2. The report of the Committee has been annexed to the said affidavit. It was also stated that students cannot be allowed to continue in unrecognized institutes on sympathetic grounds and without University affiliation the institute cannot be included in CAP for admission. The decision of this Court (Aurangabad Bench) in case of **G.H.R.Education Foundation Society and another Vs. The State of Maharashtra**<sup>4</sup> was placed on record by annexing the same to the said affidavit.

13. We have given our anxious consideration to the submissions made on behalf of parties. We have examined the documents annexed to the petition, contentions of the Petitioner in the petition, written submissions and affidavit-in-rejoinder as well as affidavit-in-reply filed by Respondent no.1 and Respondent nos.3 and 4 respectively. As far as prayer for setting aside the order dated 8 April 2016 and LOR dated 30 April 2016 issued by Respondent no.1 rejecting the application of Petitioners for change of site/location of Petitioner no.2 college, it is already observed that in the order dated 13 June 2016, when the Petitioners may apply afresh seeking said

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4 Writ Petition No.8646 of 2013 and batch of petitions decided on 21 October 2013

prayer in the next academic session and Respondents shall be free to decide the same afresh. While refusing to grant interim order, it was observed that prima facie no case for grant of said relief was made out since as per the norms, relaxation can be granted only up to 20 kilometers from the present place whereas the Petitioners are seeking shifting to the extent of 46 kilometers. In view of the aforesaid observations, it is not necessary to deal with the submissions made by both sides in respect to shifting of college. However, we make it clear that the said observation will not come in the way of the Petitioners while considering the fresh application for change of site/location of Petitioner no.2 college. Learned counsel for Petitioners has also not agitated the prayer regarding declaration of Clause-3.4(a) of Chapter-I of AICTE Approval Process Hand-book 2016-17 as ultra vires the AICTE (Grant of Approvals for Technical Institutions) Regulations, 2012 and AICTE Act, 1987. The prayer for quashing and setting aside Clause 3.4(a) referred to hereinabove on the ground of being illegal, arbitrary and violative of Articles 14, 19 and 30 of Constitution of India, was also not pursued by learned counsel for Petitioners and hence we have not dealt with the said prayers.

14. Petitioner no.2 institute is an old minority educational institution. The institute was granted approval in the year 2002 by Respondent no.1 which has been extended from time to time from 2013-14. One of the reason for placing the institution in no admission category is deficiency of seven staff members in the institute. It appears that Respondent no.1 and the Committee had not taken into consideration the fact that the course of Bio-Medical

Engineering was requested to be closed vide applications dated 28 August 2015, 19 March 2016 and 12 April 2016. The Standing Complaint Committee apparently has taken into consideration the requirement of faculty for Bio-Medical Engineering while calculating the deficiency of faculty. In the reply filed by Petitioner no.2, the explanation was given dealing with the deficiencies noted by the Respondents. While passing the impugned order, no adherence was given to the explanation tendered by the Petitioners. It was categorically stated that requirements are being complied with except deficiency of area which was not possible and for which request was made for shifting the institution. It is also noted that in pursuance of the directions given by this Court, Petitioners have applied for occupancy certificate to MCGM and the said application is pending. The Petitioners had specifically informed the Respondent no.1 vide reply dated 18 April 2016 that they have a cafeteria of 150 sq.meters catering to the needs of students, staff and guests. Petitioners have, prima facie, fulfilled the norms and standards required for imparting technical education in any college; such as faculty, laboratory, building, area etc.. The Petitioner no.2 college is an existing institution since last 35 years and it is not the case of the Respondents that Petitioner no.1 college suffers from any deficiency pertaining to academic infrastructure and facilities. It is also pertinent to note that Apex Court in the case of **Parshwanath Charitable Trust and others Vs. AICTE and others (supra)** had fixed the cut off date as 10th April of every year to grant or refuse the approval to a technical education and the appeal provided under Regulation 5 of AICTE Regulations, 2012 is required to be decided prior to 30th April of every year. However, Respondent no.1 could

not decide the application of Petitioners by 10th April. An explanation was sought vide communication dated 10 April 2016 which explanation was tendered on 18 April 2016. Thereafter the Petitioners were directed to appear before Standing Complaint Committee on 20 April 2016 and final decision was communicated by impugned letter of rejection dated 30 April 2016. It was, therefore, not possible to avail of the remedy of appeal under Regulation 5 of AICTE Regulations 2012.

15. The Petitioners have admitted that they have land of 0.6 acres since the year the Petitioner no.2 is established. Approvals have been granted to Petitioner no.2 from the year 2002 till 2013. Respondent no.1 was aware that Petitioners are in possession of the said deficient area. There was no concealment or mis-representation of facts at the instance of Petitioners in that regard. We have also noted letter dated 30 March 2016 which refers to list of colleges having similar deficiencies and in spite of that, extension of approval was granted by Respondent no.1 to them. In case of **Saraswati Education Society's Saraswati College of Engineering Vs. AICTE (supra)**, decided by this Court in Writ Petition No.4586 of 2015, it was observed as follows :

*"There is no requirement for submitting the Occupation Certificate. So far as the Occupation Certificate is concerned, though discussed in the Judgment last year, Respondents by overlooking the same in treated the same deficiency to reduce 25% intake capacity as recorded above. The Respondents failed to take note of getting Occupation Certificate from the local authorities/governments and various reasons behind it. There is no case that 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."*

Similarly in case of **Mahatama Education Society's Pillai Institute of Information Technology, Engineering Media Studies and Research Vs. AICTE (supra)** decided by this Court in Writ Petition No.6021 of 2014, in paragraph 17, it was observed as follows :

*"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 .....such drastic action would definitely cause injustice and hardship to all concerned. There is nothing on record to show that any findings or any 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 reason to be recorded in writing relax deficiencies of this kind of any classes or any categories of institution."*

16. The Petitioners have placed on record communication dated 19 July 2016. The said communication was addressed at the instance of Respondent no.1 to the institutions wherein it was stated that the issue relating to submission of occupancy certificate by all the institutes has been under consideration and accordingly during the academic year 2016-17, this condition was incorporated in the application for establishment of new technical institute and the institutes which have not submitted the certificate have not been

approved considering this as a deficiency. However, this condition was not applied to the existing institutes. It was also indicated that it has been decided to make it compulsory to submit occupancy certificate by all the existing AICTE approved institutes for getting extension of approval for the academic year 2017-18 and, therefore, it is requested to submit the occupation certificate issued by the competent authority along with application for E.O.A. to be submitted online for the academic year 2017-18. In the light of aforesaid communication, it is apparent that for the existing institutes, the deficiency of occupancy certificate is relaxed for the current academic year and further for extension of approval for the next academic year it is necessary to produce such certificate. As far as other deficiencies are concerned, it was already appraised to the authority (AICTE) that there is compliance except area which is practically not possible.

17. In case of **Parshawanath Charitable Trust and others Vs. AICTE and others (supra)**, the Apex Court has, no doubt, observed that compliance with the conditions for approval as well as Regulations and provisions of AICTE Act, is an unexceptionable condition. The Respondents have placed strong reliance on the said decision and submitted that it is mandatory to clear the deficiency for granting extension of approval. We have noted that the Apex Court in paragraph 30 of the said decision has observed that the appellant college therein shifted to the new premises without approval of AICTE and without no objection certificate from the State Government and Directorate of Technical Education. Undisputedly, the college had no title to the property in question

inasmuch as the property had been sold in the Court auction by the bank on 8 August 2011 and had been purchased by a firm in which the members of the trust were partners. The said partnership firm had executed a memorandum of understanding with the appellant trust and had given the property on lease to the trust. These undisputed facts clearly show that the appellant college had no title to the property and in fact did not even have a registered lease deed in its favour to create some recognizable interest in the property in question. It is further observed that the High Court had noticed the said defects pointed out by Expert Committee which relate to the dispute within the management of the trust, failure to obtain no objection certificate from the State Government, occupancy certificate from municipal corporation. It is in these circumstances that the Apex Court in the aforesaid decision has stressed upon compliance of deficiencies. As noted above, as far as occupancy certificate from MCGM is concerned in the present case, in pursuance of the directions of this Court, an application has been preferred which is in process. It is also pertinent to note that the Petitioners had placed on record documents stating that the application for occupancy certificate was preferred in 1984 with MCGM. In any case, in view of the communication dated 19 July 2016, the said deficiency is non-existent for the current year.

18. In view of the aforesaid observations, we have come to the conclusion that the impugned order dated 30 April 2016 classifying the Petitioner no.2 in no admission category, is arbitrary, illegal and deserves to be quashed and set aside.

19. Hence, we pass following order :

(a) Writ Petition is partly allowed;

(b) The impugned letter bearing No.Western/1-2866115835/2016/No Admission dated 30 April 2016 and impugned order bearing No.740-78-286(E)/RC/95 dated 30 April 2016 passed by Respondent no.1 whereby Petitioner no.2 is being placed in "No Admission Category" for the academic session 2016-17, is quashed and set aside and Respondent no.1 is directed to grant extension of approval to Petitioner no.2 for the academic year 2016-17 with full in-take which was granted by Respondent no.1 to Petitioner no.2 for the academic session 2015-16;

(c) Rule is made absolute in above terms, with no order as to costs.

(d) For the reasons stated above, Chamber Summons (L) No.184 of 2016 also stands disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)