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

Judgment Reserved: 28.04.2017

Judgment Pronounced: 01.05.2017

+ **W.P.(C) 3415/2017 & CM No.14926/2017**

BSA COLLEGE OF ENGG. & TECHNOLOGY Petitioner
Through: Mr.Sameer Rohtagi with Mr.Alok
Sangwan, Advs.

Versus

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ORS Respondents
Through: Mr.Anil Soni, CGSC with
Ms.Priyanka Singh, Advs. for
AICTE.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

GITA MITTAL, J.

1. BSA College of Engineering and Technology, the petitioner herein, a registered society under the Societies Registration Act, 1860 vide W.P.(C) No.3415/2017 seeks *inter alia* a writ of *certiorari* of quashing of the impugned letter of rejection dated 08.04.2017 and of the Standing Appellate Committee report of the All India Council for Technical Education (hereinafter referred to as 'AICTE') arrayed as the respondent No.1 whereby the issuance of the grant of letter of intent for starting a new polytechnic college on 1.5 acres of land leased with the approval of the governing body

of Shri Agrawal Shiksha Mandal Society (Registered) Mathura, Uttar Pradesh registered at the Sub-Registrar's Office, Mathura, in its favour for a period of 30 years with effect from 14.09.1997 vide registered lease deed dated 20.12.2001, was rejected.

2. The petitioner also lays a challenge to the Appellate Proceedings dated 18.04.2017 rejecting the appellant's appeal against the order dated 08.04.2017. As per the writ petition, the only objective and ground for rejection of the application as well as the appellant's appeal in the impugned orders is that the appellant's document of right and title on the subject land was that "*documents shown reflect that it is a private lease, hence not accepted.*".

3. In the year, 1997, Shri Agrawal Shiksha Mandal Society, after taking due approvals and permissions from the AICTE, the BSA (PG) Degree College established. Extension of approval as per the applicable Rules and Regulations has been granted to the said institute each year.

4. Out of 28.86 acres of land owned by BSA(PG) Degree College under the aegis of Shri Agarwal Shiksha Mandal Society, 11.05 acres referred to hereinabove was leased in favour of the petitioner w.e.f. 14.09.1997 vide registered lease deed dated 20.12.2001 at the Sub-Registrar's Office, Mathura. On 11.07.2015, the Governing Board of the petitioner vide its resolution decided that the petitioner shall apply to the AICTE for approval to start the ASM Polytechnic, Mathura to offer technical education in diploma in engineering and allocated 1.5 acres of land situated in Survey Nos.1505, 1506, 1508, 1509, 1514, 1516 and 1517 for the said purpose. A resolution was passed to allocate funds for procurement of equipment, furniture and other required materials. The Registrar Societies, Uttar

Pradesh renewed the registration of the petitioner's institute on 21.08.2015 for a period of five years from the date of issuance of the certificate.

5. In January, 2016, the petitioner applied to the AICTE, a statutory authority constituted under the All India Council for Technical Education ACT, 1987 (*which enactment was published in the Official Gazette vide Notification No.S.O. 317(E) dated 28.03.1988 for proper planning and coordinated development of the technical education system throughout the country, for starting new polytechnic colleges after completing the building and other works*).

6. The petitioner was called by the Standing Committee of the AICTE on 12.04.2016 and again by the respondents on 18.04.2016. The Re-Scrutiny Committee uploaded a report on 19.04.2016 pointing out the only objection that the certificate of the Sub-Divisional Magistrate had not been presented by the petitioner. In response, the petitioner sent a detailed e-mail dated 20.04.2016 informing that it had already submitted the relevant documents before the Standing Appellate Committee on 12.04.2016.

7. The application NO.1-2854879151 filed by the petitioner, however, was rejected by the Member Secretary, AICTE on 30.04.2016 stating that the certificate before the Sub-Divisional Magistrate or Collector or Tehsildar in original had not been presented by the petitioner. The petitioner submits that this rejection letter was given on 30.04.2016, which was the last date of processing of applications for new institutions. Thus the petitioner had no occasion to file any appeal to challenge the aforesaid decision before the appropriate forum in the last year, i.e., 2016.

8. The respondent No.1, i.e., AICTE vide its Notification dated 30.11.2016 in the Gazette of India published the "All India Council for Technical Education (Grant of Approvals for Technical Institutions)"

Regulations, 2016” (“*Regulations 2016*” hereafter) and issued an “Approval Process Handbook for the Academic Year 2017-18” (“*Handbook 2017-18*” hereafter). Consequently, the petitioner made a fresh application for start of a new polytechnic college on 10.01.2017 for the Academic Year 2017-18. The requisite resolution dated 31.12.2017 was passed by the petitioner in terms of the format prescribed by the AICTE allocating 1.5 acres of land for a new polytechnic college named ASM Polytechnic, BSA Engineering College and Technology at Mathura.

9. The Chartered Accountant of the petitioner issued a certificate dated 27.02.2017 specifically mentioning that the total investment in building construction of the polytechnic college made by the petitioner during the period 19.12.2015 till 27.02.2017 is Rs.8,60,67,186/-.

10. Upon a scrutiny of the application and enclosures, vide report dated 01.03.2017 of the Scrutiny Committee of the AICTE, it was pointed out by the respondents that there was some error in the map and the same should be rectified. A perusal of Annexure P-9 placed at Pg.8 of the report of the Scrutiny Committee of the respondent No.1 dated 01.03.2017 mentions vide Table-F in the original documents verification by the Architect that the only reason for the application of the petitioner having not been accepted was that the name of the institute was not mentioned in the site plan application whereas it was mentioned as an existing girls hostel. It is submitted by Mr.Sameer Rohtagi, learned counsel for the petitioner that apart from the above discrepancies in the map, all other documents of the petitioner were found to be in order. No other objection was pointed out.

11. The petitioner was again called on 10.03.2017 before the Re-Scrutiny Committee after making the necessary correction in the map and everything was found in order by the respondents. The Re-Scrutiny Committee,

therefore, recommended the visit of the Expert Visit Committee (EVC) of the AICTE for a physical inspection and verification of the petitioner's polytechnic college.

12. The EVC constituted by the AICTE comprising of three experts of the AICTE physically inspected the institute and examined its documents on 19.03.2017 and found no deficiencies at all.

13. It is essential to observe that it has been detailed in the format of the report as follows:

“Recommended Summary (please tick one box)

Note: To recommend, experts shall tick one of the boxes below

<i>Forward to RC</i>	<i>Deficiencies Noted</i>
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Please tick this only if No deficiencies are noted *Please tick this, if deficiencies are noted.”*

14. The recommendation summary indicates that the forwarding to the Regional Committee by the Expert Committee on its visit was to be made only if there were no deficiencies found. The EVC thus recommended the starting of the college after conducting the site inspection.

15. The application of the petitioner was thereafter considered by the Sub-Committee of the Regional Committee of the AICTE which submitted a report dated 24.03.2017, a copy of which is placed at Annexure P-12. It is manifest from this report that the Sub-Committee of the Regional Committee had pointed out the following four deficiencies of-

- (i) Language Laboratory;
- (ii) Barrier free toilet;
- (iii) Workshop not ready;

(iv) Stairs without railing.

16. On the basis of the said recommendations of the Sub-Committee of the Regional Committee of the respondent No.1, the letter of rejection dated 08.04.2017 was issued **but apart from the recommendations of the Sub-Committee vide the rejection letter** dated 08.04.2017, there was one more deficiency pointed out, i.e., *“Land not registered in the name of the applicant; ownership of land is marked as lease”*. Vide the said letter of rejection dated 08.04.2017, the petitioner was also apprised that it may, if it so desired, submit an appeal for consideration by the Standing Appellate Committee through portal on or before 11.04.2017.

17. The petitioner availed of this remedy by filing an appeal. We extract hereunder the summation of the findings of the Standing Appellate Committee in its order dated 18.04.2017 which reads as follows:

“Write this section in brief. Details may be submitted on separate sheets with supporting documents duly signed by the authorized signatory of the applicant organization.

S. No.	RC/EC noted deficiencies	Observations and supporting proof verified by Standing Appellate Committee to clear the deficiencies
1.	Language Laboratory- Not accepted	Presented Accepted
2.	Barrier free toilet – Not accepted	Presented Accepted
3.	Workshop ready – not Not accepted	Presented Accepted
4.	Stairs without railing – Not accepted	Presented Accepted

5.	Land not registered in the name of the applicant; ownership of land is marked as lease	Documents shown reflect that it is private lease hence not accepted.
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Recommendations of the Standing Appellate Committee. Please write one of the following and strike out whichever is not applicable:

Recommended to Council	Rejected	Scrutiny Recommended	EVC Recommended
x	✓	x	X”

18. Thus the appeal was rejected by the Standing Appellate Committee on 14.04.2017 with the observations that the four deficiencies pointed out by the Sub-Committee of the Regional Committee had been removed, but that as “*the document shown in relation to the land reflected that it was private lease*”, hence the appeal was not accepted.

19. Being aggrieved by the letter of rejection dated 08.04.2017 and by the decision of the Standing Appellate Committee dated 14.04.2017, the petitioner thus filed the present writ petition, also challenging **Regulation 6.1 of the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2016** (hereinafter referred to as ‘Regulations 2016’) and **Condition No.17 in Clause 16.1 of Appendix 16 of the Approval Process Handbook, 2017-18** as being *ultra vires* **Article 14 of the Constitution of India**.

20. Clause 6.1 of the Regulations 2016 reads as under:

“6.1 The Promoter Society/Trust/Company of a new Technical Education Institution shall have the required land as mentioned in Approval Process Handbook in its lawful possession with clear

title in the name of Promoter Society/Trust/Company on or before the date of submission of application.

Further to that it shall be open for the Promoter Society/Trust/Company to the proposed Institution to mortgage the land after the receipt of letter of approval, only for raising the resources for the purpose of development of the Technical Education Institution situated on that land.

Further to that it shall be open for the Promoter Society/Trust/Company of the existing Institution to run other Educational Courses/Institutions (Technical/Non-Technical) in the surplus land arising out of prevailing/reduced norms of land requirement. However, such surplus land can be used as per the land use certificate given to the Society/Trust/Company by the concerned authority subject to such courses/institutions having their own facilities to conduct such programmes without sharing the essential facilities such as class room laboratory etc. with the already approved Technical Institution. However, common amenities such as canteen, auditorium, playground, parking, etc. may be shared provided it caters to all the students of all the programmes.”

(Emphasis supplied)

21. Condition 17 of Clause 16.1 of the Appendix 16 of the Approval Process Handbook, 2017-18 of AICTE reads to the effect:

“17. Documents showing ownership of land in the name of the applicant in the form of Registered Sale Deed/Irrevocable Gift Deed (Registered)/Irrevocable Registered Government Lease (for a period of minimum 30 years with at least 25 years of live lease at the time of submission of application) by the concerned authority of Government or any other documents issued by the concerned competent Authority establishing the ownership and possession of the land in the name of the applicant. In case, the land documents are in vernacular language, notarized English translation of the documents shall be produced.”

22. **The petitioner thus submits that though under the said Condition No.17 in Clause 16.1 of the Appendix 16 of the Approval Process Handbook, 2017-18 an irrevocable Government lease (for a period of**

minimum 30 years with at least 25 years of live lease at the time of submission of application) is sufficient for the purpose of establishment of a technical institute, arbitrarily, unreasonably and without any rational basis to the objective sought, a private lease is excluded from the ambit of entitlement of Condition 17 in Clause 16.1 of the Appendix 16 of the Approval Process Handbook, 2017-18 for setting up a new institution.

23. It has thus been submitted on behalf of the petitioner that there has been an artificial differentiation created between an irrevocable Government lease and an irrevocable private lease, which is thus liable to be struck down on the touchstone of Article 14 of the Constitution of India and that the same is an unreasonable restriction imposed on the petitioner's fundamental right of trade under Article 19(1)(g) which is amenable to the test of reasonability under Article 19(6) of the Constitution of India.

24. It is further submitted by the petitioner that the action of the respondent-AICTE is in total contravention of the Regulations and the letter of rejection dated 08.04.2017 and the report of the Standing Appellate Committee dated 14.04.2017 rejecting the appeal of the petitioner suffers from non-application of mind by the statutory authority which has acted mechanically.

25. It was further submitted by the petitioner that the impugned letter of rejection dated 08.04.2017 and the report of the Standing Appellate Committee dated 14.04.2017 rejecting the case of the petitioner for grant of Letter of Intent for starting a new polytechnic college, being a quasi-judicial function in nature having civil consequences the AICTE should have complied with the principles of natural justice for giving an effective opportunity of hearing and of passing a reasoned order considering all

material aspects of the case, which was not done by the AICTE, the respondent No.1.

26. The petitioner submits that AICTE has prescribed the Regulations notified on 30.11.2016 called the **All India Council for Technical Education (Grant of Approvals for the Technical Institutions) Regulations, 2016** which relates to grant of approval for starting new Technical Institutions, introduction of courses or programmes and increase/variations of intake capacity of seats for the courses or programmes, extension or approval, regarding admissions under lateral entry in Degree Engineering Programme for the existing Technical institutes, which provides for procedures of approval for new technical institutions. The Regulations 2016 **nowhere prescribe that the applicant for a new college must have ownership of land registered in the name of the applicant by way of registered sale deed only nor by an irrevocable Government lease.** The only presumption is lawful possession with clear title.

27. Mr. Sameer Rohtagi, Id. Counsel for the petitioner submits that it has been running its Engineering College on the same land measuring 11.5 acres falling in the municipal area of Mathura Vrindaban Development Authority in the city of Mathura for the last 20 years. Out of the aforesaid total land of 11.5 acres of land, the applicant seeks to set up the new polytechnic college on surplus 1.5 acres and the application has been wrongly rejected without any valid reason by the respondents. The petitioner thus reiterates that it is in possession of the 1.5 acres of land acquired by way of the registered lease deed dated 20.12.2001 and that by the operation of law and that appellant is in lawful possession of the land in question with clear title thereto. The submission is that the AICTE has neither disputed the rights of the petitioner on the said land under its lease nor possession by it.

28. The petitioner has further submitted that non-issuance of the letter of intent will also cause an irrecoverable loss and injury to the petitioner who has invested to the extent of Rs.9 Crores since year 2016 in creating the requisite infrastructure for the start of the new polytechnic college and if the letter of intent is not granted immediately, the petitioner would have to wait for another year for no fault of his.

29. It has thus been prayed by the petitioner that a *mandamus* be issued to the respondents to grant the letter of intent/letter of approval to the petitioner for the Academic Year 2017-18 before the last date of issuance of letter of approval by 30.04.2017.

30. Mr. Anil Soni, Id. Central Government Standing Counsel has placed the objections taken by the respondents. Through its short counter affidavit submitted on behalf of the All India Council for Technical Education by Mr.Piyush Shukla, Assistant Director (Legal), AICTE, it is stated that as per judgment in Civil Appeal No.9048/2012 titled ***Parshvanath Charitable Trust vs. All India Council for Technical Education, (2013) 3 SCC 385***, the Supreme Court has set out the last date for giving approval as 30th April of each Academic Year beyond which the AICTE has not been authorized to do any act. The respondent through its short counter affidavit further submits that vide paragraph 8 therein in terms of Clause 9.8 of the Approval Process Handbook, 2016-17, Chapter-I, it is stated as under:

“In case of rejection of the proposal, it shall be open for the applicant to ***make a fresh application as stated in Chapter-I of this handbook in the following year.***”

31. In order to explain the stipulation regarding possession of the Government lease, Mr. Anil Soni, Id. CGSC draws our attention to the counter affidavit dated 27.04.2017 of the respondent no.1 vide para 9, 10, 11

and 12 wherein it is further submitted that the purpose of irrevocable Government lease for a minimum 30 years etc. is for consistency in the running of the institute; so that possibility of fraudulent activity of any kind is minimized; and that a private lease may be revoked for any reason which would make the institute run into litigation jeopardizing the interest and career of innocent students.

32. It has thus been submitted by the respondents through the short counter affidavit dated 27.04.2017 that as a matter of policy for good and smooth governance which is fair and beneficial to public at large, the AICTE from 2006-07 has chosen not to allow institutes on temporary locations, but asked to shift to approval permanent sites. Reference has also been made through the counter affidavit vide para 13 thereof to Rule 8(4)(i) of the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009, which reads as under:

“No institution shall be granted recognition under these regulations unless the institution or society sponsoring the institution is in possession or required land on the date of application. The land free from all encumbrances could be either on ownership basis or on lease from Government or Government institutions for a period of not less than thirty years, the State Government or Union territory laws the maximum permissible lease period is less than thirty years, the State Government or Union Territory administration law shall prevail and in any case no building shall be taken on lease for running any teacher training programme.” To submit that the said Regulations which have also been approved by the Supreme Court have a clause not to permit teacher institutions on private lease land. The AICTE has thus submitted that the present writ petition is not maintainable being without any cause of action and that the same is liable to be dismissed with costs.”

33. We find that above aspects are not *res integra* and have been the subject matter of challenge and consideration before this court many years ago. Reliance was placed on behalf of the petitioner on the verdict of this

Court in *Vibrant Institute of Technology vs. All India Council for Technical Education & Ors.* (2009) 162 DLT 652 which relates to aspects and facts materially *pari materia* to the instant case. In the said case, the very same respondent arrayed as the respondent No.1 herein had rejected the case of the Vibrant Institute of Technology for establishing an institute was rejected on a similar ground as at present. Vibrant's reliance on a settlement deed for creating of title in land of the Trust was rejected on the ground that the property settled with the Trust cannot be considered, as such mode of Transfer of Property is not contemplated as per the Handbook of Approval Process under which the property can be transferred to the Trust only by sale deed, gift deed and lease deed for thirty years.

34. The observations made in paragraphs 25 to 33 in *Vibrant Institute of Technology (supra)* are wholly relevant and germane for the instant case. Para 30 of the said verdict categorically lays down that the contention of the respondents (respondent No.1 therein is the same before us) that conveyance deeds other than those stipulated in the handbook of the approved procedure cannot be accepted, was without any legal basis.

35. Observations in the para 29 of the said verdict categorically lay down that the Regulation 2006 clause III only contemplates the area which is required by an institution for running an engineering/technology college and does not contemplate **the way the rights are to be acquired and that the rights in the immovable property can be transferred or conveyed by many modes as contemplated under the Transfer of Property Act** and that restricting the approval to only if title in the land was acquired by sale deed/gift deed/irrevocable government lease deed for 30 years did not seem to have any rationale. Paragraphs 25 to 33 of the said verdict of the learned Single Bench of this Court are mentioned and are reproduced hereinbelow:-

“25. The other contention of the respondent is that in order to consider the application of an institute for grant of affiliation, for the purpose of ascertaining the rights of the Trust/Society in the land, only three documents as detailed in the handbook of approved process can be taken into consideration and any other document, even if it is executed in accordance with the provisions of Transfer of Property Act or some other enactment and which is duly registered and properly stamped in accordance with law, cannot be accepted. Learned Counsel for the respondents has vehemently contended that the regulations framed under All India Council for Technical Education Act have been approved by the Supreme Court of India and the decision taken under the regulation not to accept any other document except three documents as detailed in the handbook for approval process cannot be faulted. In Bharthiya Vidyapeeth (supra) relied on by the respondents. Central Government on the advice of University Grants Commission had conferred the status of deemed university of Bharthiya Vidyapeeth and the deemed university was allowed admission to be made in the respective medical, engineering and dental colleges under the stream of common entrance test conducted by the State authorities till 1995- 1996 and thereafter they decided to keep themselves outside the scope of the said authority. The writ petitions were filed challenging the admission rules to medical, engineering and dental colleges whereby the colleges run by Bharthiya Vidyapeeth were included in the admission proposed to be controlled by CET authorities. The High Court after considering the petition had dismissed the writ petition and in the appeal to the Supreme Court, it was held that the regulations and guidelines subject to which the deemed university status was granted would cover all the relevant functions to be performed by the deemed university including the matters which were sought to be regulated by the State under the Act and Rules by including deemed university within the definition of the term 'Educational Institution' and the order of the High Court was set aside and the appeals filed in the Supreme Court were allowed and the writ petition was allowed to the extent of restraining the respondents to enforce their instructions for brining the institutions of Bharthiya Vidyapeeth with the

stream of common entrance test examination. Apparently, the case of the present respondents is distinguishable. Under the regulations framed by the respondents, the only requirement is the area of the land which is required for starting an engineering college and the regulations do not specify in what manner the rights in the land is to be acquired by the institutions. Learned Counsel for the petitioner has also argued that the handbook for approval process are merely the guidelines which has been formulated by the respondents, however, they do not acquire the same status as that of the Regulations. Learned Counsel for the respondents is unable to show that the handbook of approval process which are sort of the guidelines will become the regulations or the handbook for approval process has been approved in the manner so as to become the regulations at par with Regulations, 2006 of the respondents.

26. This cannot be disputed by the respondents that if the properties are settled with the Trust at the time of creation of the Trust by the founder trustee, the ownership of the immovable property will vest with the Trust. This has also not been disputed by the respondents that an institution run by a Trust is entitled for affiliation from the respondents provided such an institution meets the requirement for grant of affiliation. Learned Counsel for the respondents has contended that since under the Regulations, the respondents have the power to carve out a procedure, they are within their rights to accept some documents pertaining to lands executed under the provisions of Transfer of Property Act and in accordance with the provisions of Stamp Act and Registration Act and not to accept other documents which though may be validly executed but the same will not be acceptable to the respondents. To buttress his point, it is contended that it is a policy matter and the court should not interfere with such decisions taken by the respondents. Learned Counsel for the respondents have also contended that accepting some documents like sale deed, gift deed, lease deed (30 years) and not accepting other documents executed in favour of the institution seeking affiliation is reasonable and is not to be interfered by the court. Regarding the reasonable classification, learned Counsel for the respondents has relied on 2 (2008) CLT 60, Supreme Court,

Hindu Prateek Sangh v. Mirzapur Moti Kuresh Jamat and Ors., holding that the closure of slaughter house for few days during 'Paryashan' out of respect for sentiments of Jain community is not violative of fundamental rights to do trade and business as guaranteed by Article 19(1)(g) of the Constitution of India. It was held that such a restriction is not excessive. The Supreme Court had further held that even non-vegetarians can remain vegetarian for the short period of nine days out of respect for feeling of one community and in the circumstances closure of slaughter house in that period will not be excessive restriction and the order passed by the Municipal Corporation, Ahmedabad was held to be valid. ”

(Emphasis by us)

36. We find that in ***Vibrant Institute of Technology (supra)***, the respondents had rejected the application over the failure of the petitioner to comport with the Condition No.17 of in Clause 16.1 of Appendix 16 of the Approval Process Handbook-January 2008, which has been reproduced recorded in Para 27 of the said judgment reads as follows:

“17. Document showing ownership of land in the name of the applicant in the form of Registered Sale Deed/Irrevocable Gift Deed (Registered)/Irrevocable Registered Government Lease (for a period of minimum of 30 years with at least 25 years of live lease at the time of submission of application.”

37. Rejecting the aforesaid contentions in ***Vibrant Institute of Technology (supra)***, the Court held as follows:

“27. The Regulations pertaining to land requirements for establishment of new technical institution only **contemplates the area which an institution must have for running an engineer/technology institution.** The **hand book** of approval process, however, **restricts the acquisition of such lands by the Trust/Society only by a sale deed/irrevocable gift deed/irrevocable government lease for a minimum period of 30 years.** This classification contained in the hand book for approval process is valid or not is the point to be considered.

Learned Counsel for the respondents in support of this classification has submitted that if conveyance of rights in the land is permitted by any other types of documents, it will result into a number of institutions applying for affiliation.

28. *Though a reasonable classification is permissible, however, to pass the test of permissible classification two conditions must be fulfilled, namely, that the classification must be found on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group, and that the differentia must have a rational relation to objects sought to be achieved by the statute/rule/regulations in question. The yardstick or parameters or classification may be founded on different basis, however, what is necessary is that there must be a nexus between the basis of classification and the object of the Act/Regulation under consideration. In *Ram Krishna and Ors. v. Shri Justice S.R. Tendolkar and Ors.* AIR 1958 Supreme Court 538, the Supreme Court had held on the basis of various other decisions that Article 14 contemplates discrimination not only by a substantive law but also by procedure. In the present case though the Regulations do not carve out a distinction in respect of documents by which the rights in the land are transferred to a Trust/Society seeking affiliation but by the procedure adopted by the respondent, a classification has been done whereby the rights transferred in the land in favour of Trust/Society seeking affiliation by any other documents then stipulated in the hand book for approval process, are not to be considered.*

29. *One of the **reasons for classification** given by the learned Counsel for the respondents for classification is that other documents conveyancing rights in the immovable properties, if are taken into consideration will lead to flood gate of the institution applying for affiliation. This cannot be termed to be an intelligible differentia. A reasonable classification is one which includes all persons or things similarly situated with respect to the performance of the law. The Regulation 2006 clause III only contemplates the area which is required by an institution for running an engineering/technology college and does not contemplate the way the rights are to be*

acquired. The rights in the immovable property can be transferred or conveyed by many modes as contemplated under the Transfer of Property Act. Restricting the approval only by sale deed/gift deed/irrevocable government lease deed for **30 years does not seem to have any rationale in the present facts and circumstances**. The reason given by the learned Counsel for the respondent that taking into consideration other legal and valid document conveying rights in the property **will lead to a large number of institution applying for affiliation cannot be termed to be rational and having any object for which the alleged classification has been done by the respondent in the hand book for approval process**. If the Regulation contemplates only the area, which a trust/society must own for purpose of running engineering/technology institution, then permitting conveyance of rights only by sale deed/gift deed/a government lease deed for 30 years, has no rational and cannot be permitted.

(Emphasis by us)

38. In ***Vibrant Institute of Technology (supra)***, an argument was made by the learned counsel for the respondent that lease deeds can be set aside easily. In other words, there would be no guarantee of permanency of the institute, jeopardizing continuity of the institute and surety of completion of academic courses to students. This submission was also rejected by the Court holding as follows:

30. The learned Counsel for the respondents also contended that deeds other than as stipulated in the handbook of the procedure can be set aside easily. This plea is without any legal basis. ***If the sale deed/gift deed conveys the rights in the immovable property till such conveyance deeds are set aside, for same reason, a trust deed settling properties will equally convey the rights in the property to the trust/society, till it is set aside. No distinction can be carved out on the plea of the learned Counsel for the respondents.***

31. Learned Counsel for the respondent is unable to give any plausible reason as to why a trust deed settling the properties

by a founder trustee in the trust which is stamped according to law should not be considered and the properties which are acquired by a trust/society pursuant to sale deed or a gift deed should be considered. This is not disputed by the respondents that under law, a founder trustee can settle his properties with the trust on execution of an appropriate instrument which is duly stamped and registered.”

(Emphasis supplied)

39. It has thus been held that Handbook for Approval Process – January, 2008 – Notification No.F-373/Legal, which was framed in terms of Regulation 2.4 of the AICTE Regulations, could not govern the eligibility which is stipulated under the said Regulations.

40. The judgment in *Vibrant Institute of Technology (supra)* was not challenged by the respondents. The reasoning and findings on the stipulation in the Handbook for Approval requiring that the proposed institute must hold land rights under the sale deed/gift deed/Government lease of 30 years have no rationale and nexus with the object sought to be achieved, squarely apply to the case in hand.

41. There is yet another aspect of the matter. It is also essential to observe that the Transfer of Property Act, 1882 through Section 5 prescribes as follows:

“5. “Transfer of property” defined. -

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and "to transfer property" is to perform such act.

In this section Living person includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.”

42. The modes by which immovable property may be transferred under the Transfer of Property Act ('TPA' hereafter) include sale, gift, lease and trust. Rights may also be acquired in an immovable property under a testamentary bequest or by succession as well.

43. Vide Section 8 of the TPA enactment, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Hence, the Transfer of Property Act, 1882 itself makes no distinction between a Government lease and a private lease for the purpose of rights that may accrue under the two kinds of leases.

44. We have extracted here Clause 6.1 of the Regulations 2016 which set out the requirement of only "*lawful possession with clear title*" in the name of Promoter Society/Trust/Company on or before the date of submission of application.

45. So far as the Approval Process Handbook 2017-18 of the AICTE is concerned, the same is really to provide the process for evaluation of the application made in terms of Regulations 2016. The stipulation in Clause 6.1 of this Handbook restricting the acquisition of title to register sale deed/irrevocable gift deed (Registered)/irrevocable (Registered) Government lease therefore is clearly beyond the processual matters regarding which the Handbook has been granted. Right, title and interest in immovable property flows by operation of the Transfer of Property Act, which recognizes not only sale deed/gift deed but testamentary requisites as well.

46. The petitioner before us states that it has the rightful ownership of the entire land measuring 1.5 acres, in view of the Lease Deed dated 20.12.2001 out of which it seeks to put up polytechnic college only on the surplus 1.5

acres thereof earmarked for a polytechnic college. The petitioner has already been running the engineering college for the last 20 years on the same land. The respondents do not dispute this position. On the contrary, they accepted this title qua the engineering college.

47. The respondents make no disclosure as to how a Government lease for thirty years is more secure than a private lease for the same period. We further find that Regulation 6.1 of the Regulations 2016 even envisages and permits mortgage of the land after receipt of the approval from the respondent. It is also permissible for a promoter of an existing institute to run other educational institutions on surplus land. It is so in the present case. The respondents, therefore, have the additional reassurance of the petitioner actually running an engineering college since 2001 on the larger part of the same land.

48. We find that even in the counter affidavit, no real objection or difficulty with regard to the title of the land by the petitioner is pointed out or made out. The apprehension of consistency or insecurity premised on the fact that the appellant has a private lease has clearly no factual basis. On the contrary, it stands belied by the above factual narration.

49. The above narration of facts would show that a similar application of the petitioner for grant of permission was for the last year, i.e., Academic Year 2016-17 was rejected by the respondents. The respondents do not dispute that the status of the petitioner this year as well as the requirements under the Regulations 2016 and Handbooks are concerned, they remain the same as it was for the last year.

50. It is noteworthy that the application for the Academic Year 2016-17 was made in respect of the same piece of land as has been applied in the current year. The petitioner had last year also relied on the same registered

lease deed for acquisition of right, title and interest. No such objection was raised regarding the lease being a private one. The validity thereof thus stood accepted last year.

51. We find that the rejection letter dated 30.04.2016 for the previous academic year, i.e., Academic Year 2016-17 states that it was due to non-presentation of the original certificate of the Sub-Divisional Magistrate or the Collector or Tehsildar and the application was rejected. It is undisputed that the Condition No.17 in Appendix 16 of the Approval Process Handbook, 2016-17 as is imposed this year was present in the Handbook of last year as well. No lacuna in the title of the subject land of the petitioner was found in last year's rejection letter dated 30.04.2016.

52. We also find that the scrutiny process of the application of the petitioner consists of four different stages. The first stage of scrutiny was conducted by the Scrutiny Committee, which submitted its report on 01.03.2017 and it was the first scrutiny exercise effected by the respondents. The report dated 01.03.2017 which has been placed along with writ petition notes by Point No.7 that the ownership type of the petitioner was recorded as a lease over 11.5 acres of land. The second stage consisted of a report by a Re-Scrutiny Committee and the Re-Scrutiny Committee was required to verify the authenticity of the documents submitted by the applicant as mentioned in Appendix 16 of Approval Process Handbook, 2017-18. The report of the Re-scrutiny Committee extracted above shows that it was after considering all documents including documents showing ownership of land by way of private lease deed came to a conclusion that the application of the petitioner be recommended for the next stage, which was the Expert Visiting Committee. The report of the Expert Visiting Committee dated 19.03.2017 was really the third stage scrutiny accorded to the application of the

petitioner. We have extracted above the Recommendation Summary of this Committee which forwarded the application to the Regional Committee.

53. It was only at the fourth stage when the Sub-Committee of the Regional Committee of the AICTE dated 24.03.2017 effected the scrutiny that it came to the conclusion that the application be rejected on the ground of following four deficiencies:

- (i) Language Laboratory
- (ii) Barrier free toilet
- (iii) Workshop not ready
- (iv) Stairs without railing

54. Even at this stage, no deficiency was found qua the ownership or title of land on the basis of which the petitioner's application was being scrutinized. So far as these four deficiencies are concerned, the impugned order dated 14.04.2017 of the Standing Appellate Committee records that the same have been rectified.

55. Thus, the application of the petitioner was rejected by the impugned order dated 08.04.2017 by the Executive Committee of the AICTE only at the fifth stage. It is apparent that there is no real deficiency in the title of the land.

56. Before us as well, other than the reference to the stipulation in the Handbook-2017-18, Mr. Anil Soni, the learned CGSC is unable to point out any sustainable basis or lawful ground to support the rejection of the appellant's application.

57. The respondents have attempted to create a charade of public interest in the prescription of the condition regarding title in the Approval Process Handbook. There is no material to support the apprehension provided by the respondents especially in the facts of the present case. Further, the

respondents have completely ignored the other material aspects of ensuring good educational institutions who are positioned to provide suitable education. The same is in the interest of the communities where such institutions are set up. The petitioner admittedly has the valuable experience of running an Engineering College of twenty one years. The respondents do not point out any objection to its working. The petitioner would, therefore, have the expertise and the professional capacity to take the discharge of the onerous duty it is doing so in creating other institute.

58. We also cannot close our eyes to another critical issue impacting rights placed by the petitioner before us. The petitioner has placed before us a Chartered Account certificate dated 27.02.2017 specifying that the investment made by the petitioner in laying construction of the polytechnic college during the period 19.12.2015 till 27.02.2017 was Rs.8,60,67,180. This amount has been for installation of the infrastructure for the start of the new polytechnic college. It cannot be denied that if such infrastructure would be left unutilized it would depreciate in value. There may be damage over time to the construction and the fittings and fixtures. However, the loss suffered by the petitioner cannot override the binding concern of the larger public interest. In the present case, that given the accepted removal of all objections raised by the respondents, it cannot be in the interest of public at large, especially to prospective students, if the petitioner would not be permitted to commence running the institution in these above facts and circumstances.

59. Given the above discussion, it is now necessary to discuss the prayers made in the writ petition. How is the relief to be moulded? We find some light thrown thereon from the following reliefs granted in ***Vibrant Institute of Technology (supra)***, which was not challenged by the respondents:

32. In the circumstances, on the grounds as raised by the respondents, the issue of letter of intent/Letter of approval to the petitioner could not be denied. Therefore, for the forging reasons, the decisions communicated to the petitioners by letters dated 03.07.2009; 15.06.2009 and 23.03.2009 are liable to be set aside. The respondents are liable to issue letter of intent/Letter of approval to the petitioner for the block year 2009-2010.

33. Therefore the writ petition is allowed. The decisions of the respondents in letters dated 03.07.2009; 15.06.2009 and 23.03.2009 are set aside. The respondents are directed to issue letter of intent/Letter of approval to the petitioner for the block year 2009-2010 forthwith. Considering the facts and circumstances the respondents are also liable to pay costs of Rs. 30,000/- to the petitioner.”

60. Reliance was also placed by the petitioner on the verdict of this Court in ***Silver Oak College of Engineering & Technology vs. All India Council for Technical Education & Ors.*** in W.P.(C) 9568/2009 decided on 10.06.2009. By the said case, the petitioner's case therein had been rejected by the AICTE on the ground that the land had not been conveyed in any of the three modes mentioned in the Approval Process Handbook. Vide the judgment dated 10.6.2009 aforementioned, the AICTE was directed to treat the said writ petition as an appeal under the Clause 2.67 under AICTE Handbook for Approval Process – January, 2008 – Notification No.F-373/Legal with it to be heard and disposed of by the Appellate Authority within 10 days. The Appellate Authority was also directed to consider all the grounds raised by the petitioner therein in the appeal **including the title of the petitioner under the Gujarat Cooperative Societies Act, 1961.**

61. The observations in the above verdict dated **10.06.2009** in **W.P.(C) No.9568/2009** of the learned single Judge of this Court pertinent to the present case are reproduced as under:

- “1. Issue notice to the respondent.*
- 2. Mr.Jatan Singh, Advocate accepts notice on behalf of the respondents.*
- 3. At the outset, it is pointed by learned counsel for the respondents that there is an alternative remedy of appeal against the impugned order dated 30th May, 2009 in Clause 2.67 under the AICTE Handbook for Approval Process – January, 2008 – Notification No.F-373/Legal.*
- 4. Learned Senior Counsel for the petitioner submits that the petitioner has been denied LOI for the year 2009-2010 on the short ground that the petitioner is not the owner of the land by a sale deed/irrevocable gift deed (Registered)/Irrevocable Government Lease, as per the approval of AICTE. Learned Senior Counsel for the petitioner submits that the petitioner is the lawful owner of the land in question by virtue of Section 17(3) of the Gujarat Cooperative Societies Act, 1961. Leaned Senior Counsel further submits that the respondents have not considered this aspect of the matter.*
- 5. In the facts and circumstances of this case, it is directed that the copy of the writ petition served on the respondents be treated as an appeal under Clause 2.67 under the AICTE Handbook for Approval Process – January, 2008 – Notification No.F-373/Legal and same be heard and disposed of by the Appellate Authority within 10 days.*
- 6. The Appellate Authority shall consider all the grounds raised by the petitioner in the appeal including the title of the petitioner under the Gujarat Cooperative Societies Act, 1961.***
- 7. Learned Senior Counsel for the petitioner submits that the petitioner’s counsel shall accompany the representative of the petitioner, at the time of hearing.*
- 8. The appeal is disposed of with the aforesaid directions.*
- 9. Copy of this order be given ‘Dasti’ to learned counsel for the parties under signatures of Court Master.”*

(Emphasis supplied by us)

62. The respondents have placed reliance on the pronouncement of the Supreme Court in ***Parshvanath Charitable Trust vs. All India Council for Technical Education*** (2013) 3 SCC 385 to contend that the last date of giving approval is 30th April of the academic year beyond which the respondents are not authorized to do any act.

63. The above narration of facts shows that so far as the petitioner had made application in 2016 for the Academic Year 2016-17 and no objection was taken with regard to the very land on which the application has been made for the Academic Year 2017-18. The present application was made by the petitioner as back as on 10.01.2017 and the scrutiny was effected only on 01.03.2017, after passage of almost three months from the making of the application. The re-scrutiny was effected on 10.03.2017 and Expert Visit Committee conducted the physical inspection of the facilities provide by the petitioner on 19.03.2017. All objections made hitherto by the respondents were satisfied and so noted in the report dated 24.03.2017 of the Sub-Committee of the Regional Committee.

64. It is undisputed before us that the respondents were in possession of the title documents of the petitioner from the time it made the application in 2016. The respondents accepted the validity of title and did not reject the application in 2016 on any ground of want of registered Government lease. Such objection for the first time even was taken in the rejection letter dated 08.04.2017 by the respondents.

65. In addition, the respondents were fully aware of the legal position in view of the authoritative judicial pronouncement made as back as on 21.08.2009 by the learned Single Judge of this Court when W.P.(C) No.10104/2009 titled ***Vibrant Institute of Technology vs. All India Council for Technical Education & Ors.*** reported as ***2009 SCC OnLine Del 2539:***

(2009) 162 DLT 652 was allowed. The very explanation sought to be advanced to oppose the present writ petition stood rejected on 21.08.2009 by this Court.

66. The respondents accepted the correctness of the judicial view, did not assail it and acted upon the judgment. The decision dated 08.04.2017 of the respondents was carried in the appeal provided by the respondents which culminated in the order dated 18.04.2017 of the Standing Appellate Committee of the AICTE. The writ petition came to be filed on the very next day, i.e., 19.04.2017. On the first date itself, i.e., the 21st April, 2017, the respondents appeared on advance notice and sought time of one week for filing the counter affidavit. Keeping in view the urgency of the matter, the case was kept for consideration immediately on expiry of one week, i.e. on Friday, the 28th of April 2017.

67. Arguments in the writ petition were actually heard on this date. Keeping in view the heavy board of the Court, the judgment could not be dictated in open Court and had to be reserved. In any case, the judgment could not have been ready before the closure of the office of the respondents for the weekend.

68. The judgment was dictated on Saturday, i.e., 29.04.2017 and was ready for pronouncement on the 30th April, 2017 which was a Sunday. Keeping in view all the foregoing facts, as per the prescription by the judgment, read meaningfully, the last day would have to be the next working day, which is today.

69. Even otherwise, given the removal of objections by the petitioner as noted even in the report dated 24.03.2017, the petitioner became entitled to issuance of the letter of approval on that day itself.

70. We are informed that the Academic Session commences only from the 1st of August, 2017.

71. On a consideration of the submissions of the petitioner and the respondents and in view of the Regulation 6.1 of the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2016 published in Gazette of India: Extraordinary F.No.AB/AICTE/REG/2016 issued under All India Council for Technical Education **which ordains only** the petitioner Society/Trust company of a new technical education institute to have the required land as mentioned in the Approval Process Handbook in its **lawful possession with clear title** in the name of promoter society/trust/company on or before the date of submission of application, **without restriction of the manner and mode of conveyance and transfer of the clear title of the property on which the technical education institute is to be run.**

72. The letter of rejection dated 08.04.2017 of the Member Secretary, AICTE and consequential order of rejection of the petitioner's application for setting up a new technical institute vide Application ID No.1-2854879195 for ASM Polytechnic by the Standing Appellate Committee of the AICTE and the order dated 18th April, 2017 of the Standing Appellate Committee are hereby set aside and quashed.

73. Inasmuch as keeping in view the notified deadline, for paucity of time, we have not been able to hear detailed arguments on the challenge to the vires of the stipulation in the Handbook, though in the light of the above

discussion we could have ruled thereon, we are refraining from doing so. The respondents may have additional submissions thereon.

74. Consequentially, the respondents are directed to forthwith issue the letter of intent/letter of approval to the petitioner for setting up a new technical institution as sought vide Application ID No.1-2854879195 for the ASM Polytechnic, Mathura, Uttar Pradesh.

75. The present writ petition is allowed in the above terms. CM No.14926/2017 is thus rendered anfractuous and disposed of accordingly.

76. Dasti under the signatures of the Court Master.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 01, 2017

pmc/sd