

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10130 OF 2014

Dr.J.J. Magdum College of Engineering
Through its Principal
V/s.

... Petitioner

AICTE and others

... Respondents

**WITH
CIVIL APPLICATION NO.2931 OF 2014
IN
WRIT PETITION NO. 10130 OF 2014**

Smt. Vandana Appasaheb Magdum

... Petitioner

V/s.
Dr.J.J. Magdum College of Engineering
& another

... Respondent

**WITH
WRIT PETITION NO. 4642 OF 2016
ALONGWITH
CIVIL APPLICATION NO.2849 OF 2016**

Dr.J.J. Magdum College of Engineering
Through its Principal & anr.
V/s.

...Petitioners

All India Council for Technical
Education (AICTE) & anr.

...Respondents

**WITH
WRIT PETITION NO. 5142 OF 2018**

Dr.J.J. Magdum College of Engineering
& another
V/s.

... Petitioners

All India Council for Technical
Education (AICTE) & anr.

... Respondents

**WITH
WRIT PETITION (st) NO. 13410 OF 2018**

Dr.J.J. Magdum College of Engineering
& another
V/s.

... Petitioners

All India Council for Technical
Education (AICTE) & ors.

... Respondents

Shri A.V.Anturkar, Senior Counsel i/b. Mr. U.P. Warunjikar, advocates for petitioners in all petitions and for applicant in C.A.2849/2016.

Mr. S.B.Kalel, AGP for respondent-State in all petitions.
Mr. Abhijeet A. Joshi for respondent no.1-AICTE in all petitions.

**CORAM: B.R.GAVAI &
DAMA SESHADRI NAIDU,JJ**

**JUDGMENT RESERVED ON : 26th MARCH 2019
JUDGMENT PRONOUNCED ON : 03rd May 2019**

JUDGMENT (PER DAMA SESHADRI NAIDU,J)

Introduction:

A college, established by a Trust, starts functioning nearly three decades ago. It expands its academic activities, secures statutory permissions, and opens new courses. Eventually, it shifts its campus on to one of the two pieces of land the Trust owns. Later, both the College and the Trust get embroiled in a family dispute involving the founder's kin. Many years after the College getting shifted to another campus, one of the legal heirs complains to AICTE about the Trust's alleged violation of land-requirement norm. AICTE probes into it and restrains the College from functioning.

2. In this context, the Court is called upon to examine the efficacy of the norms as contained in "AICTE Approval Process Handbook" and their retrospectivity. Should the norms affect the College, then the Court needs to examine whether the College has violated any norm.

Facts:

WP No.10310 of 2014:

3. The 2nd petitioner—Dr. J. J. Magdum Trust—runs the 1st petitioner Engineering College. The Trust had its initial approval in 1992

from All India Council for Technical Education (“AICTE”). So, in that year, it established the Engineering College to conduct undergraduate courses in Civil, Mechanical, and Electronics disciplines. The Trust claims to have possessed in 1992 about 41 Acres at two places, separated by 6 km: 3 Acres at Village Jaisingpur, Shilong Taluka, Kolhapur District; 38 Acres at Village Jambhli, of the same Taluk.

4. Later, the College has grown in size and expanded its educational activities, too. In that process, it has shifted a part of its establishment to some other place. With the death of the founder, Dr. J. J. Magdum, who bequeathed a substantial portion of his landed property to the Trust, it seems, a family feud surfaced. It has spilled over to the litigious front.

5. One facet of this family feud is a complaint to the respondent authorities from one Smt. Vandana Magdum, the founder’s daughter-in-law. Acting on that complaint, AICTE passed Order, dated 03.11.2014. It placed the College “under no admission category” for the academic year 2014-2015.” It has also directed the “withdrawal of extension” for that academic year, besides requiring the students of the College to be relocated to another AICTE approved college. Aggrieved, the College and the Trust have filed WP No.10310 of 2014.

6. As the record reflects, on the strength of an ad interim order this Court granted then, the College continues to function.

WP No.4642 of 2016:

7. As we have noted above, in WP No.10130 of 2014, this Court stayed the Order, dt.03.11.2014. Later, for the next academic year, 2016-17, AICTE, through its order dt.04.03.2016, again put the institute under “No Admission” category. The College, then, filed this writ petition. When the second order, too, was stayed, AICTE took the matter to the Supreme Court, in SLP No.19938 of 2016. The Court refused to interfere, but allowed AICTE to approach this Court to have the order modified.

8. But AICTE’s efforts to have the Order, dt.04.03.2016, modified has borne no fruit.

WP No.5142 of 2018:

9. When WP Nos.10130 of 2014 and 4642 of 2016 were pending, on 30th April 2017 AICTE granted to the College a modified approval for AY 2017-18, fixing the intake at 420, as was prevalent in 2009-10. Then the College requested for increased intake, and the request yielded no result. So it filed WP No. 5142 of 2018.

WP (ST.) No. 13140 of 2018:

10. The College kept on requesting AICTE to reconsider its decision, dt.30.04.2017. In January 2018, the College decided to change the name of one course from 'Electronics and Electronics Communication Engineering' to 'Electronics and Telecommunication Engineering'. After securing an NOC from the Director of Technical Education, the College sought AICTE's approval, too. In March 2018, a committee of AICTE inspected the College and recommended in the College's favour. Yet AICTE refused to change the name. Thus, the College has challenged the EOA, dt.10.04.2018, and other later developments in this Writ Petition.

11. All the writ petitions involve the same parties and revolve on the same point: the minimum-land requirement a college should fulfil under the AICTE norms. In fact, three of the four writ petitions only challenge the *lis pendence* developments after WP No.10310 of 2014 was filed. So we have decided to dispose of all the writ petitions through a common judgment.

Submissions:**Petitioners':**

12. Shri Anthurkar, the learned Senior Counsel for the petitioners, has first contended that the AICTE norms require a college to have only 10 Acres of land, but the petitioner College, located in a rural area, has 42.2 Acres. Though this land is in two blocks, the authorities have never objected to it, despite their inspecting the College often. In this context, the learned Senior Counsel stresses that AICTE only acted post-haste in the face of a complaint.

13. The learned Senior Counsel also maintains that the authorities ought to consider the Colleges' compliance with the norms as were prevailing when it had the initial permission. In other words, he stresses that the 2007-Norms about continuous land cannot be applied retrospectively. Shri Anthurkar draws our attention to the Ext. S 'NOC', dt.12.06.2003, AICET is said to have issued when the College shifted its educational complex and campus. With a touch of rhetoric, the learned Senior Counsel submits that any hyper-technical approach to the issue will imperil the academic careers of about 2550 students taking education at the institute.

Respondents':

14. Shri Abhijeet Joshi, the learned Standing Counsel for AICTE has strenuously defended the official action. According to him, AICTE has

scrupulously followed the area-requirement norms as mentioned in the Approval Process Handbook 2018-2019. As the College shifted in 2003 to a campus of only 3.92 acres, it has failed to fulfil the AICTE norms in force then. According to him, the College never revealed to AICTE that it had the land, though 46.92 acres, in two pieces, at two places.

15. To elaborate, Shri Abhijeet Joshi has submitted that in 2003, when the College shifted its campus, the minimum land requirement for rural area was 25 acres, which the College has failed to fulfill. He nevertheless agrees that until 2009, the AICTE norms did not explicitly specify that the land must be one contiguous piece. Yet in 2010, the land requirements were modified: Regulation 65 of the Approval Process Handbook 2010-11, r/w Appendix 4.1., mandates that it must be one contiguous piece.

16. About the NOC AICTE granted to the College, Shri Joshi submits that it was based on the College's self-declaration, which is silent about the land being in two pieces. He nevertheless contends that though AICTE has acted on a complaint, it has yet followed the due procedure and passed the impugned order.

17. Heard Shri Anturkar, the learned Senior Counsel for the petitioners, Shri Abhijeet Joshi, the learned Standing Counsel for AICTE, and Shri S. B. Kalel, the learned Assistant Government Pleader for the other official respondents.

Discussion:

18. About the properties Dr. J. J. Magdum left behind, about the Trust, its affairs, and about the college, too, there seem to be disputes among the Dr. J. J. Magdum's legal heirs or representatives, involving the Trust, too. We steer clear of those disputes. We will, instead, focus on the College, its shifting, the consequential steps AICTE has taken, and the legal fall out.

19. Dr. J. J. Magdum College of Engineering began functioning in 1992, with three branches: Civil Engineering, Mechanical Engineering, and Electronic Engineering. The College was established on two pieces of land: 1. 3 acres in C.T.S. No. 70/1,71, 73A/1, at Jaysingpur; 2. 38 acres Gate No. 597, at Jambhali. But, to begin with, it had its principal operations on 3 acres at Jaysingpur until 1998, with an intake of 180 students. In 1999, two additional branches—Computer Science Engineering and Production

Engineering—with an intake of 40 students each were added. The student strength grew to 260.

20. In 1999, the College applied for the accreditation of the first three branches to NBA, New Delhi. Then, AICTE, on inspection, noticed certain deficiencies and reduced 20 seats from in Civil Engineering. In June 2001, AICTE imposed, among other things, a specific condition that the College should shift to a permanent building by 03.12.2001. So the College secured 1H.60R at Jaysingpur on lease from Dr. J. J. Magdum.

21. Thus, the College came to possess 4.92 acres at Jaysingpur and 31.08 acres at Jambhali, the total land available being 16H. 85R. The Trust prepared building plans and is said to have secured permission from the Gram Panchayat, Agarbha, Jaysingpur. Eventually, the College has established itself in 'permanent buildings' at Jaysingpur.

22. But by 31.12.2001 the College could not complete the construction, as AICTE mandated. So for the AY 2002-2003, AICTE reduced the College's student intake by 25% across all courses. Later, on the College's request for the intake restoration, AICTE appointed an expert committee. And on the Committee's recommendation, by August 2002 it restored the intake to its original 240.

23. In March 2003 AICTE's Expert Committee visited the College and affirmed the College's landholding: a total area of 36.72 acres. Besides that, in April 2003, the College is said to have applied to its affiliating University, that is Shivaji University, Kolhapur, for an NOC to shift itself to a new building. In turn, University appointed a committee to visit the College; on the Committee's recommendation, it did issue an NOC in the same month. Likewise, in the same month, the College secured an NOC from the State Government, too.

24. On parallel lines, on the College's request, AICTE asked it to submit documents to AICTE's Regional Office, so it could consider regularising the 'proposed site'. The documents submitted in June 2003, AICTE issued an approval letter for the year 2003-2004, mentioning as "Approved Permanent Site." So the College maintains that while shifting itself from the old site to the permanent site, it has breached no provisions of law, rules, regulations, especially those under Sections 22 and 23 of AICTE Act, 1987.

AICTE'S COUNTER ASSERTIONS:

25. AICTE does acknowledge that land requirement for a technical institution either in an urban or a rural area has undergone periodic

changes. Here we are concerned with the rural area, though. As mentioned in the AICTE'S Approval Process Handbook 2018-2019, it can be tabulated as follows:

Year:	1985-1990	1995	1997	1999-2003	2004-05	2006-09	2010-11	2016-17	2017-18	2018-19
Area in acres:	20	20	10	25	10	10	10	7.5	7.5	7.5

26. To begin with, in 1992, when the College was established, it had no minimum-land requirement. But by the time the College sought the “Extension of Approval (EOA)” dated 18.06.2001, and when the College was directed to shift to a permanent building, there was a minimum-land requirement: 25 acres. AICTE, however, maintains that the College, then, had only 3.92 acres; it was short of the required extent. Of course, as of today, the requirement stands at 7.5 acres.

27. Granted AICTE accepts that by 2000 itself, the College had 46.92 acres, but the College never disclosed that it was in two blocks; that is, not one contiguous piece of land. Further relevant is the fact that between 2004-2009, a technical institute should have possessed 10 acres; but there was no stipulation that it should be contiguous. Only in 2010, for

the first time, was this requirement put in place, as is evident from Regulation 65 of the Approval Process Handbook 2010-11 r/w Appendix 4.1. About AICTE's NOC to the College, it maintains that the NOC was granted based on the College's self-declaration that it had fulfilled the norms. True, AICTE also defends its granting NOC because the approval process "carried out each year for every new batch". And because of the "enormous number of colleges applying for approval, it is simply not possible for AICTE to inspect each college for deficiencies."

28. Finally, AICTE affirms that acting on the complaints it had received, its Expert Visit Committee went into the deficiencies the College had suffered from. Later that Committee placed its findings before the Standing Complaint Committee. Then, the College did appear before the latter Committee and put forward its defence. According to AICTE, only after following the due process, did it pass the "No Admission" order, dated 03.11.2014.

Later Developments:

29. First, questioning the Order, dt.03.11.2014, the College filed this writ petition. The Court stayed that order. Later, for the next academic year,

2016-17, ACITE, through its order dt.04.03.2016, again put the College under “No Admission” category. The College, then, filed WP No.4642 of 2016. The second order, too, was stayed. When AICTE took the matter to the Supreme Court, in SLP No.19938 of 2016, the Court refused to interfere.

The Requirement:

2003-04 AICTE Approval Process Handbook:

30. ACITE “Approval Process Handbook 2003-04” contains the guidelines on various institutional aspects. In “AICTE Norms for Existing Institutions at a Glance” (Chapter 11) find mentioned the Essential Requirements. One among them is that an existing institution in a rural area requires 25 acres of land. “The land shall not be more than in 2 pieces with main institutional buildings on a plot not less than 6 acres (contiguous).

2010 AICTE Approval Process Handbook:

31. The petitioners have placed much reliance on this Handbook to justify that the College violated no norms. Let us see what this Handbook stipulates about the land requirement. Clause 10 refers to the conditions to

be fulfilled by the applicant seeking permission to establish an integrated campus. The petitioners refer to subclauses (g), (i), and (j). And subclause (g) mentions that the land area requirement must be as mentioned in appendix 4. Subclauses (i) and (j) similarly state that the administrative area requirements and ‘amenities area requirement’ must also be as mentioned in Appendix 4.

32. Chapter II of the Handbook deals with the “Approval Process for Grant of Extension of Approval to existing Technical Institution.” Clause 14 enlists the requirements for the grant of approval. Subclause (3) states that the “on-line application shall have, inter alia, documents as mentioned [...], annexed in scanned form. Additionally, all the information asked for in computerised application form must be uploaded.” The petitioners, thus, maintain that among the enlisted requirements, the land is conspicuously absent.

33. We do notice that Vandana was not a party to this writ petition; she was not arrayed as a respondent. But later, she filed CAW No.2849 of 2016 as an intervener and came on record. That defect thus stands cured.

2019-20 AICTE Approval Process Handbook:

34. Let us take the latest Approval Process Handbook 2019-20. Clause 4.5.1 deals with the “Requirements and Eligibility”: The Promoter Trust/ Society/Company shall possess the land as required, with a clear title in the name of the Promoter Trust, etc., by the date it applies. Clause 6.4 further mandates that the Technical Institutions shall follow the “Norms for Land and Built-up requirements” as provided in Appendix 4 of the Approval Process Handbook.

35. Clause 6.4 (d), does insist that the Plot(s) of Land under consideration shall be contiguous and shall have no obstacles such as a river, canals, rail tracks, highways, high tension lines, or any such entity, hampering the continuity of land. If any obstacles come later, the institute shall secure a proper Safety Certificate from a Competent Authority.

36. And Clause 7.7 deals with “Non-Fulfillment of Location/ Built-up Area/ Land at the time establishment or current Academic Year”. Institutions working in a temporary location or at a location not approved by the Council and Institutions—that is, without fulfilling the prescribed Built-up area requirements—shall be liable to any one or more of these punitive actions by the Council: (a) suspension of approval for NRI and supernumerary seats, if any, for one Academic Year; (b) reduction in

“Approved Intake”; (c) no admission in one/ more Course(s) for one Academic Year; (d) withdrawal of approval for Programme(s)/ Course(s); and withdrawal of approval of the Institution.

37. As the land requirements stand specifically dealt with in Appendix 4, we will check that one, too. Clause 4.1 tabulates the area requirements. After conditions (a) to (f), it mentions that “the Land area required in Urban/ Rural shall be in a maximum of two plots. The Academic, Instructional, Administrative, and Amenities area shall be in one plot not less than 1.5 Acre. The aerial distance between the plots shall not exceed 2 km.” The remaining land, it further specifies, shall only be utilized for sporting infrastructure/ hostel/staff accommodation, and related educational activities of the Institution.

38. In Appendix 4, Notes (c) to (e) assume importance. They read:

(c) For *an Institution established prior to 1994*, the Land requirement should be fulfilled *as per the norms existed thereon for the Programme(s)/ Course(s)/ Divisions applied*. In case of any deviation from those norms, the Institution has to adhere to the existing norms at the time of seeking Extension of Approval.

(d) For an Institution established after 1994, the Land requirement should be fulfilled as per AICTE norms existing at the time of the establishment of the Institution for the Programme(s)/ Course(s)/ Divisions applied thereon. In case of any deviation from those norms, the Institution has to adhere to

the existing norms at the time of seeking Extension of Approval.

(e) If the Institution (c or d) had been given approval for more Programme(s)/ Course(s)/ Divisions later, the Land requirements as per the corresponding AICTE norms should be fulfilled. Annexure 12 of Approval Process Handbook gives Land Requirements as per AICTE norms during the previous years.

(italics supplied)

39. From Note (c) we gather that for an institution established before 1994, the land requirement should be as per the norms then existed for the Programme(s)/ Course(s)/ Divisions applied. It has no reference to AICTE norms, however. Only if there was any deviation from those norms, should the institution adhere to the existing norms. And those existing norms relate to the ones prevailing when the institution sought “Extension of Approval”. On the contrary, note (d) specifies that for an institution established after 1994, the land requirement should be as per the AICTE norms existing then. In either case, if an institution, established before or after 1994, applied for more Programmes/ Courses/ Divisions, the land requirements must be as per the corresponding AICTE Norms.

40. And the petitioner-College was established before 1994.

41. Appreciably, AICTE has kept in its website its regulations, proceedings, or plain administrative instructions, beginning from 1994. It seems the Approval Process Handbook was introduced, for the first time, in December 2000. Though the petitioner-College was established in 1992, even in 1994 Gazette Notification there was hardly any reference to the land requirement—in specific terms. But we hasten to add that we do not intend to dilute the rigour of the AICTE norms in whatever measure. We do, however, underline one fact.

42. That singular fact is this: the College was established in 1992, that is 27 years ago. It has, all along, the necessary approvals. It was periodically inspected by various committees of AICTE, besides the affiliating University and the State Government agencies. Till recently, the requirement of an institution holding the required land in one contiguous block was not a norm. The second petitioner is a college imparting education to a few hundreds of students, close to three decades by now. AICTE has even granted an NOC when the College shifted its campus. It has so far not been cancelled. Given the institutional interest and, more particularly, the future of the student community, can we adopt a hyper-technical view? And the whole alleged norm-violation broke into open,

after many years, on the complaint filed by one of the warring kins of the founder, at that.

Intra-Family Imbroglia:

43. Let us contextualise the dispute or the complaint that has led to this dispute. In or about 2012, Dr. J. J. Magdum died. Then differences arose among the members of his family; in that dispute got entangled are the Trust and the College, too. Many complaints—civil and criminal—seem to have been registered from either end. Smt. Vandana Magadum, the daughter-in-law, filed WP No.7396 of 2013. This Court disposed it of through an order, dated 15th September 2014. The Court has held that the dispute between the parties is civil and that Vandana has an efficacious alternative remedy. In turn, Vandana faces the charges of forging the documents and interfering with the course of justice. So a criminal case is said to be pending against her before the Chief Judicial Magistrate, Sangli, for the alleged offences punishable under Sections 193, 196, 465, 471 r/w S.34 of IPC.

44. Kiran Sajane, Vandana's brother, filed another complaint about the Trust's alleged wrongful conversion of the land. He filed WP No.8832

of 2013. In that writ petition, the Tahsildar seems to have filed an affidavit affirming that the Collector granted the NA permission for the land to be used for educational purposes. Eventually, through Judgment, dated 26th April 2018, this Court refused to entertain the writ petition. Instead, it relegated Kiran Sajane to an alternative remedy.

45. The petitioner College claims that Dr. J. J. Magdum gifted the property in Block No.298 to the College through a registered gift deed, dated 25.11.2009. It also maintains that Dr. J. J. Magdum died testate. In the will deed, he adumbrated the likely distribution of his properties among his legal heirs. One of the arrangements is said to be that the Trust properties must devolve among his legal heirs if the Trust or any institute run by the Trust gets 'shut-down'. Thus, the College supplies justification for a flurry of complaints by the members of Dr. J. J. Magdum's family. Vandana is said to have been a Trustee around 2012.

46. Irrelevant it may be as to the complainant's motive, for a norm or provision violated stands violated under all circumstances. Motive matters little in one's adherence to the Rule of Law. Yet we have examined the Trust's apprehension because the College has substantially complied with

the statutory regime, but faced action under a complaint, after many years, from a person who has allegedly an axe to grind.

Summary:

47. Indisputably, the petitioner-College secured its first approval in June 1992. Then the AICTE Act, 1987, was holding the field. The College did comply with the statutory mandate. Later, after its shifting the campus, the College has continued to function on two pieces of land, the whole of which far exceeds the AICTE norms. In fact, AICTE itself has approved the shifting of campus. And that NOC still holds good.

48. AICTE, as is evident from the Table above, has repeatedly gone on, and continues, to reduce the area requirements, perhaps given the shrinking land and soaring prices. Now the College holds over 40 acres of land. Nothing prevents AICTE to insist that the College should carry on a substantial part of its activities from either piece of the land. And it may ensure that under no circumstance the educational activities of the institution suffer.

49. Indeed, AICTE has contended that it approves the courses annually and colleges must be complying with all the norms annually, as per the Approval Process Handbook of that relevant year. Yet we reckon, the

approval process guidelines are prospective. They affect the existing institution only to the extent of the new courses the institution may apply for. Nothing beyond.

Result:

I. WP No.10130 of 2014:

(a) For the reasons mentioned above, AICTE's Order, dt.3rd November 2014, is set aside;

(b) AICTE and other respondent authorities, as a consequence, will allow the petitioner-College to function with no interruption;

(c) Barring the land requirement, this judgment does not affect AICTE's all other regulatory powers over the petitioner-College;

(d) No observations made here shall affect the rival claims of the legal heirs of Dr. J. J. Magdum among themselves or vis-a-vis the Trust and its members, before any other competent judicial or official fora.

II. WP No.4642 of 2016:

II. WP No.5142 of 2018:

III. WP (ST.) No.13140 of 2018:

In the light of the judgment in WP No.10130 of 2014, nothing survives in these writ petitions. They have all come up *lis pendence*,

assailing subsequent developments after the impugned order questioned in WP No.10130 of 2014 was passed. So they need no independent adjudication. In view of disposal of writ petitions, pending Civil Applications do not survive and stand disposed of accordingly.

(DAMA SESHADRI NAIDU, J)

(B.R.GAVAI, J)

L.S. Panjwani, P.S.