

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2019

PRONOUNCED ON : 27.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.15563 of 2019 and
W.M.P.Nos.15465 and 15466 of 2019

Infant Jesus College of Engineering,
Kamarajar Nagar,
Tirunelveli Thoothukudi Highway (NH-7A),
Keelavallanadu,
Thoothukudi - 628 851
Represented by its
The Chair Person,
Tmt.A.Roselet Bai

Petitioner

Vs

1.The Registrar,
Anna University,
Chennai - 600 025.

2.The Director,
Centre for Affiliation of Institutions,
Anna University,
Chennai - 600 025.

3.The Commissioner of Technical Education,
Directorate of Technical Education (DOTE),
Chennai - 600 025.

4.The Secretary,
TNEA (Tamil Nadu Engineering Admission),
Directorate of Technical Education (DOTE),
Chennai - 600 025.

5.The Secretary,
TANCET (Tamil Nadu Common Entrance Test),
Anna University
Chennai - 600 025.

6.The Regional Officer,
Southern Region Office,

All India Council for Technical Education (AICTE),
'Sastri Bhavan', 26, Haddows Road,
Nungambakkam,
Chennai - 600 006.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus calling for the records relating to the proceedings issued by the first respondent in letter No.282/CAI/AU/CRF/2019 dated 11.05.2019 and quash the same and direct the first respondent to grant an extension of affiliation to the Infant Jesus of Engineering College for the academic year 2019-2020 as per the extension of approval of the college by AICTE (7th respondent) dated 10.04.2019 for the sanctioned intake of students to the following below courses:-

Sl .N o	Courses	Sanctioned Intake 2019- 2020
1	B.E Aeronautical Engineering	60
2	B.E Mechanical Engineering	60
3	M.B.A - Master of Business Administration	60
4	M.E Aeronautical Engineering	18
5	M.E CAD/CAM	18

For petitioner : Mr.G.Murugendran

For Respondents 1,2 & 5: Mr.M.Vijayakumar, Standing Counsel

For Respondents 3 & 4 : Mr.S.Sureshkumar, Government Advocate

For 6th Respondent : Mr.B.Rabu Manohar

ORDER

The petitioner College is a minority Educational Institution running Engineering College affiliated to Anna University. Till the year 2018-2019, it had approval of All India Council for Technical Education (hereinafter referred to as "the AICTE") and affiliation of Anna University, for the following courses, with the sanctioned intake shown against it:-

Sl .N o	Courses	Sanctioned Intake 2019- 2020
1	B.E Aeronautical Engineering	60
2	B.E Mechanical Engineering	60
3	M.B.A - Master of Business Administration	60
4	M.E Aeronautical Engineering	18
5	M.E CAD/CAM	18

2. For the academic year 2019-2020, the AICTE has extended the approval vide order dated 10.04.2019. When the petitioner sought for provisional affiliation from the University for the academic year 2019-2020 for the existing course, as against the sanctioned strength, the Inspection Committee of the Anna University, visited the petitioner college on 11.03.2019. After inspection, the University sent a communication to the petitioner College pointing out certain deficiencies and sought for compliance of the said deficiencies. On receipt of this letter dated 29.03.2019, the petitioner complied the deficiencies pointed out in the Inspection Report and submitted the compliance report to the University, within the stipulated date fixed by the University. After receipt of the compliance report, the University sent a letter to the petitioner College on 11.05.2019, rejecting the compliance report and has reduced the sanctioned intake of following five courses for the academic year 2019-2020 as below:-

Sl .N o	Courses	Intake sought 2019-2020	Sanctio ned Intake 2019- 2020
1	B.E Aeronautical Engineering	60	30
2	B.E Mechanical Engineering	60	30
3	M.B.A - Master of Business Administration	60	0
4	M.E Aeronautical Engineering	18	0
5	M.E CAD/CAM	18	0

3.The petitioner contends that the said order dated 11.05.2019 passed by the first respondent is arbitrary and impermissible under the regulation of the AICTE. While the AICTE has granted approval for a particular strength, the same cannot be reduced by the University as per the judgment of the Hon'ble Supreme Court in Rungta Engineering College v. Chattisgarh Swami Vivekanand Technical University (2015 (11) SCC 291).

4.The courses for which the sanctioned intake now reduced by the first respondent University are the courses which, the petitioner started several years ago, with adequate infrastructure, after getting the approval from the AICTE and affiliated to the first respondent Anna University. While so, reduction of intake suddenly based on the alleged inspection report, is beyond the power of the first respondent University.

5.The first respondent has failed to consider the rectification report. Even after submitting documents about the appointments of faculty in the respective branches; purchase of library books and laboratory equipments with photocopies and invoice, it was not taken note by the University. The respondent University has passed a cryptic order saying the deficiencies pointed out in respect of Library books and Laboratory equipments continue to exist. Hence, the petitioner seeks writ of certiorarified mandamus to quash the impugned order and to direct the first respondent University to grant affiliation as per the extension of approval granted by the AICTE.

6.The Registrar of the first respondent University has filed a counter affidavit wherein, it is stated that the petitioner college was inspected on 29.03.2019 by the first respondent committee. Several deficiencies were found and pointed out viz., shortage of faculty; shortage of library books and laboratory equipments. Hence, out of 11 courses, four courses were placed under SN (show cause notice) category (course to be considered based on satisfactory reply to show cause notice and compliance report). One course placed under CR (compliance report) category (course to be considered based on satisfactory compliance report).

7.The petitioner College was given opportunity to rectify the deficiency and submit the compliance report on or before 12th April 2019. The petitioner was also informed that, there will be only one opportunity to submit compliance report after rectifying the existing deficiencies. The show cause notice dated 29.03.2019 had clearly mentioned that the courses which are classified under CR category does not meet the minimum criteria. In respect of 'CR' and 'SN', in the impugned notice, it has been stated as follows:-

CR - Does not meet the minimum criteria prescribed by the University for provisional affiliation for the academic year 2019-2020. However, affiliation can be considered only after the receipt of satisfactory compliance report.

SN - Does not meet the minimum criteria prescribed by the University for provisional affiliation for the academic year 2019-2020. However, affiliation can be considered only after the receipt of satisfactory explanation for the show cause notice and a satisfactory compliance report."

8.The inspection report annexure clearly indicates that there is deficiencies in respect of faculty, library books and laboratory equipments. The petitioner submitted the compliance report without rectifying the deficiencies pointed out by the first respondent. Hence, the Scrutiny Committee of the compliance report held that, the insufficient documentary evidence submitted by the College were not acceptable and decided to reduce the intake for B.E Mechanical Engineering and B.E Aeronautical Engineering and placed M.B.A - Master of Business Administration, M.E Aeronautical Engineering and M.E CAD/CAM under no admission category.

9.The learned Senior Counsel appearing for the first respondent University would contend that as per the University Regulation, when there is deficiencies in faculty, shortage of library books and shortage of laboratory equipments, the University is empowered to reduce the strength or cancel the affiliation. The learned Senior Counsel also referred the relevant provisions of the Statutes and Regulations for Affiliation of Anna University and the same reads as follows:-

"4.3 Suspension or Withdrawal of
Affiliation

The University shall have the power at any time after adopting the set procedures, to suspend or withdraw the affiliation granted to an academic programme.

.....

7.9 Suspension / Withdrawal of
Affiliation of an Academic Programme:

The affiliation (provisional/permanent) granted to any academic programme(s) in a college may be suspended/withdrawn after adopting the procedures laid down in the Regulations, if the college fails to comply with the provisions made in this behalf or the college has failed to observe/implement any of the conditions of affiliation, or the college has conducted in a manner which is prejudicial to the interests of university education and/or students."

He further submitted that, the Expert Body of the Scrutiny Committee has found the deficiencies not rectified. Hence, ordered reducing intake was passed.

10. Heard the learned counsel for the petitioner and the learned Senior counsel appearing for the respondents 1,2 and 5; learned Government Advocate appearing for the respondents 3 and 4 and the learned counsel for the 6th respondent and also perused the records and the relevant judgments cited by them.

11. The first respondent University which is the Affiliating Agency has caused inspection of the petitioner college on 29.03.2019. The defects and deficiencies in faculty, Library and laboratory has been brought to the notice of the petitioner college and time was granted to them to rectify. The petitioner herein contends that he has rectified the defects and intimated the same to the first respondent University, but, the first respondent University has not properly considered the rectification report. The annexure to the Scrutiny Committee report indicates that as far as B.E Aeronautical Engineering is concerned, 8% deficiency in respect of Faculty; 50% deficiency in respect of Library and 69 % of deficiency in respect of Laboratory. As far as B.E Mechanical Engineering is concerned, 17% deficiency in respect of Faculty; 50% deficiency in respect of Library and 72 % of deficiency in respect of Laboratory. Taking note of the above deficiencies, the first respondent University has reduced the intake for the above two Under Graduate courses from 60 to 30.

12. Similarly, as far as M.B.A - Master of Business Administration is concerned, 17% deficiency in respect of Faculty; 25% deficiency in respect of Library and 35 % of deficiency in respect of Laboratory noted. As far as M.E Aeronautical Engineering is concerned, 67% deficiency in respect of Faculty; 50% deficiency in respect of Library and 100% of deficiency in respect of Laboratory noted. As far as M.E CAD/CAM is concerned, 67% deficiency in respect of Faculty; 50% deficiency in respect of Library and 67% of deficiency in

respect of Laboratory note. These deficiencies are grave in nature and no authority can give affiliation to these courses with deficiencies.

13. The first contention raised by the learned counsel for the petitioner is that, as per Rungta Engineering College case (cited supra), it is the AICTE which has to reduce the intake of the petitioner college and the University has no authority to reduce the intake. A reading of Rungta Engineering College case (cited supra), this Court finds that when the University attempted to reduce the intake, pointing out certain deficiencies in the college, the matter was taken up to the Hon'ble Supreme Court. Pending petition, the Supreme Court has directed the AICTE to make re-inspection to ascertain 'whether the contention of the University that the college lacks infrastructure facility is true'. In such circumstances, the AICTE conduct the inspection and submitted its inspection report. The University which is the Affiliating Agency contrary to the said report, exercised its power to reduce the intake. In such circumstances, the Hon'ble Supreme Court has observed as below:-

"In the light of sharp difference of opinion between the petitioners and the first respondent University, during the pendency of the present writ petition, we thought it fit to call upon AICTE by the order dated 08.8.2014 to "inspect the petitioner's College and submit a report whether the petitioner has complied with all the requirements of law". In view of the said direction, AICTE conducted inspection and reported. The substance of which is that the petitioner College has complied with all the requirements of law.

The respondent University and the State very vehemently argued that notwithstanding the opinion expressed by AICTE there are still some shortcomings examined in the light of the norms and standards of the University for granting affiliation to any institution imparting technical education.

It is argued that the University, which is a statutory body brought into existence pursuant to an enactment made by the legislative assembly of the State of Chhattisgarh, is obliged to discharge the duties enjoined upon it by the 2004 Act and it cannot be prevented from discharging its

obligation of being satisfied that the petitioner institution qualifies for affiliation in terms of the norms and standards prescribed by it in discharge of its statutory powers and compelled to grant affiliation notwithstanding the fact that the University is not satisfied with the eligibility of the first petitioner College for affiliation.

An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the 1st petitioner college, reported that the 1st petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the petitioner college."

14.As far as the present case is concerned, the AICTE has granted extension of approval to the petitioner college not based on physical verification but based on the documents produced by the college. Whereas, the physical inspection of the Institute has been done by the first respondent University wherein, deficiencies in faculty, library and laboratory has been specifically pointed out and time was granted for rectification.

15.Even in the affidavit and the typed set of documents, submitted to the Court along with the writ petition, the petitioner could not assertively say that all the defects pointed out by the inspection committee is fully rectified.

Contrarily, in the counter affidavit, it is specifically stated that the deficiencies in respect of faculty, library and laboratory, not rectified by the petitioner college. For better clarity, the relevant paragraphs of the counter affidavit, is extracted below:-

"4.I humbly submit that with regard to the paragraph No.8 of the affidavit. The petitioner college submitted the compliance report on 12.04.2019. The compliance report was scrutinized by expert committee on 13.04.2019. The report was not having any Purchase Order, Invoice Bills for rectification of library books & journal deficiencies for B.E & M.E courses. For faculty deficiencies in M.E - CAD/CAM course, the college has submitted the three faculty details namely Dr.P.SEngottuvel (date of joining 02.04.2019), Mr.J.Sugunthan (date of joining 13.07.2013) and Mr.M.Harisundar (date of joining 24.04.2019). In the case of Mr.J.Sugumthan the appointment order was shown that he is appointed on 11.07.2013. If it is true, the inspection committee would have accepted him as a faculty. He is not accepted as a faculty by the Inspector Committee because he has not produced any experience certificates, hence expert committee also rejected his documents. In the case of Mr.M.Harisundar was shown at the time of inspection, but the inspection committee rejected him as a faculty because he has not produced any experience certificates, hence expert committee also rejected his documents.

5.I humbly submit that for faculty deficiencies in M.E Aeronautical Engineering course, the college has submitted the two faculty details (Actually three faculties required) namely, Dr.S.Ganesan (date of joining 02.04.2019), Mr.S.Suman (date of joining 26.12.2018). In the case of Mr.S.Suman was shown at the time of inspection, but the inspection committee rejected him as a faculty for not having any experience certificates, hence expert committee also rejected his documents. Even if this faculty is accepted still the deficiency will be 33% (2 faculty out of 3

required). The University decision will be same.

6.I humbly further submit that as per the instructions given for submitting compliance report, the University has clearly mentioned in the Instructions (Point No.I) - that for deficiency in faculty: Faculty members should be appointed after the inspection date. The Expert Committee accepted only Dr.P.Sengottuvel (date of joining 02.04.2019) for M.E - CAD/CAM, Dr.S.Ganesan (date of joining 02.04.2019) for M.E - Aeronautical Engineering. For M.B.A., Course not having acceptable documents/bills for Laboratory deficiencies. As per the instructions given for submitting compliance report, the University has clearly mentioned in the instructions (Point No.II & III) - that for deficiency in Library and Laboratory: B) Supporting Documents: Purchase order and Invoice Bills. Also the report was not having any Bills/Invoice for the purchase of Library Journals and laboratory equipments and not having acceptable documents purchase of software for laboratory deficiencies. The documents provided in the compliance report was not accepted by expert committee."

16.The learned counsel for the petitioner would further rely on the following judgments:-

(i)In Vijay Institute of Management v. The Registrar, Anna University (W.P.(MD) No.12532 of 2019 dated 06.06.2019), a learned Single Judge of this Court has held as follows:-

" The only deficiency, even according to the respondent University, was lack of 10 number of books and journals. In order to fulfil the same, not only 10 books and journals, more number of books and journals have already been purchased and kept in the library. When that being so, for the said single or sole reason, where such a drastic action of placing the Institution under no admission category can be extended is the moot question, where this Court finds an answer that, the University ought not to have rejected the application of the

petitioner Institute for extension of affiliation, as according to the University, only one deficiency was pointed out by them, in fact, that has been complied with and this fact has been factually found out by this Court, after having perused all the materials placed before this Court both by the petitioner as well as the University. "

(ii) In *Jaya Gokul Educational Trust v. Commissioner & Secretary to Government Higher Education Department* (2000 (5) SCC 231), it has been held as follows:-

"Admittedly, the University's inspection report was in favour of the appellant. This is clear from the appellant's letter dated 31.5.95 to the State Government. The only requirement as per the statute 9(7) was for the University to obtain the "views" of the State Government. Obtaining the 'views' of the State Government, as already stated, did not amount to obtaining its 'approval'. Procedure and conditions for affiliation could not be inconsistent with the provisions of the Central Act, in particular section 10(k) of the Regulation, and the University could not seek approval of Government. The University was also one of the agencies consulted by the council of the AICTE under Regulation 8. Once that was over, and approval was granted by the AICTE, if there was any default on the part of the College in compliance with the conditions of approval, the only remedy for the University was to bring those facts to the notice of the AICTE so that the latter could take appropriate action."

17. Relying upon the above judgments, the learned counsel for the petitioner would submit that the first respondent University cannot reduce the strength for short fall of library books. In *Vijay Institute of Management v. The Registrar, Anna University* case (cited supra), this Court, after considering the Inspection Report and Compliance Report has found that some of the purchase bills produced by the petitioner College was disbelieved by the University for want of GST number. Therefore, this Court has rightly negatived the contention of the University for shortage of around 10 books intake strength cannot be reduced.

18. Contrary to the facts involved in that case, in the present case, there is not mere deficiency of library books but

there is shortage of faculty and laboratory equipments also. As far as the deficiencies in faculty, library books and laboratory equipments continues, the respondents can pass order reduction of intake or cancel the admission.

19.It is incorrect to say that the first respondent University as an Affiliating Agency has no power to reduce the strength sanctioned by the AICTE. The observations made in the Rungta Engineering College case (cited supra), is based on a specific facts which has already been extracted. When the latest inspection report of the AICTE indicates substantial compliance, the stand of the University contrary to the report of the AICTE was condemned by the Hon'ble Supreme Court and while doing so, has observed that the Affiliating Agency cannot try to occupy the field of Approval Agency (AICTE).

20.However, in this case, the patent deficiencies in faculty, shortage of books and shortage of laboratory equipments has been pointed out which has not been rectified by the petitioner College, in time. Hence, the order has been passed for reduction of strength in respect of some courses and no admission for some courses. It is further submitted that, the deadline for granting affiliation as fixed by the Hon'ble Supreme Court in Parshvanath Charitable Trust v. All India Council for Technical Education (2013(3) SCC 385) crossed, has been extracted below:-

"The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standard and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the

University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body.

The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system."

.....
"Both grant/refusal of approval and admission schedule, as afore stated, shall be strictly adhered to by all the authorities concerned including the AICTE, University, State Government and any other authority directly or indirectly connected with the grant of approval and admission.

ii.No person or authority shall have the power or jurisdiction to vary the Schedule prescribed herein above."

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(Emphasis added)"

21.In this case, since, the last date for granting affiliation has already been expired, the petitioner herein has to comply the deficiencies and seek for increase of strength only for the ensuing academic year. In fact, a Division Bench of this Court in The Anna University vs. M/s.Dhaya College of Engineering (W.A.(MD) No.873 of 2014 dated 21.07.2014), has observed as follows:-

"27. In such circumstances, we are of the considered view that no positive direction can be issued to the University, to grant the affiliation to the petitioner College, as directed by the learned single Judge, in his order, dated 01.07.2014, made in W.P.(MD).No.11470 of 2013. It is seen, from the relevant decisions relied on by the learned Advocate General appearing on behalf of the appellants, that the affiliation to be granted, by the University, is not purely based on the approval granted by the AICTE. Therefore, it cannot be said that the grant of affiliation is an event, that should happen, automatically, following the grant of approval, by the AICTE. The norms prescribed for the approval of the College, by the AICTE, are different from those which have been prescribed for the grant of affiliation, to the petitioner College, by the University. As such, the contentions raised on behalf of the petitioner College that it would not be open to the University to deny the grant of affiliation, based on the norms, which have been prescribed for the grant of approval, by the AICTE, cannot be countenanced."

22.From the rival submissions, it is clear that the respondents University has power to reduce the intake. Before reducing, opportunity to rectify the deficiencies be given. Since, the petitioner Institute failed to provide necessary proof for purchase of books and laboratory equipments, strength reduced proportionately.

23.Therefore, in the light of the above discussions, this Court finds that the submissions made by the learned counsel for the petitioner herein are not satisfactory and the writ petition is liable to be dismissed.

24.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm
To

1.The Registrar,
Anna University, Chennai - 600 025.

2.The Director,
Centre for Affiliation of Institutions,
Anna University,
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3.The Commissioner of Technical Education,
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Nungambakkam, Chennai - 600 006.

+1cc to Mr.M.Vijayakumar , Advocate SR.No. 53617
+1cc to Mr. G.Murugendran, Advocate SR.No. 53311

W.P.No.15563 of 2019

A.SK(27/06/2019)