

**W.A.No.1146 of 2016**  
**and W.P.(MD) No.21453 of 2023**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2025

PRONOUNCED ON : 18.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**  
and  
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.No.1146 of 2016  
and  
W.P. (MD) No.21453 of 2023

**W.A.No.1146 of 2016**

National Engineering College  
Rep.by its Chairman Mrs.K.R.Chennammal  
K.R. Nagar, Kovilpatti,  
Thoodhukudi District.  
(Chairman of the appellant college is  
substituted vide court order dated  
22.08.2023 made in CMP (MD) No.  
10831 of 2022 in W.A.No.1146 of 2016)

... Appellant / Petitioner in both  
W.A No.1146 of 2016 and  
W.P No.21453 of 2023

Vs

All India Council for Technical Education  
Rep.by its Member Secretary  
Nelson Mandela Marg, Vasat Kunj  
New Delhi – 110 067.

... Respondent in both W.A No.1146  
of 2016 and W.P No.21453 of 2023

Prayer in W.A.No.1146 of 2016 : Writ Appeal filed under Clause 15 of Letter



**W.A.No.1146 of 2016**  
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Patents Appeal to set aside the judgment dated 01.09.2016 made in W.P.No. 40899 of 2002.

Prayer in W.P.(MD) No.21453 of 2023 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Ceriorarified Mandamus calling for the records relating to the All India Council for Technical Education (Grant of Approval for Technical Institution) Regulations, 2020 F.No.AB/AICTE/REG/2020 dated 04.02.2020 issued by the Member - Secretary of the AICTE and quash the same and further declare that the Regulation No.4.1(b) of the All India Council for Technical Education (Grant of Approval for Technical Institution) Regulations, 2020 F.No.AB/AICTE/REG/2020 dated 04.02.2020 is invalid, inoperative and unenforceable in respect of the petitioner to function under the name and style of “National Engineering College”.

**In both W.A.No.1146 of 2016**  
**and W.P (MD) No.21453 of 2023**

|                               |   |                                                       |
|-------------------------------|---|-------------------------------------------------------|
| For Appellant /<br>Petitioner | : | Mr.A.L.Somayaji<br>Senior Counsel for<br>Mr.V.Perumal |
| For Respondent                | : | Mr.N.Dilip Kumar<br>Standing Counsel or AICTE         |



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**COMMON JUDGMENT**

[Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**]

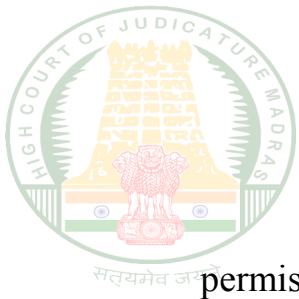
By administrative order, the W.P (MD) No.21453 of 2023 is posted alongwith Writ Appeal.

2. Counter has been filed in both the cases and common argument and common judgment were rendered.

3. For the sake of convenience, the petitioner is referred to as “Petitioner College”.

4. The brief factual matrix of the case that are required for the disposal of this writ petition in nutshell are as under -

**4.1** The petitioner / Institution, namely, “National Engineering College” was established by the National Educational and Charitable Trust, registered under the Trust Registration Act, under Regn.No.180 of 1984. The Government of Tamil Nadu, vide G.O.Ms.No.939 dated 20.07.1984, granted



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permission to the said Trust to start an Engineering College in the name and style “National Engineering College” at Kovilpatti, under the Self Financing Scheme in order to cater the needs of rural area people, from the academic year 1984-1985 and thereafter, on 11.10.1984, the Madurai Kamarajar University had granted affiliation as well as permission to start Under Graduate Courses in Mechanical Engineering, Electronics and Communication Engineering and Computer Science with an intake of 60 students in each discipline.

**4.2** The College was started in the academic year 1984-1985 after obtaining necessary permission / approval / affiliation. The Government, vide Letter dated 04.08.1992, had granted three permissions to the petitioner College to start Electrical and Electronics Engineering with an intake of 60 students and Electronics and Instrumentation Engineering with an intake of 30 students and the petitioner / College was affiliated upto the year 1992 with the Madurai Kamaraj University.

**4.3** In the interregnum, the All India Council for Technical Education



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[AICTE] Act, 1987 [Central Act 52 of 1987] came into force on 28.08.1988  
vide G.O.Ms.No.317 [E] dated 26.03.1988.

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**4.4** The AICTE had also granted permission to the petitioner / College on 19.08.1993 by approving the existing courses recognised by Madurai Kamaraj University and the very same Council had accorded permission to conduct two additional courses, viz., Electronics and Instrumentation Engineering and Electrical and Electronics Engineering with an intake of 40 students in each discipline, after getting necessary permission / approval from the Government of Tamil Nadu.

**4.5** After the formation of Manonmaniyam Sundaranar University in the year 1992, the said University has also granted affidavits for conducting courses in the very name and style and it was also followed by an increase in intake of students from 40 to 60 by AICTE for Electronics and Instrumentation Engineering and Electrical and Electronics Engineering and not stopping with that, the petitioner / Institution has started Master of Computer Application [MCA] with an intake of 30 students and it was increased from 30 to 60 from the academic year 1997- 1998 and the AICTE



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had accorded permission to do so and further, granted permission to start M.E. [Computer Science and Engineering] with an intake of 25 students from the academic year 2001-2002 and the Under Graduate Courses, viz., Information and Technology Course with an intake of 60 students from the academic year 2009-2010.

**4.6** It is the specific case of the petitioner that the College, viz., the National Engineering College, is functioning from the academic year 1984-1985 onwards and after the introduction of the AICTE Act, the said Body had also continued to grant permission/approval to the existing courses and also permitted the Institution to start the Under Graduate Courses and Post Graduate Courses in certain disciplines, having aware of the fact that it uses the word “National”.



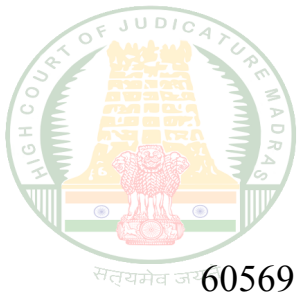
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**5.1** As stated supra, the All India Council, after inspection by an expert committee had granted approval vide communication dated 19.08.1993 to National Engineering College. The approval granted by AICTE was periodically renewed. On 04.08.1998, Manonmaniam Sundaranar University also granted temporary affiliation for the year 1992-1993 for the above Mechanical Engineering, Electronics and Communication Engineering and Computer Science courses. The respondent issued paper advertisement number AICTE/23/2002 dated 02.11.2002, which reads as follows :

*"The use of word "Indian" and/or "National" and/or "All India" and/or "All India Council" and/or "Commission" in any part of the name any name of a Technical Institution and/o whose abbreviated form leads to "IIN" / "IT" / "IISC" / "IT" /" AICTE"/ "UGC" shall not be permitted. As institution which is already functioning with the nam using the above words shall submit its application change of name within one month from the date publication of this notification for approval by AI failing which AICTE may withdraw its approval".*

**5.2** Aggrieved by the paper advertisement, National Engineering College filed W.P. No.40899 of 2002 before this Court and obtained an order of interim stay of the impugned notification on 14.11.2002 in W.M.P. No.



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60569 of 2002. The interim stay was made absolute on 23.09.2003. However, Writ Petition was dismissed on 01.09.2016.

**6.1** The learned Single Judge of this Court, by an order dated 01.09.2016 in W.P.No.40899 of 2002 has observed as follows -

*8. The primordial submission made by the learned Senior Counsel appearing for the petitioner is that since there is no express prohibition as to the use of the word "National" under the Emblems and Names [Prevention of Improper Use] Act, 1950, coupled with the fact that 12 the petitioner / Institution came to be established prior to passing of the AICTE Act, it need not change its name by deleting the word "National" and in support of the same, has placed reliance upon the other decisions.*

**6.2** The learned Judge has further held as follows -

*10. ....Insofar as the interpretation given to Clause No.7 of the Emblems and Names [Prevention of Improper Use] Act, 1950, is concerned, it is to be stated that the impugned Advertisement issued by the respondent / AICTE does not say that in terms of the above said Act, there is a prohibition to use the word "National". But, placed reliance upon the All India Council for Technical Education Approval Process Handbook, which is*



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*having a statutory backing.*

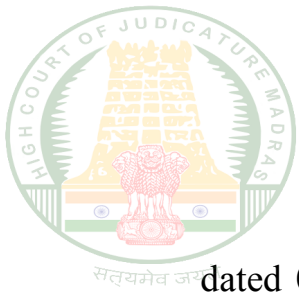
### **6.3 The learned Judge has also held as follows-**

*13. It is not in serious dispute that the impugned Advertisement came to be issued on the basis of the AICTE Approval Process Handbook which is described as a legal document under the AICTE Act, 1987 and in exercise of statutory power only, the respondent has issued the impugned Advertisement.*

*14. The respondent / AICTE, in terms of the Statutory powers only has issued the impugned advertisement and admittedly, the exercise of the said statutory powers have not been put to challenge.*

7. Aggrieved by the final order in W.P. No.40899 of 2016 dated 01.09.2016, the petitioner College filed W.A.No.1146 of 2016 and obtained an order of Interim Stay on 15.09.2016 which was subsequently extended on 22.11.2016. Pending Writ Appeal, the interim order is in operation.

8.1 Thereafter, AICTE issued All India Council for Technical Education (Grant of Approval for Technical Institutions) Regulations, 2020



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dated 04.02.2020 under sub section (1) of Section 23 read with Sections 10 and 11 of the AICTE Act and in supersession of the All India Council for Technical Education (Grant of Approval for Technical Institutions) Regulations, 2018 notified in the Gazette of India dated 31.12.2018. Under said Regulations, Regulation No. 4 deal with the 'Generic Conditions for Approval' which is extracted for the sake of convenience.

*"4.1 a. The Applicants shall not name the Technical Institution in such a way that the abbreviated form of the name of the Technical Institution becomes IIM/ IIT/ IISc/ NIT/ AICTE/UGC/ MHRD/ Gol. The Applicant shall also not use the word(s) Government/ India/Indian/ National/ All India/ All India Council/ Commission, anywhere in the name of the Technical Institution and other names as prohibited under the Emblems and Names (Prevention of Improper Use), Act, 1950. Provided that the restrictions mentioned above shall not be applicable, if the Technical Institution is established by Government of India or its name is approved by the Government of India.*

*b. The Institutions which were already given approval with those words shall be instructed to change/ drop the word from the Name of the Institution, as the Stake holders may misinterpret them to be Government/ Government Aided Institutions. If any Institution (other than Government/Government Aided) continue to use 'Indian', 'National', etc. in the Name of the Institution, the Council shall remove such words while issuing EoA.*



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**WEB COPY** *Institutions within the State."*

*c. Applicants/ Institutions shall not use the names of the Existing*

**8.2** Thus, the Petitioner College filed W.P. (MD) No. 21453 of 2023 challenging Clause 4(i)(b) of All India Council for Technical Education (Grant of Approval for technical institutions) Regulations, 2020 dated 04.02.2020.

**8.3** The said Regulations provides that a person who makes an application to the All India Council for Technical Education (herein after referred as AICTE) for seeking approval shall not name the Technical Institution in such a way that the abbreviated form of the Technical Institution becomes "IIM"/"IIT"/"IISC"/"NIT"/"AICTE"/"UGC"/"MHRD"/"GoI" and shall not use the word(s) Government/India /Indian/National/All India/ All India Council/Commission anywhere in the name of the Technical Institution and other names as prohibited under the Emblems and Names (Prevention of Improper Use), Act, 1950.

**8.4** On perusal of the above said impugned notification (hereinafter

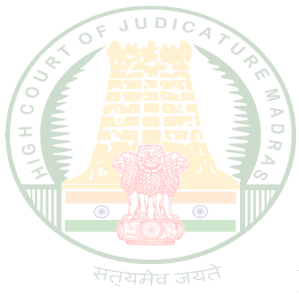


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referred to as notification), we find that sub clause (b) of Clause 4.1 specifies that Institutions which are already given approval with those words shall be instructed to change/drop the words from the name of the institution as the stake holders misinterpret may them to be Government/Government Aided Institutions. It further states that if any institution other than Government/Government aided continues to use Indian, National etc. in the name of the Institution, the AICTE shall remove such words while issuing the extension of approval for the conduct of the technical programs in the institution.

9. The said writ petition has been filed challenging the advertisement No.AICTE 23 of 2002 in the Hindu dated 02.11.2002 issued by the Member Secretary of AICTE and to quash the same. The said writ petition was dismissed. Against the said order of dismissal, Writ Appeal has been filed and interim order was granted in CMP No.14793 of 2016. We are also keeping in mind the findings rendered by the learned Single Judge for rejection of the W.P.No.40899 of 2002, as extracted supra, in respect of the Writ Appeal.



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**10.** The present writ petition is filed challenging the said notification itself and hence the decision in the Writ Petition No.21453 of 2023 will govern the lis in the writ appeal.

**11.** Mr.A.L.Somayaji, learned Senior Counsel appearing for the appellant/petitioner College would contend that (a) the respondent AICTE has no power or jurisdiction to prohibit the word “National” and competency to frame the regulation prohibiting the use of the above mentioned name, more so, with “retrospective effect” and further contended that (b) powers of the respondent are dealt with Section 12, 22 and 23 of **AICTE Regulations** and also relied upon the judgment of the Hon'ble Division Bench of Kerala High Court reported in the case of ***Sujith Kumar and another vs. Vinodh and 8 others*** in OP (KAT) No.542 & 543 of 2019 dated 09.12.2019, as confirmed by Hon'ble Supreme Court in SLP No.C 11399 to 011402 of 2021 dated 04.08.2021 and (c) further relied upon the judgments reported in ***2020 (1) MHLJ 74, AIR 2007 Bombay 184 and AIR 2016 Raj 62*** and also (d) produced a typedset that the colleges and institutions that are using the word “National” and the respondent AICTE which has approved the above said use of the word “National” in other incidental cases, as mentioned in the typedset



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and also the various private institutions which are using the word “National” and accreditation of the respondent's council.

**12.** Per contra, Mr.N.Dilip Kumar, learned Standing Counsel appearing for the respondent would contend that (a) AICTE has powers to make the rule with regard to Section 23 of the Act retrospectively and (b) it has got competency to frame regulations and emphasized upon Section 10(k) that AICTE only has power to grant approval and also draw our attention to Section 23, read in consonance with Section 10(k) sub clause (m) (r) (v) and would contend repelling the contention of the learned Senior Counsel for the appellant/petitioner College.



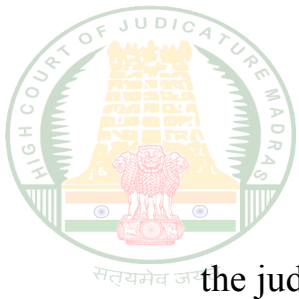
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**13.** On the point of “retrospectivity”, we also heard the learned Standing Counsel for the respondent who contended that the use of the word "National" is clearly prohibited under clause 7 of the schedule to the Emblems Act unless approved by the Central Government. Regulation 4.1.b. put to challenge herein is in line with the Emblems Act. Evidently, according to the Emblems Act, as well as the Grant of Approvals Regulations, the competent authority to vest a right with any institution / body to use the word 'National' is the Central Government. The Petitioner institution has not produced anything to show that they have such authorization from the Central Government to show that they have a right to use the name.

**14.** Heard both. Perused voluminous of typed set filed by both sides.

**15.1** The sum and substance of submission of the standing counsel for the respondent counsel is that the advertisement and the provision only require the Petitioner to change their name with effect from the date of its introduction and not, since its inception. It is settled that when a statute operates in the future, it cannot be said to be retrospective operation. Reliance is placed on



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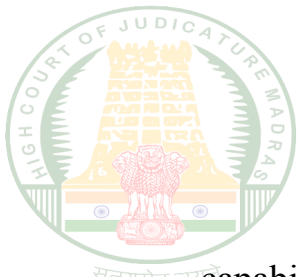
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the judgment in ***Trimbak Damodhar Raipurkar v. Assaram Hiranman Patil & ors, reported in AIR 1966 SC 1758*** wherein it has been held as follows:

"9. In this connection it is relevant to distinguish between an existing right and a vested right. Where a statute operates in future it cannot be said to be retrospective merely because within the sweep of its operation all existing rights are included. As observed by Buckley, L.J. in *West v. Gwynne*"

**15.2** The Standing Counsel for the respondent AICTE Council would submit that in light of the above mentioned facts and circumstances, the Regulation has not been enacted retrospectively.

**15.3** It is the specific contention of the Standing Counsel for the respondent that the Approval Process Handbook has a “statutory backing” and would place reliance upon Section 23 of the AICTE Act and developed his argument by submitting that the expansive powers granted to the AICTE under Section 23 of the AICTE Act allow for the formulation of regulations that align with the objectives of the Act, provided they do not contradict its provisions. Despite arguments to the contrary, the Council's regulatory



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capabilities extend beyond merely granting approvals for new institutions.

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**15.4** The Standing Counsel for the respondent further vehemently submitted that the harmonious reading of Sections 10 and 23 underscores the Council's authority to implement rules that foster both the development and regulation of technical education. The “Approval Process Handbook”, with its statutory backing, further reinforces the mandatory nature of compliance for institutions. Thus, while the regulation's retrospective application must be judiciously assessed, the Council's directive to modify future actions remains within its legitimate purview.

**15.5** The last limb of argument of the learned Standing Counsel is that the regulations were not laid before the Parliament, as required under Section 24 of AICTE Act, however does not undermine the Council's authority.

**16.** Mr.A.L.Somayaji, learned Senior Counsel for the appellant/petitioner college relied upon the following judgments touching upon the point of word “National” as used in the Emblem Act -

(i) South India Textiles & Ors. Vs. Government of



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- Andhra Pradesh & Ors. reported in AIR 1989 AP 555
- (ii) Goenkarancho Ekvot Vs. Union of India & Ors.  
reported in AIR 2007 Bombay 184.
- (iii) Thomad Luke Vs. The Registrar of Firms in WP (C)  
No.21435 of 2007 (B)
- (iv) Bharat Chamber Vs. The General Manager,  
District Industries Center reported in 2012 (6) CTC 453
- (v) Kerala Corrugated Box Vs. The District Registrar  
(General) in W.P. (C) No.10976 of 2014 (V)
- (vi) Shri Ragunath International School Vs. State of  
Rajasthan reported in 2014 (3) WLN 545 (Raj)
- (vii) New India Public School Scoiety and Ors. Vs. State  
of Rajasthan reported in 2015 (3) WLN 1 (Raj)
- (viii) Rajasthan Public School Samiti and Ors. Vs. State  
of Rajasthan reported in 2015 SCC Online Raj 8786
- (ix) Kerala Ju-Jitsu Association Vs. The District Registrar  
(General) reported in WP (C) No.323 of 2016 (M)
- (x) Geeta Rani Vs. Union of India & Ors. reported in  
2019 (2) CWC 6



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17. On the point of “retrospective operation” or “prospective operation”, Mr.A.L.Somayaji, learned Senior Counsel for petitioner College relied upon the following judgments -

- (i) The Co-operative Central Bank Ltd. & Ors. Vs. The Additional Industrial Tribunal, Andhra Pradesh & Ors. reported in 1969 (2) SCC 43
- (ii) Mahabir Vegetable Oils (P) Ltd. Vs. State of Haryana reported in 2006 (3) SCC 620
- (iii) T.Kaliamurthi & Anr. Vs. Five Gori Thaikkal Wakf & Ors. reported in 2008 (9) SCC 306
- (iv) Shree Sidhabali Steels Ltd. & Ors. Vs. State of Uttar Pradesh & Ors. reported in 2011 (3) SCC 193
- (v) Federation of Indian Minerals Industries & Ors. Vs. Union of India & Anr. reported in 2017 (16) SCC 186
- (vi) Ram Chandra Prasad Singh Vs. Sharad Yadav reported in 2020 SCC Online SC 821
- (vii) Union of India & Ors. Vs. G.S. Chatha Rice Mills & Anr. reported in 2021 (2) SCC 209
- (viii) Assistant Exercise Commissioner Kottayam & Ors. Vs. Esthappan Cherian & Anr. Reported in 2021 (10) SCC 210
- (ix) Pharmacy Council of India Vs. Rajeev College of Pharmacy & Ors. Reported in 2023(3) SCC 502



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(x) Dr.J.J.Magdum College of Engineering Vs. AICTRE & Ors.

reported in 2020 (1) Mh.L.J.74

(xi) Sujith Kumar K.V. & Ors. V. Vinod M.S. & Ors. reported in  
OP (KAT) No.542 of 2019

(x) Vijeesh V & Ors. V. The State of Kerala & Ors. reported in  
SLP (Civil) Diary No.28477 of 2020

and also relied upon for the proposition that AICTE Regulation should be placed before the Parliament as reported in **2013 (8) SCC 271 [Association of Management of Private Colleges v. All India Council for Technical Education & Ors.]** to the point that every judgment must be read as applicable to the particular facts proved or assumed to be proved.

**18.** Mr.N.Dilip Kumar, learned Standing Counsel draw our attention to the object and reasons of All India Council for Technical Education Act, 1987 and also The Emblems and Names (Prevention of Improper Use) Act, 1950 and the definition for the word “suggests”.



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19. Rival submissions made by the learned Senior Counsel for the petitioner and Standing Counsel for the respondent are kept in mind and the decisions referred thereto are perused.

20. The present Writ Petition (MD) No.21453 of 2023 is filed seeking for a declaration to declare the Regulation No.4.1(b) of the All India Council for Technical Education (Grant of Approval for Technical Institution) Regulations, 2020 F.No.AB/AICTE/REG/2020 dated 04.02.2020 as invalid, not binding upon the existing institution and direct the respondent to permit the petitioner to function in the name and style of “National Engineering College” as it being stood.

21. Counter has filed by the respondent. Based upon the counter, Standing Counsel for the respondent made submissions as extracted supra. Defending the notification, the crux of the respondent stand, as submitted by Standing Counsel is that the word 'National' in the name of the petitioner self-financing private engineering technical institution, as a prefix or suffix, will lead to misconception in the minds of the common public as if it is sponsored



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or run by the Central Government of India. He further submitted that the said regulation is introduced only to prevent the dubious naming of the institutions and to avoid the misconception in the minds of the students, parents and the public at large. The respondent AICTE, being a statutory body empowered to control and regulate the growth of technical education and institutions is empowered to issue the impugned regulations.

**21.2** In reply, the learned Standing Counsel further submitted that the respondent AICTE is the institution set up by the Act of Parliament under Entry 66 of List – I Schedule VII relating to institution of higher learning and the parliament has empowered such a body to coordinate and set standards for all technical institution in India and therefore with such capacity, the impugned notification has been issued. He further contended that the impugned notification and regulations are framed only in the large interest of the public so that the said prefix will not lead to confusion for a common man to identify whether these institutions are set up by the Government.

**21.3** Rejoinder has been filed by the petitioner college wherein it is stated that the principles of eye of common man or Doctrine of consumer eye



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has been derived from the trademark and patents and people have identified the institution as private institution for more than 4 decades (40 years) and it is one of the primary institution which is the first self-financing institution started in Tamil Nadu before 39 years and hence such a contention is fair fetched and the same is only a sweeping statement and besides draw our attention to the list of cases annexed in the **typed set numbering 99 cases where Colleges, Schools and Polytechnic** Educational Institutions having their names either prefixed or suffixed with word “National”.

22. After taking into consideration the rival submissions and contentions raised in the counter and the rejoinder filed by the petitioner college and typedset of papers including list of colleges having prefix “National” and list of educational institution having “National” and various other institutions which was approved by AICTE, this Court finds that following question of law arises in the Writ Appeal -



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(i) Whether AICTE has got the power and jurisdiction to prohibit the use of words "Indian" and / or "National" and/or "All India" and/or "All India Council" and/or "Commission" in any part of the name of a Technical Institution and/or any name whose abbreviated form leads to "IIM" /"IIT"/"IISC"/"IIIT"/"AICTE"/"UGC" in any part of the name of the Technical Institution.

(ii) If, so, assuming such power exists, whether AICTE has got the competence to frame the regulations prohibiting the use of the above mentioned names with retrospective effect?

**23.1** After perusal of the contents in the AICTE Act, as interpreted by the Hon'ble Supreme Court in the above cited decisions, we find that Section 10 of the Act deals with powers and functions of the Council. It provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and the maintenance of standards and for the purpose of performing its functions, the Council, may inter-alia grant approval for starting new technical institutions and for introduction of new courses and programs in consultation



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with the agencies concerned and also set up a National Board of accreditation to periodically conduct evaluation of technical education or programs on the basis of guidelines, norms and standards as specified by it and to make recommendation to the council or university grants commission or other bodies regarding recognition or de-recognition of the institute programs.

**23.2** On perusal of Section 12 & 22 of the Act, we find that the power of the Central Government to make rules by notification in the official gazette to carry out the said purpose of the Act has been incorporated. Since there is a specific challenge and reference to Section 23 of the Act, the same is extracted for the sake of continuity.

*Section 23 empowers the council to make regulations not inconsistent with the provisions of the Act and rules to carry out the purpose of the Act and such regulations are to be published in the official gazette. In order to appreciate the issue involved, it is necessary to set out the provisions of sub Section 2 of Section 23;*

*(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-*

*(a) Regulating the meetings of the Council and the procedure for conducting business thereat;*



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*(b) The terms and conditions of service of the officers and employees of the Council;*

*(c) Regulating the meetings of the Executive Committee and the procedure for conducting business thereat;*

*(d) The area of concern, the constitution, and powers and functions of the Board of Studies;*

*(e) The region for which the Regional Committee be established and the constitution and functions of such Committee.*

**23.3** A careful reading of Section 23, in particular, Sub Section 2 would reveal that the power to frame regulations would not embrace or in encompass within its preview as to the words to be used in the name of the technical institution as also the words not to be used in the names of the technical institution, assumes significance.



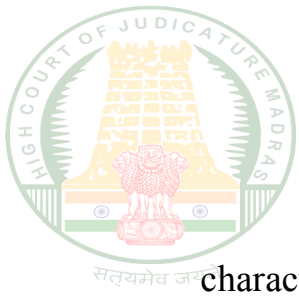
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**23.4** A reading of the provisions of the Act, would also disclose that no such power is vested in the respondent council as to what words are to be used by the technical institution in its name. Consequently, the council lacks competence and power to take any decision or to make regulation as to what words are to be used in the name of the technical institutions. Hence, we find that the respondent council lacks competence and power to take decision and also no specific power has been pointed out by AICTE in its counter affidavit or in the course of arguments as to the powers of the council to take policy decisions or make regulations in this regard.

**24.1** The second question of law is that whether the respondent has got any power and competency to frame the regulations with retrospective effect.

**24.2** It is admitted case of the respondent council that the power to frame regulations in exercise of power under Section 23 is in the nature of subordinate legislation. Therefore, it is necessary to examine whether in exercise of power to make regulations, which is subordinate legislation in

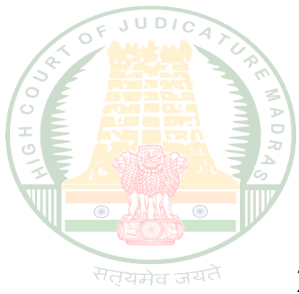


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character, the council can make regulations which are retrospective in character in the sense that it applies to all the institutions which are in existence prior to the framing of 2020 Regulations.

**24.3** At this juncture, it is relevant to refer to the decision of the Hon'ble Apex Court in the case of ***UNION OF INDIA AND OTHERS VERSUS G.S. CHATHA RICE MILLS AND ANOTHER***, reported in ***2021 (2) SCC 209***, wherein the Apex Court, after referring to the decision in the case of ***Hukam Chand versus Union of India, reported in (1972) 2 SCC 601, Regional Transport Officer Versus Associated Transport Madras (P) Ltd, reported in (1980) 4 SCC 597 1981 SCC (Tax) 9*** and ***Federation of India Mineral Industries versus Union of India, reported in (2017) 16 SCC 186*** has summed up the legal position to the effect that the Central Government or the State Government cannot make subordinate legislature having retrospective effect unless the parent statute explicitly or by necessary implication authorizes it to do so and that delegated legislation is ordinarily prospective in nature and the right or liability created for the first time cannot be given retrospective effect.



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**24.4** In the above said decision, at Para 8, the Hon'ble Supreme Court has extensively dealt with rule making power and empowerment of Central Government with regard to subordinate legislation. The relevant portion that are applicable to the question in hand is extracted as under -

*8. The extent and amplitude of the rule-making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled....*

**24.5** At Para 105.2, sub-clause 2, the Hon'ble Apex Court has held as follows -

*105.2 The Court held that the fact that the rules had been*



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*framed in pursuance of a resolution passed by the legislature or that they have to be placed on the table of the legislative body would not lead to an inference that the legislature had authorised the framing of subordinate legislation with retrospective effect: (Associated Transport Madras case [Regional Transport Officer v. Associated Transport Madras (P) Ltd., (1980) 4 SCC 597: 1981 SCC (Tax) 9], SCC p. 599 599.*

*4.....The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in Hukam Chand v. Union of India [Hukam Chand v. Union of India, (1972) 2 SCC 601].*

**24.6** At para 106, the Hon'ble Apex court has held as follows -

*106. In Federation of Indian Mineral Industries v. Union of India [Federation of Indian Mineral Industries v. Union of India, (2017) 16 SCC 186], a three-Judge Bench of this Court formulated the principles on the subject. Madan B. Lokur, J. observed that the power to frame subordinate legislation is not retrospective unless it is authorised expressly or by necessary implication by the parent statute.*



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**25.1** It remains to be stated that in the above said decision, various points have been decided by the Hon'ble Supreme Court to the extent that the Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorises it to do so. Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. [Panchi Devi v. State of Rajasthan, (2009) 2 SCC 589: (2009) 1 SCC (L&S) 408.

**25.2** The above said decision has been approved on similar lines in *State of Rajasthan Vs. Basant Agrotech India Ltd.*, reported in **2013 (15) SCC 1** and keeping in mind the above provisions, as enunciated by the Hon'ble Supreme Court with regard to whether a particular regulation a subordinate legislation and empowered to act retrospectively for the same competency of the parent legislation has to be looked into. The said preposition is kept in mind.

**26.1** Coming to the impugned notification, it is the specific stand of the



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Standing Counsel for the respondent that they have power under Section 23.

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The said Section 23 is extracted supra. Thus, the scope of lis is now narrated down, as discussed infra. Thus, it becomes necessary to examine the provisions of Section 23 in light of other provisions of the Act. Whether there is express power entrusted to AICTE to make subordinate legislature having retrospective effect or even in the absence of such a provision, the parent Act by necessary implication authorises the subordinate authority to make legislation with retrospective effect.

**26.2(a)** Obviously there is no express provision in Section 23 to make regulation with “retrospective effect” which is only a subordinate legislation.

**26.2(b)** A reading of the provisions of the Act reveals that a primordial obligation on the part of the council is to have a proper planning and coordinated development of education system throughout the country, the promotion qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in technical education system. It is for this purpose the council has been established under Section 3 of the Act.



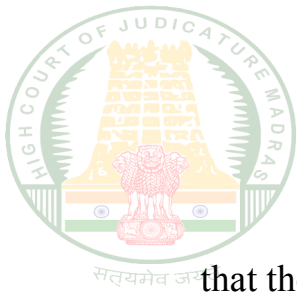
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**26.3** The functions of the council are enumerated which do not imply any power given to the council to frame regulations “retrospectively”. On the contrary, Section 10(K) provides for grant of approval for starting new technical ES institutions or for starting new courses or programs. Therefore this Court is clear that there is no power vested with the council to frame regulations with retrospective effect.

**26.4** The impugned regulation 4(1)(b) in so far as it applies to change of name containing the words stipulated therein to existing technical institutions with the threat of removal of such words by council of existing technical institutions fails to drop the words enumerated in 4(1)(a) from the names of the technical institution is clearly without any authority or power. In that the regulations are made applicable retrospectively to the technical institutions which has come into existence before the coming into force the Act or the regulations. Thus, we find that AICTE lacks competency to make to make regulation with retrospective effect.

**27.1** On a combind reading of regulation 4.1.a. And 4.1.b, we find



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that they are compliment to each other dealing with different situation.

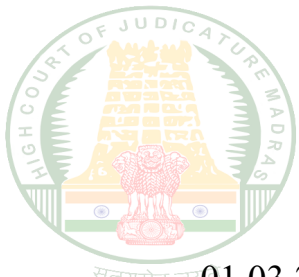
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**27.2** We like to refer to the Division Bench of Kerala High Court in the case of ***Sujith Kumar and Anr. Vs.Vinodh and 8 Ors. including the All India Council for Technical Education in OP (Kat) No.542 & 543 of 2019 vide order dated 09.12.2019*** wherein it has been held that the following twin conditions are to be satisfied to make a subordinate legislation and to give retrospective effect viz.

*(i) That the parent statute must authorize the delegate to frame subordinate legislation with retrospective effect.*

*(ii) The subordinate legislation must itself declare that the same will have retrospective effect.*

**28.1** In that case, the Division Bench of Kerala High Court was considering the issues of whether the stipulation in the 2019 Regulations which were brought into force only on 01.03.2019 can have any retrospective operation. In other words, the question is whether the stipulations in those Regulations can apply to vacancies of lecturers which arose prior to



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**28.2** The Division Bench of Kerala High Court has held that subordinate legislation cannot have any retrospective operation unless two conditions are satisfied. The 1<sup>st</sup> condition is that the 'parent statute must authorise' the delegate to frame subordinate legislation with 'retrospective effect'. The 2<sup>nd</sup> condition is that the subordinate legislation 'must itself declare' that the same will have 'retrospective effect'.

**29.** In *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana* reported in (2006) 3 SCC 620 it was held as follows -

*"41. We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. The rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.*

*42. It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne [(1911) 2 Ch 1: 104 LT 759 (CA)])" The conditions noticed above are to be cumulatively satisfied if we are to hold that the 2019 regulations have retrospective operation. No*



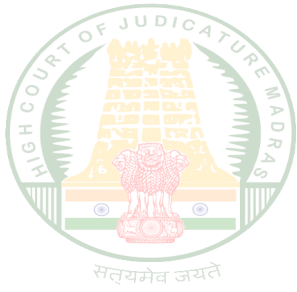
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*provision has been pointed out from the AICTE Act to suggest that the AICTE could frame regulations with retrospective effect. The regulations themselves do not declare that they are retrospective in operation. We therefore, have no hesitation to hold that all vacancies of lecturers in polytechnics which arose prior to 01.03.2019 can be filled up without reference to the 2019 regulations.*

and accordingly, we find that the above twin conditions are to be cumulatively satisfied in order to make AICTE regulations with retrospective effect. The Kerala High Court has held that no provision has been pointed out in the AICTE Act to suggest that AICTE regulations will have retrospective effect.

**30.** It remains to be stated that the said decision was rendered by the Division Bench of Kerala High Court while dealing with the case of regulation relating to filling up of vacancies of lecturers in polytechnic colleges prior to 01.03.2019 i.e., prior to the framing of regulation and the very same regulation has been considered and the competency has been considered by the Division Bench and the Division Bench of the Kerala High Court has held that in the absence of any provision in AICTE Act to suggest that AICTE Regulations will have retrospective effect, has struck down the filling up of vacancies in the new regulation.



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**31.** As against the above said order, it appears that the State of Kerala has filed SLP No.011399 to 011402 of 2021 and the same was dismissed by the Hon'ble Supreme Court on 04.08.2021 and hence we concur with such view of the Division Bench judgment of the Hon'ble Kerala High Court which has been confirmed by the Hon'ble Supreme Court. We do not find any other provisions to make a different diverge view with that of the Division Bench judgment. Accordingly, we have no hesitation to come to the conclusion that AICTE has no powers to make regulation with retrospective effect.



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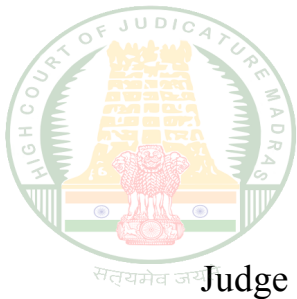
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**32.1** The learned Single Judge, while deciding W.P.No.40899 of 2022 (W.A.No.1146 of 2006) has observed at Para 10 of the judgment that All India Council for Technical Approval Process Handbook is having a “statutory backing”.

**32.2** We called upon both the learned Senior Counsel for the petitioner College and the Standing Counsel for the respective parties to address on the issue.

**33.** As observed by the learned Single Judge at Para 13 of the impugned judgment in Writ Appeal, it is not in serious dispute that the impugned advertisement came to be issued on the basis of the AICTE Approval Process Handbook which is described as a legal document under the AICTE Act, 1987 and in exercise of statutory power only, the respondent has issued the impugned advertisement. So is the finding of the learned Single Judge which is subjected to challenge in the Writ Appeal.

**34.** We have perused the impugned order passed by the learned Single



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Judge and also the AICTE Approval Process Handbook.

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**35.1** At the outset, we would like to express that such a finding is legally unsustainable “to the limited extent of retrospectivity in operation” and we put a question to the Standing Counsel for the respondent under what provision of law such an Approval Process Handbook was issued and further when there is no provision in the Act for issuance of Approval Process Handbook. The learned Senior Counsel for the petitioner would contend that in the absence of any provisions, such Handbook can only be treated as an Administrative instruction and the same cannot be assigned as a statutory power nor in exercise taken thereof. In the absence of any provisions in the Act for issuance of Approval Process Handbook. It can be only treated as set of guidelines for authorities to consider in the matter of issuance of approval for new institutions and at no stretch of imagination, the Approval Process handbook can be equated to the regulations framed under Section 23 of the Act.



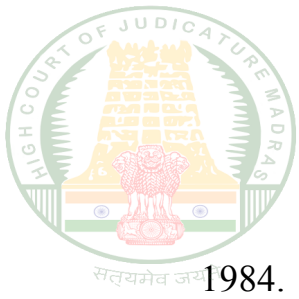
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**35.2** In this regard, we are fortified by the Division Bench Judgment of the Bombay High Court in the case of ***DR. J. J. MAGDUM COLLEGE OF ENGINEERING VERSUS AICTE & OTHERS***, reported in **2020 1 MHLJ 74**. In that case, the Engineering College, which was the Writ Petitioner, secured approval for starting the College in the year 1992 when the Act was holding the field. The council increased the land requirement norm to 25 acres which according to the council, the Engineering College failed to fulfill.

**35.3** The Hon'ble High Court, while considering the above question, held in Para 49 that the approval process handbook guidelines are only prospective and they effect the existing institution only to the extent of the new courses the institution may apply for and nothing beyond.

**35.4** Consequently, this court find that Clause 2.6 of the approval of process of Handbook shall be applicable only to new institutions set up. The Approval of process of handbook will only apply to colleges that seek approval from the Respondent, but not the institutions such as the Writ Appellant/Petitioner, which have already obtained its approval as early as



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**36.** As we find that the reasoning of the Division Bench of Bombay High Court in the above said case is squarely applicable to the facts and circumstances of this case, we have no hesitation to hold that the finding rendered by the learned Single Judge in this regard is unsustainable in law and hence the said finding hereby stands vacated.

**37.** The next contention is with regard to The Emblem Names (Prevention of Improper Use) Act, 1950. The Act prohibits the improper use of certain emblems or names, specified in the schedule without the previous permission of the Central Government or such officer of the Government as may be authorized. The Schedule to the Act contains the names and emblems. For the purpose of the present case, what is necessary is to refer to Clause 7 of Schedule which runs as follows:



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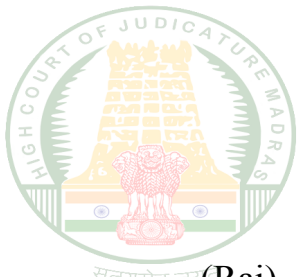
7. Any name, which may suggest or be calculated to suggest -

(i) the patronage of the Government of India or the Government of a State; or

(ii) connection with any Local Authority or any Corporation or body constituted by the Government under any law for the time being in force".

**38.** Rival submissions in this point as extracted supra are kept in mind.

**39.** After perusing the various judgments as relied upon by the learned counsel for the petitioner on the above score in (i) South India Textiles & Ors. Vs. Government of Andhra Pradesh & Ors. reported in AIR 1989 AP 555; (ii) Goenkarancho Ekvot Vs. Union of India & Ors. reported in AIR 2007 Bombay 184; (iii) Thomad Luke Vs. The Registrar of Firms in WP (C) No.21435 of 2007 (B); (iv) Bharat Chamber Vs. The General Manager, District Industries Center reported in 2012 (6) CTC 453; (v) Kerala Corrugated Box Vs. The District Registrar (General) in W.P. (C) No.10976 of 2014 (V); (vi) Shri Ragunath International School Vs. State of Rajasthan reported in 2014 (3) WLN 545 (Raj) and(vii) New India Public School Society and Ors. Vs. State of Rajasthan reported in 2015 (3) WLN 1



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(Raj), we find that the word "National" which is found in the name of the Petitioner's institution is not mentioned in the schedule. Further, the provisions of the Act do not impose a total prohibition from the use of the word "National". It only prohibits improper use of the words mentioned in the Schedule. The Schedule does not specifically contain the word "National".

**40.** Furthermore, it is apt to refer to the decision of the Bombay High Court in **GOENKARANCHO EKVAT VERSUS UNION OF INDIA & ORS.** reported in **AIR 2007 BOMBAY 184**. Para 8 of the Judgment is extracted below.

*"8. The cumulative reading of the above provisions shows that a person is prohibited from using in his trade activity any name or emblem specified in the schedule. Clause 4 of the schedule contemplates that name, emblem or official seal of the Government of India or of any State or any name which may suggest patronage of the Government of India or the State Government cannot be used by a person. Name of a place, thus, is not even mentioned in the schedule. It is the name, emblem or seal of Government of any State which cannot be used by any person in his trade activity. This is permissible, provided previous permission of the Government or such officers specified by the Government is taken by the person concerned."*

**41.** Admittedly, in the instant case, neither in the counter, nor during

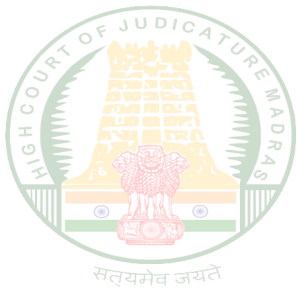


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the argument, the respondent has made any allegations that the petitioner / appellant had improperly used the word “National”. With regard to the applicability of the word “National” in respect of educational institution, the Division Bench of Rajasthan High Court (Jaipur Bench) in ***New Indian Public School Society & Ors. v. State of Rajasthan & Ors.*** reported in ***AIR 2016 Raj 62*** has dealt with the question as to whether the word “Indian” in the name of School or College is in contravention to Section 3 of the Emblems Act. The operative portion of the judgment is as follows:

*8. A conjoint reading of Section 3 of the Act of 1950 and Entry No. 7 to the Schedule appended thereto indicates that what is prohibited is not the use of a name but its improper use which is suggestive or calculated to suggest the patronage of the Government of India or the State Government. For a contravention of the Act of 1950 therefor what is the essential is that any word utilized by an entity or organization incorporating it in its name, is suggestive of or intended to suggest or reflect the patronage of the Government of India rendering it improper. Central to a contravention of the Act of 1950 therefore is the improper use of a word-relating the user to the Government of India or the Government of State. In the circumstances of the case, a bare look at the name of the petitioner-Society and all the schools and colleges run by it would indicate that the word "Indian" is merely a part of the whole name of the colleges/schools incorporating prefixes and suffixes as have been detailed herein above. The word "Indian" used in the name of the schools/colleges is not stand alone and is preceded and followed by other words with the consequence that the name taken as a whole is not*



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*even remotely suggestive or calculated to suggest that it has the backing or support or patronage of the Government of India. In fact this is not even the allegation. What is however asserted without any foundation is that the mere use of the word "Indian" in any name of a school or college is sufficient to mislead the "unsuspecting and gullible" students and the parents. That to my mind is a very patronizing view of the respondents verging on an insult to national intelligence and awareness. The basis of this conclusion appears to be ipse dixit of the respondents without being based on any objective material. It has not been submitted that even a single complaint has been received from any member of the allegedly "unsuspecting and gullible consumers" Le. the students in the various institutions of the petitioner-Society and/or their parents.*

9. .... I am of the considered view that Section 3 of the Act of 1950 does not absolutely prohibit the use of any word even if it be "Indian/National/Bharat" in conjunction with other words to express the name and style of a business/trade/vocation. It is only when it can be established in a given case that the name is being improperly used, is calculated to suggest by itself Government patronage, support or approval, it would stand prohibited under Section 3 of the Act of 1950 read with Entry No. 7 of the Schedule appended thereto. In the facts of the case as detailed herein above, to my mind, neither the name of the petitioner-Society, nor its schools and colleges where the word "Indian" is merely a part of the whole name, can even remotely be construed as an attempt to reflect the patronage or support or approval of the Government of India in running of the schools and colleges. As stated herein above, there can be no presumption as sought to be drawn under the impugned order dated 03.07.2013 with regard to



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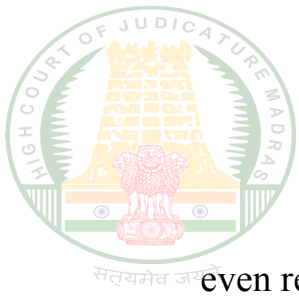
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*improper use of a name."*

**42.1** After perusing the above said decision, we find that in order to make a contravention as defined in the above said Act, what is essential is any word utilised by the School, there must be a suggestive or intend to suggest or reflect patronage of the Government of India empower, in other words, the petitioner has improperly used the word “National”. The above said any one of the three conditions has to be satisfied.

**42.2** The respondent, in his counter has stick on to the word “suggestive” and relied upon the judgment rendered by the Division Bench of this Court in another case.

**42.3** After perusing the above provisions and in the absence of any compliant from any student, college or parents that they have been misguided by the word unsuspecting or gullible consumers against the petitioner's college, we find that the prohibition which is let in Section 3 of the Act 1950, a National has to be read with in conjunction with the other words. Here, in the instant case, word “National” is merely a part of the whole name, cannot



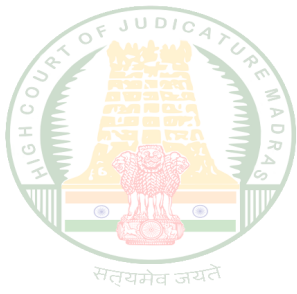
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even remotely be construed as an attempt to reflect the patronage or support or approval of the Government of India in running of the schools and colleges. Hence, no presumption can be drawn under the impugned order with regard to improper use of the name.

**43.1** It is needless to state that every judgment must be read as applicable to a particular facts proved or assumed to be proved. In this connection, we also took note of the typedset of papers filed by the petitioner to show that the AICTE has approved National Institute of Securities Market, MAA Buddha National Institute of Engineering and Technology and NIT Polytechnic (all are private and self financing institutions) to use the word “National” as prefix or “as a part of its name”.

**43.2** The University Grants Commission (UGC) has also approved National College of Pharmacy to use the word “National”. The University Grants Commission has approved the following Private Institutions to use the word “National”.



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- (i) National Degree College
- (ii) Sri Sai Baba National Degree College
- (iii) Bhagalpur National College
- (iv) Gurunayak National College
- (v) Govind National College
- (vi) Guru Tegh Bahadur National College
- (vii) National College for Women
- (viii) I.G. National College
- (ix) Maharana Pratap National College
- (x) National Evening College of Commerce
- (xi) National Institute of Engineering,
- (xii) K.P. National College of Arts & Science and
- (xiii) N.K.T. National College of Education for women

**44.** We have also taken note of the ranking of the petitioner institution by various competent authorities, as stated in the affidavits which goes to show that the petitioner is running the College in the same name for long 40 years namely 4 decades and various records enclosed in the affidavit and typedset of papers goes to show that if at this juncture, i.e. after 40 years, they



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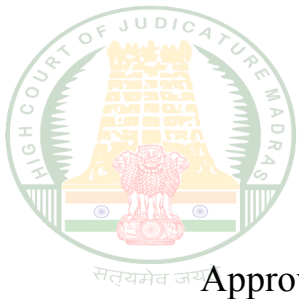
are made to delete the name “National”, it would cause prejudice for various reasons, as mentioned in the affidavits, found to have force.

**45. In fine -**

(a) the finding of the learned Single Judge in the judgment under challenge in W.A.No.1146 of 2016 that AICTE “Approval Process Handbook” is having statutory force to act retrospectively hereby stands vacated and the conditions prescribed under the “Approval Process Handbook” with regard to prohibition to use the word “National” does not have any statutory force for its retrospective action.

(b) We are in agreement with the view expressed by the Division Bench of Kerala High Court with regard to the very same question of law decided in respect of the very same regulation, i.e. AICTE Regulations, that it has no power to make regulations retrospectively which was upheld by the Hon'ble Supreme Court on 04.08.2021, as extracted supra.

(c) We are also in agreement with the view of the Division Bench judgment of the Bombay High Court with regard to retrospectivity in AICTE



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Approval Process Handbook does not have any statutory backing for retrospectivity.

(d) We are also in agreement with the view of Division Bench of Bombay High Court with regard to use of the word “National” and also

(e) with regard to use of the word “National” at the educational institutions with the Division Bench of Rajasthan High Court, as extracted supra. Hence, both the questions of law as formulated in the preceding paragraphs are held against the respondent AICTE and in favour of the petitioner College.

46. Accordingly, this Writ Petition No.21543 of 2023 is allowed and the notification is held to be invalid and the regulation to be invalid in respect of the petitioner College. In view of the above order passed in this writ petition, W.A.No.1146 of 2016 is allowed and the judgment dated 01.09.2016 made in W.P.No.40899 of 2002 is set aside. In view of the order passed in



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this writ petition, W.P.No.40899 of 2002 stands allowed on the similar lines.

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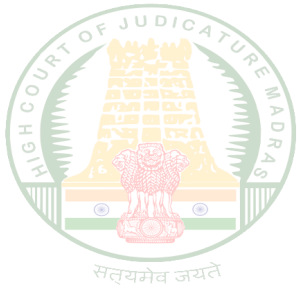
No costs.

**[T.K.R., J.] [N.S., J.]**  
**18 .03.2025**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
rgr

To

The Member Secretary  
All India Council for Technical Education  
Nelson Mandela Marg, Vasat Kunj  
New Delhi – 110 067.



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**and W.P.(MD) No.21453 of 2023**

**RMT.TEEKAA RAMAN, J.**  
**and**  
**N.SENTHILKUMAR, J.**

rgf

**Pre-delivery Common Judgment**  
**in W.A.No.1146 of 2016 and**  
**W.P. (MD) No.21453 of 2023**

18.03.2025