
(2007) 06 AHC CK 0055
In the Allahabad High Court

Amity Business School

APPELLANT

Vs

All India Council for Technical Education, All India Council for
Technical Education, Principal Secretary, Higher and Technical
Education Government of Uttar Pradesh and State of U.P.

RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11, 22, 23
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 226, 32

Citation : (2007) 06 AHC CK 0055

Hon'ble Judges : Vikram Nath, J; R.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Agarwal, J.—Amity Business School, Noida and Ritnand Balved Education Foundation, New Delhi, have preferred this special appeal under Chapter VIII Rule 5 of the Rules of Court, 1952 against the judgment and order dated 23.12.2005 passed by a learned Single Judge of this Court whereby the writ petition, being Civil Misc. Writ Petition No. 65741 of 2005, filed by the aforementioned two persons, has been dismissed with certain observations.

2. Briefly stated, the facts giving rise to the present appeal are as follow:

Ritnand Balved Education Foundation, appellant No. 2, (hereinafter referred to as "the Society") is a Society registered under the provisions of the Societies Registration Act, 1860, with its registered office situate at E-27, Defence Colony, New Delhi. Its aims and objects, inter alia, are to establish educational institution of all descriptions including public school, management training institution, colleges carrying out research in all aspect of education including applied science. It has established an institution in the name and style of Amity Business School (hereinafter referred to as "the Institution") at Sector 44, Noida, District Gautam Budh Nagar (U.P.), appellant No. 1. The Society runs various educational

institution by the name of AMITY. According to it, at present it has more than 40,000 students, 130 programmes and 22 campus all over India. It is also offering various graduate and post graduate professional technical career decrees. It claims to be dedicated for the last more than 5 years in building the nation through world class education. It offers varied courses in engineering, bio-technology, computer science, information technology, nano-technology, medical science, research, management courses, communication, design, fashion technology, law and a number of international courses. Some of its institutes, as is being claimed, have been ranked as number one private Institution in the country, namely, the Amity School of Bio Technology and the Amity School of Engineering and Technology. It has also established the Amity University, U.P. pursuant to an Act passed in the year 2005 by the legislature of the State of U.P. According to them, the Institution which has been established in the year 1994, is an autonomous institution. It does not receive any government grant/aid. It is a private unaided institution and imparts only two programmes, viz. Post Graduate Diploma in Management (Full Time) and (Part Time) (hereinafter referred to as "the PGDM (FT)" and "the PGDM (PT)"). To that extent, aforesaid programmes which require approval of the All India Council for Technical Education (hereinafter referred to as "the AICTE") had been approved by the AICTE on 16.12.1994 with annual intake of 120 and 60 students, respectively. The renewal has been continuously granted by the AICTE. The intake of students in PGDM (FT) has been increased to 150 students. The Association of Indian Universities has also recognised the PGDM course run by the institution as equivalent to MBA. The AICTE granted extension of approval to the Institution on 14.5.2004 for the period 2004-06. It claims to have been ranked at No. 8 in the, whole country amongst top business schools in terms of availability of infrastructure and in the past 10 years, its students have been placed in top multinationals and the Indian Companies of repute. It is accredited with ISO 9001:2000 and ISO 14001:1996. The Institution is an independent entity having separate building, infrastructure for the two AICTE approved courses, viz., PGDM(FT) and PGDM(PT) ever since 1995. According to them, the Amity University has no correlation with the Institution. The Institution has separate faculty and other facilities, as per norms of the AICTE. It does not impart any other programme except PGDM(FT) and PGDM(PT).

3. On 26.7.2005, a fax message under the signature of the Advisor (UG/PG) of the AICTE was received by the Institution, intimating that an inspection u/s 10(p) of the All Indian Council for Technical Education Act (hereinafter referred to as "the Act") by an Expert Committee will be made on 27.7.2005 at 11 A.M. for verifying the maintenance of norms and standard of management education. The Institution informed the AICTE that the Head of the Institution was on business trip abroad and the notice given was very short. However, the Expert Committee visited the Institution on 27.7.2005. The requisite information could not be made available to the Expert Committee as required by them. Another inspection was fixed on 5.8.2005 at 10 A.M. on which date and time the Expert Committee

visited the Institution and made the inspection. According to the appellants, the Committee was apparently satisfied with the infrastructure facilities, norms and academic standard being maintained by the Institution. However, a letter/show cause notice dated 18.8.2005 was issued calling upon the Institution to show cause within 10 days as to why action including withdrawal of approval for 2005-06 should not be taken against the Institution with respect to certain deficiencies mentioned therein. The deficiencies pointed out in the said show cause notice were to the following effect:

- (i) Running multiple courses in a single campus;
- (ii) Exclusive faculty for PGDM (FT) is difficult to ascertain;
- (iii) Fee being charged u/s 153A/153C of the Act the institution seems to be on higher side;
- (iv) The built up area is not adequate;
- (v) The computers and library are being shared with other AICTE unapproved programmes;
- (vi) Admission policy is not clear; and
- (vii) Academic ambience and hygiene is not proper as it is congested and crowded.

5. The Institution, vide letter dated 23.8.2005, replied to the show cause notice, in which it was specifically stated that-

- (i) When the Apex Court quashed the Private University Act of Chattisgarh, on 11.2.2005, leaving all the students of Amity University, Raipur, in darkness and uncertainty about their education and future, the responsibility of management programmes of erstwhile Amity University, Raipur was entrusted on appellant Institution temporarily till Amity University, U.P., became operative when the Ordinance was issued on 12.1.2005 and all the AICTE approved management programmes have been taken over by Faculty of Management Studies, Amity University, U.P., pursuant to the Amity University Uttar Pradesh Act, 2005, enacted by the legislature of Uttar Pradesh;
- (ii) The appellant Institution does not have any collaboration with any foreign university/institution and it does not conduct any coaching/teaching for and on behalf of any foreign university leading to award of any diploma/degree. The programmes mentioned in the notice are under MOUs with Amity University, which is a separate entity and even the said university did not prove for any foreign university to impart training in India;
- (iii) The appellant Institution has 25 exclusive faculty members for two years full time PGDM programme in the cadre ratio of 1:4 5:15 which fulfills the AICTE norms. A list of full time faculty members, exclusive faculty for PGDM, time table of PQDM and other programmes of AUUP were furnished alongwith the reply;

(iv) Between July 27, 2005 and August, 2005, 20 out of 25 faculty members who exclusively teaching PGDM, have interacted with the AICTE Expert Committee. On the said date, three faculty members in the class room while 2 faculty members were on leave. The Committee observed that those faculty members who were in the class room, should not be disturbed, as academics are sacrosanct;

(v) All the persons shown as members of the faculty in the information brochure, are involved in teaching and/or coordinating the programme/courses of a specific area, which includes recruitment activities also. The observation of the Expert Committee regarding fee is not factually correct. As per information provided to the Expert Committee, the PGDM fee is Rs. 4,10,000/- payable in four equal instalments over a period of two years. The laptop, textbooks for each courses are provided to each student which becomes the asset of the student concerned after completion of the course;

(vi) The fee for three years part time PGDM programme is Rs. 2,00,000/- payable in nine instalments spread over three years. Three years PGDM(PT) has since been discontinued and there have been no admissions in 2004- 05 and 2005-2006;

(vii) The figure of 1583 sq, meters indicated in earlier report is a computation and clerical error. The carpet area under instructional area is 2390 sq. meters, administrative area is 160 sq. meters, amenities area is 40 sq. meters and circulation etc. is 736 sq. meters;

(viii) The approved building plan is for the Ritnand Balved Education Foundation, which has demarcated specific area for the Institution. The resolution pf the Board of Foundation was enclosed with the reply;

(ix) Five of the class rooms shown to the Expert Committee as a matter of fact are on the, lower ground floor and on the basement. All thermos are fully ventilated and centrally air-conditioned;

(x) The Institution imparting PGDM has exclusive built up area while the University programme being run by Amity University Uttar Pradesh have separate infrastructure; and

(xi) The Admission policy is very clearly defined. The applicants are short listed on the basis of merit list of AIMA. The short listed candidates are invited for selections test on different dates, which included the group discussion and interview held by a panel of three members of which two members are very senior faculty members and at least one member from the industry. The entire selection process is fully computerized and every candidate gets a micro-site with his personal password by; which he can access his own result on the web site. Reply to every issues raised in the notice was submitted alongwith list of enclosures.

6. The respondent No. 2, vide letter dated 17.9.2005, addressed to the Principal

Secretary, Higher and Technical Education, Government. of Uttar Pradesh, respondent No. 3, communicated the order of the AICTE to withdraw the approval to the Institution for conduct of the courses of PGDM (FT) and PGDM (PT) from the academic year 2005-06. It also suggested that as the admission for the academic year 2005-06 have already taken place and the students were studying, the students already admitted in the Institution would be transferred and distributed amongst the institutes approved by the AICTE in the nearby locality, The order dated 17.9.2005 including the notice dated 18.8.2005 was challenged by the present appellants by means of a writ petition before this Court, which has been dismissed. Before the learned Single Judge, the appellants assailed the validity of the action undertaken by the AICTE on the ground that the said action was totally unwarranted, unjustified and arbitrariness was reflected on the face of it inasmuch as in passing the impugned order, no reasons whatsoever have been assigned and conclusions had been arrived at without adverting to the reply filed pursuant to the show cause notice by the appellants and coupled with this, the copy of the report of the Expert Committee, which had been made the foundation and basis for passing the impugned order, had not at all been supplied to them and on this ground the impugned order was unsustainable. Apart from this, it has been contended that even on merits, the view which has been taken, was perverse and unreasonable and opportunity ought to have been afforded to them for rectifying the deficiencies, if any, and straightaway such a drastic action of withdrawal ought not to have been taken.

7. The challenge was resisted on behalf of the Institution on the ground that the AICTE had the authority to take such necessary steps, as may be required, for compliance of its directions, and further the principle of natural justice had been complied with in the present case. Further, the principle of natural justice could not be put in straitjacket formula and requirement of natural justice must depend on the facts and circumstances of the case, further of enquiry, the rules which authority was acting, the subject matter to be dealt with and so forth. While complaining violation of principles of natural justice, party was not only required to show that it had no notice but also that it was seriously prejudiced thereby, and here no prejudice had been established, coupled with the fact that the entire records, as per earlier order of this Court had been produced and perused by the Court and on the own admission of the appellants, the only irresistible conclusion was that the terms and conditions of affiliation had been flouted as such no interference was warranted by this Court.

8. The learned Single Judge, after taking into consideration the pleadings of the parties, the relevant statutory provisions of the Act and the grounds of challenge as raised before him, came to the conclusion that the reply given by the appellants had been considered, though not very elaborately, but the finding has been returned that a large number of courses were being run in the same premises utilising the infrastructure, faculty and other facilities intended for the AICTE approved courses and, thus, diluting the standard of education. The learned Single Judge also summoned the original record and after perusing it,

recorded a finding that the representative of the petitioner had admitted that the large number of unapproved courses were being run in the same campus and, if this was not in dispute and the Expert Committee on the basis of the same had concluded that the standard of education is being diluted, then the same could not be termed as arbitrary exercise of authority. This reason in itself was enough to justify the action taken by the AICTE. The learned Single Judge also found that a comparative chart dated 2.9.2005 had been prepared containing three columns. In the first column, the deficiencies communicated had been taken note of. In the second column, reply qua the same submitted by the petitioner had been taken note of and in the third column, conclusions/observations qua the same had been mentioned indicating brief reasons why the petitioner's claim was not being accepted. On the basis of the same and other records, decision had been taken, which had been duly ratified by E.C. sub-committee, vide resolution No. 4, in meeting dated 16.9.2005 and thereafter communication dated 17.9.2005 had been sent containing brief reasons for conclusion arrived at. The learned Single Judge repelled the plea advanced by the appellants that the principle of natural justice had not been followed by not providing the report on the ground that there was no obligation cast upon the AICTE to supply the copy of the inspection report rather, to the contrary, obligation was that the AICTE should communicate to the technical institution its views in regard to the result of any such inspection and, in the present case, the gist of the report had been mentioned in the show cause notice which had been replied by the appellants, which reply did not find favour and, therefore, it was incorrect to suggest that the cause of the petitioned was, in any way, prejudiced on account of non-supply of the copy of the inspection report. The principles of natural justice had been complied with. The order withdrawing the recognition had been upheld on the ground that it was within its jurisdiction. The learned Single Judge, however, gave liberty to represent the matter before the AICTE after removing all the deficiencies, leaving it open to the AICTE to take appropriate decision on the same in accordance with law.

9. After the writ petition was dismissed by the learned Single Judge, the appellants made a representation on 19.1.2006 before the AICTE alongwith compliance report in respect of alleged deficiencies. The AICTE, vide letter dated 3.2.2006, required the appellants to furnish certain information viz., copies of the building plan which the appellants submitted alongwith its letter dated 17.2.2006. When no action was being taken by the AICTE on the representation dated 19.1.2006, the appellants preferred the present special appeal on 8.5.2006 alongwith an application seeking condonation of delay in filing the appeal assailing the judgment and order dated of the learned Single Judge, referred to above. The delay has been condoned by the Court vide order dated 19.7.2006.

10. An amendment application was filed on 14.7.2006 by the appellants challenging the inaction of the AICTE in passing any order seeking approval for the academic year 2006-07.

11. While condoning the delay and staying the operation of the order of withdrawal of approval, dated 17.9.2005, passed by the AICTE, this Court gave certain directions vide order dated 19.7.2006 which is reproduced below:

Further it has been stated by the appellants that they have already removed all the shortcomings and deficiencies and have placed the material.

The AICTE has also framed certain guidelines or norms for "Extension of Approval/Variation in Intake/New Courses in respect of Technical Educational Institutions". The document filed along with this appeal is for the year 2005-06 in respect of the management courses, and for the year 2006-07 for engineering and technical courses. However, it has been submitted from the appellants' side that there exists such guide-line for management courses also for the academic year 2006-07.

Having considered the submissions of both sides, we direct the AICTE to take a reasoned decision in the light of the facts found by it after reasoned consideration of the material furnished before it as also any fresh material which may be now furnished along with a certified copy of this order with 3 days from today, and in the light of its own guide-lines and policy as to whether the petitioner's institution, i.e., Amity Business School is or is not entitled to be granted approval for the academic session 2006-07. The said decision will be placed before this Court by the next date, i.e., 31.7.2006, along with a supplementary counter affidavit. While taking such decision, the AICTE will not only take into account the material placed before it by the appellants as stated above, but also its own guide-lines and the parameters and treatment accorded by-it to other similar institutions.

The tendency to close down educational institutions on flimsy technicalities, which do not substantially detract from the quality of education imparted to students has already been deprecated by a Division Bench of this Court in the judgment dated 8.3.2006 passed in Writ Petition No. 14255 of 2006. We are of the opinion that even without our saying so, the AICTE will also act on the same principles as laid down in the said decision.

12. Pursuant to the order dated 19.7.2006 passed by this Court, the AICTE, vide order dated 28.7.2006, refused to recognise the approval to the Institution for PGDM programme for the academic year 2006-07, which action has been challenged by means of an amendment application.

13. Vide order dated 31.7.2006, while considering the prayer for continuance of the interim order, passed on 19.7.2006, and its vacation, made by the respective parties, the Court directed both the parties to submit application by interrogatories or by way of seeking discoveries of documents. This procedure was adopted by the Court to cut short the controversy and to reduce the requirement of examining the bulky record submitted by the parties, thus, speeding up the matter for disposal. The objections regarding interrogatories/discoveries were deferred for being decided.

14. We have heard Sri R.N. Singh, learned senior counsel, assisted by Sri A.K. Goel, Advocate, on behalf of the appellants, and Sri Sudhir Chandra, learned senior counsel, assisted by Sri Ajit Kumar Singh, Advocate, on behalf of the respondents.

15. Sri Sudhir Chandra, learned senior counsel, raised a preliminary objection regarding the availability of the remedy by way of an appeal. According to him, pursuant to the directions given by this Court, vide judgment and order dated 23.12.2005 and 19.7.2006, the AICTE constituted an Appraisal Committee consisting of eminent expert and placed the entire material before the said Committee. Based on the recommendations of the Appraisal Committee and considering the entire material on record, the AICTE passed an order on 28.7.2006 rejecting the representation of the Institution for granting extension of approval for the academic year 2006-07 against which there is a provision of alternative remedy of appeal available under Regulation No. 2.7.1.3(a) framed under Sections 10 and 11 of the Act. The appeal, if any, preferred by the Institution is to be considered by the Appellate Committee which is constituted by the Chairman, AICTE, and comprises of reputed members. An educationist/academician of repute is appointed as Chairman, and the Director of IIT/NIT/IIM for management programmes, the Vice Chancellor, of an University and the Advisor, AICTE, as convener, are appointed as members of the Appellate Committee. It was submitted that the Institution should exhaust the alternative remedy available under the law and cannot by pass and approach the appellate jurisdiction of this Court. According to him, the subject matter of challenge before the learned Single Judge of this Court was an order of the AICTE dated 17.9.2005 in which the approval of Amity Business School, Noida, for the academic year 2005-06, has been withdrawn and, therefore, the special appeal has to be confined to the subject matter as to whether the learned Single Judge was correct in affirming the order of withdrawal granted by the AICTE and dismissing the writ petition and the appellate Court should not expand its scope beyond the challenge before the learned Single Judge. Apart from it, the prayer made for the academic year 2005-06 has now been rendered infructuous by efflux of time and, therefore, the appeal is liable to be dismissed by this Court on this ground also.

16. Relying upon an interim order dated 4.8.2006 passed by the Apex Court in another Special Leave Petition, where the approval of the AICTE was granted to a technical education subject to compliance of certain deficiencies by 31.8.2006, it was submitted that the expert in the AICTE are the best person to decide as to whether the recognition to a technical course should be granted or not. He, therefore, submitted that the appeal should be dismissed at the threshold.

17. In the alternative, he submitted that against the order dated 28.7.2006, the appellants, if at all, have a fresh cause of action, which can, at best, be challenged by means of a separate writ petition. It is not a continuing action and, therefore, cannot be challenged by way of amendment of the writ petition or in

the present appeal.

18. Sri R.N. Singh, learned senior Counsel, meeting out the preliminary objection raised by Sri Sudhir Chandra, submitted that the alternative remedy available to a party, as a rule, cannot be treated to be a bar for exercising powers by the High Court under Article 226 of the Constitution of India. He further submitted that the preliminary objection regarding availability of the alternative remedy was raised by the respondents before this Court, which has been negated vide order dated 10.8.2006 and, therefore, it is now not open to the respondents to raise the same plea again and again. According to him, if any order has been passed by the authority pursuant to a direction given by this Court in a proceeding which are pending, then that order can be brought on record and challenged by means of an amendment in the same proceeding because it is in continuation of an earlier dispute and the appellants are well within their right to seek the amendment in the memo of appeal by challenging the subsequent orders also. He also raised the plea of *res judicata* being applicable in the present case, as the order dated 10.8.2006 passed by this Court has already decided the availability of the alternative remedy and negated the same. Reliance has been placed on a decision of the Apex Court in the case of *Y.B. Patil and Anr. v. Y.L. Patil* AIR 1977 SC 392.

19. In reply Sri Sudhir Chandra, learned senior counsel submitted that under the Statute, i.e. AICTE Act and a Regulations framed therein a Institute gets recognition of the various technical courses to be run by it. Withdrawal of recognition has also been provided under the Statute. If any wrong decision has been taken the remedy by way of appeal has also been provided under the Statute to get it corrected and, therefore, the appellant had to be relegated to avail of the alternative remedy by way of filing appeal provided under Regulation 217.1.3.(a) of the AICTE Act, 1987. He further submitted that principle of *res judicata* is not applicable on the question of jurisdiction not affecting the rights of the parties. Moreover, it is not strictly available to the proceedings under Article 226 of the Constitution of India. In support of his plea he has relied upon the following decisions:

1. *Escorts Farms Ltd., Previously known as Escorts Farms (Ramgarh) Ltd. Vs. The Commissioner, Kumanon Division, Nainital, U.P. and Others,*
2. *Hari Chand and Others Vs. Faridabad Complex Administration and Others,*

20. In the case of *Escorts Farms Ltd. (supra)* the Apex Court has held that the plea of *res judicata* is not available where there is no contest of issue between the parties. It has further held as follows:

51. *Res Judicata* is a plea available in civil proceedings in accordance with Section 11 of the Code of Civil Procedure. It is a doctrine applied to give finality to "lis" in original or appellate proceedings. The doctrine in substance means that an issue or a point decided and attaining finality should not be allowed to be, reopened and reargued twice over. The literal meaning of *res* is "everything that

may form an object of rights and includes an object subject-matter or status" and res judicata literally means: "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment". Section 11 CPC engrafts this doctrine with a purpose that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitute as absolute bar to a subsequent action involving the same claim demand or cause of action" See Black's Law Dictionary at pp. 1304-05).

21. In the case of Hari Chand (supra) the Apex Court has held that the doctrine of res judicata as envisaged by Section 11 of the CPC does not *stricto sensu* apply to the proceedings under article 226 of the Constitution of India, We may mention there that the even though the provisions of Section 11 of the CPC is not applicable to the proceedings under Article 226 of the Constitution but the principles enshrined in the doctrine of res judicata have been made applicable to writ proceedings under Article 226 of the Constitution.

22. So far as the preliminary objection raised by Shri Sudhir Chandra regarding the availability of remedy of appeal is concerned, we may mention here that this Court vide order dated 10th August, 2006 had over ruled the technical objection about the alternative remedy of appeal. Relevant portion of the said order is reproduced below:

We therefore, overrule the respondents' technical objection about wasting further time by putting the appellants through the grind of the alternative remedy of appeal (see Regulation 2.7.1.3 (a) framed under Sections 10 and 11 of AICTE Act 1987) against the order of AICTE refusing approval for 2006-07....

The aforesaid order has become final.

23. In the case of Y.B. Patil (supra) the Apex Court has held that it is well settled that the principle of res judicata can be invoked not only in separate subsequent proceeding; they also get, attracted in subsequent stage of the same proceedings. Once an order made in the course of the proceeding becomes final, it would be binding at the subsequent stage of the proceeding.

24. In the case of U.P. State Road Transport Corporation Vs. State of U.P. and Another, the Apex Court has held as follows:

In Daryao and Ors. v. State of U.P. and Ors. AIR 1960 SC 1457 , a Constitution Bench considered the application of rule of res judicata in writ petitions. It was held that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. Similarly, in Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, which is also a decision by a Constitution Bench, it was held that it would not be right to ignore the principle of res judicata

altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights. It was further held that considerations of public policy cannot be ignored in such cases, and the basic doctrine that judgments pronounced by the Supreme Court are binding and must be regarded as final between the parties in respect of matters covered by them must receive due consideration. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, the Constitution Bench emphasized that the binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32.

25. It had further held that the principle of *res judicata* is based on the need of giving a finality to judicial decisions. The principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of Section 11 of CPC in this respect. *Res judicata* applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. See *Satyadhan v. Smt. Deoraiin Devi* AIR 1960 SC 940.

(Underlined by us).

26. In the case of *Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. and Others*, the Apex Court has held that the doctrine of *res judicata* is not merely a matter of procedure but a doctrine evolved by the courts in larger public interest. What is enacted in Section 11 of the CPC is not the fountainhead of the doctrine, but merely the statutory recognition of the doctrine, which rests on public policy.

27. In the case of *Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd.*, the Apex Court has held that:

16... However, there cannot be any doubt whatsoever that the question as to when such a discretionary jurisdiction is to be exercised or refused to be exercised by the High Court has to be determined having regard to the facts and circumstances of each case wherefor, no hard and fast rule can be laid down.

28. In the case of *Star Paper Mills Ltd. v. State of U.P. and Ors.* AIR2006 SCW 5782, the Apex Court has held as follows:

5. The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in *State of Himachal Pradesh and Ors. v. Gujarat Ambuja Cement Ltd. and Anr.* 2005 (6) SCC 499.

6. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

7. Constitution Benches of this Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, *Sangram Singh Vs. Election Tribunal, Kotah*, *Bhurey Lal Baya, Union of India (UOI) Vs. T.R. Varma, State of U.P. and Ors. v. Mohammad Noon* AIR 1958 SC 86 ; and *K.S. Venkataraman and Co. Vs. State of Madras*, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

8. Another Constitution Bench of this Court in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, *Municipal Council, Khurai and Another Vs. Kamal Kumar and Another*, *Siliguri Municipality and Others Vs. Amalendu Das and Others*, *S.T. Muthusami Vs. K. Natarajan and Others*, *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, *A. Venkatasubbiah Naidu Vs. S. Challappan and Others*, and *L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others*, *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, ; *Pratap Singh Vs. State of Haryana and Others* and *Shri Bhajan Lal and Others*, and *G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors.* 2003(1) SCC 72.

9. In *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the

Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

10. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, *Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others*, ; *Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others*, ; *C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, *H.B. Gandhi v. Gopinath and Sons 1992 (Suppl.) 2 SCC 312*; *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, *Tin Plate Co. of India Ltd. Vs. State of Bihar and Others*, *Sheela Devi Vs. Jaspal Singh*, and *Punjab National Bank Vs. O.C. Krishnan and Others*, , this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

11. If, as was noted in *Ram and Shyam Company Vs. State of Haryana and Others*, the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

12. The above position was recently highlighted in *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*,

29. In the case of *Shahnaz Ayurvedics, Noida and Anr. v. Commissioner of Central Excise and Ors. 2004 UPTC 737*, this Court after referring to various decisions of the Apex Court has held as follows:

11. Thus, the law can be summarized that rule of exclusion of the writ jurisdiction is not a law. Discretion should be exercised; by the writ Court. considering the facts and circumstances involved in each case; But where there has been violation of the principle of natural justice or failure of any rule of fundamental procedure or Tribunal places erroneous interpretation on the statutory provision, or exceeds its jurisdiction, writ petition can be entertained, even if the Statute provides for appeal/revision.

30. From the aforesaid decision it is absolutely clear that no hard and fast rule

can be laid down in exercising discretionary jurisdiction by the High Court under Article 226 of the Constitution of India.

31. Sri R.N. Singh, learned Counsel further submitted that this Court vide order dated 19th July, 2006 while directing the AICTE to take decision, had directed to take the same in the light of its guidelines and also the principle laid down by a Division Bench of this Court in the judgment dated 8th March, 2006 passed in Writ Petition No. 14255 of 2005. According to him the AICTE while passing the order dated 28th July, 2006 did not take into consideration the direction given by this Court on 19th July, 2006. According to him in view of the decision of the Apex Court in the case of Capt. Dushyant Somal v. Smt. Sushma Somal and Anr. (1981) 2 SCC 227, wherein the Apex Court has held that true, alternative remedy ordinarily inhibits a prerogative writ. But it is not an impossible hurdle. Where what is complained of is an impudent disregard of an order of a court, the fact certainly cries out that a prerogative writ shall issue and therefore this Court should not relegate the petitioner to avail of the remedy of appeal.

32. We may further mention here that the AICTE has passed the Reorder on 28th July, 2006 pursuant to the direction given by this Court vide order dated 19th July, 2006. The order dated 28th July, 2006 having been passed pursuant to the direction of this Court during the pendency of the special appeal, it would not be proper for us to direct the appellant to challenge its validity in appeal. It is a subsequent development, which has been brought on record and this Court exercises the same power of Article 226 of the Constitution of India while hearing the special appeal and can definitely go into its merit.

33. Thus we are of the considered opinion that the plea of the bar of alternative remedy raised by the respondent having once been negated by this Court vide order dated 20th August, 2006, if is not open to the respondent to press this plea again. Sri Sudir Chanra is not right in his submission that this Court at the time of hearing the appeal at a later stage can go into the question of the bar of alternative remedy.

34. On merits of the case Sri R.N. Singh, learned senior Counsel submitted that under the regulations framed by the AICTE the enquiry contemplated for grant of approval and for extension of approval known as renewal are entirely different. Regulation 2.5 provides for the requirements for grant of approval. Regulation 2.6 stipulates the procedure for processing the applications for grant of approval for establishment of new technical institutions for conduct of technical courses/programmes, whereas under Regulation 2.7 approval process for processing applications for extension of approval to existing technical institutions has been provided. According to him, on perusal of the same it would be crystal clear that the nature of enquiry contemplated in the two sets are entirely different whereas in respect of grant of approval for the first time the requirements are more stringent and for extension of approval only certain parameters are required to be gone into. According to him the appellants' case was for extension of approval in which rigid standard for grant of approval could not have been

applied by the AICTE. He further submitted that in reply to the show cause notice the appellant had given a detailed reply and explanation to each and every point mentioned in the notice which had not been adverted to by the AICTE while passing the order. Even pursuant to the order dated 19th July, 2006 when the appellant approached the authorities the AICTE did not apply its mind in terms of the observation/direction given by this Court in its order dated 19th July, 2006 while parsing the order dated 28th July, 2006. He further submitted that under Regulation 2.10 the AICTE had been given the power to relax any of the provisions of the regulations in order to remove the hardship which power had been exercised by the AICTE in a number of institutions by granting extension for compliance. According to him if there is any short coming or deficiency in the appellant institution the AICTE ought to have adopted the same yardstick and should have relaxed the conditions. According to him the appellant is not claiming parity of any illegal order which has been passed by the AICTE but is claiming parity on the basis of the order passed by the AICTE in exercise of powers under Regulations 2.10 wherein it had discretion to relax the provisions of the regulations and had exercised such discretion in respect of other institutions. He further submitted that the appellant was not provided with a copy of the inspection report as a result of which it could not meet the various deficiencies pointed out by the inspection team. He further submitted that the statutory authority of the AICTE in the present case ought to have complied with the regulations and any departure made by it without any rhyme or reason would be arbitrary. According to him the order impugned before the learned Single Judge as also the order dated 28th July, 2006 have been passed without giving any reason nor the same deals with the various points raised by the appellant, therefore, the said order is liable to be set aside on this ground alone. He further submitted that the appellant is not running any unapproved courses in the building of the institution nor the services of any faculty member is being utilized for teaching students in any other course and the infrastructure has also not been shared with others. The entire building is demarcated. He further submitted that except for a short period when the Amity University at Chattisgarh was closed pursuant to the order of the Apex Court, the students therein had been accommodated but that not at the expense of the existing students. In these circumstances, Submitted that the two orders passed by the AICTE are liable to be aside and a positive order be issued by this Court for granting approval/extension. In support of his various submissions, Sri R.N. Singh has relied upon the following decisions:

1. Sengara Singh and Others Vs. State of Punjab and Others,
2. Vishundas Hundumal and Others Vs. State of Madhya Pradesh and Others,
3. B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others,
4. Bharathidasan University v. AICTE (2001) 8 SCC 676;
5. Prof. Yashpal and Another Vs. State of Chhattisgarh and Others,

6. Rai University Vs. State of Chhattisgarh and Others,

7. Surya Dev Rai Vs. Ram Chander Rai and Others,

8. Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,

35. Sri Sudhir Chandra, learned Senior Counsel, on the other hand submitted that admittedly the, appellant has been running unapproved, courses which would be clear from the inspection report. The AICTE has been set up to maintain the standard of technical education in the country and to stop commercial exploitation. The reply given to the show cause notice did not enclose any proof in support of infrastructure/faculty and there was no denial that the unapproved courses are being run from the same campus. According to him by running unapproved courses from the same premises an impression has been given to the public that all courses are approved by the AICTE, which is effecting the academic standard of technical education in the country. The AICTE is well within its right to withdraw the recognition granted to any institution that is running any unapproved technical courses and there has been no discrimination. The order thus passed is in accordance with law and does not call for any interference. In support of his various pleas Sri Sudhir Chandra has relied upon the following decisions:

1. Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary and Others,

2. State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,

3. State of U.P. Vs. Neeraj Awasthi and Others,

4. Islamic Academy of Education and Anr. v. State of Karnataka and Ors. JT (2003) 7 SC 1;

5. Regional Engineering College, Hamirpur Vs. Gurjeet Singh and others,

6. State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,

7. Asgar S. Patel and Others Vs. U.O.I. and Others,

8. K.L. Tripathi Vs. State Bank of India and Others,

9. Grosons Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others,

10. Bhagat Ram Patanga Vs. The State of Punjab,

11. Union of India Vs. Era Educational Trust and Another,

12. Union of India (UOI) and Another Vs. S.B. Vohra and Others,

13. Union of India (UOI) Vs. Kishan K. Sharma and Others,

36. Sri R.N. Singh, learned senior counsel, in rejoinder submitted that as the

inspection report was not confronted to the appellants, the learned Single Judge was not justified in calling for the record and looking for him self the entire records. The procedure adopted by the learned single Judge is against the natural justice. He refuted the claim of the respondent that the institution is running unapproved courses or is sharing the facilities with others. According to him for the last one decade the institution has made its name for itself. Its students are offered good job in Multi National Companies by way of campus selection which itself establishes that the standard maintained by the institution is very high. The faculty members of the institution are also highly qualified and there is no question of any detonation in academic standard.

37. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

38. As would be clear from the statement of objects and reasons, the All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert body to advice the Central and the State Government for ensuring the coordinated development of technical education in accordance with approved standard. In order to provide statutory powers the Act was enacted which gives power to the AICTE for ensuring proper planning and coordinated development of the technical education system throughout the country; promotion of Qualitative improvement of technical education in relation of planned quantitative growth and regulation of the system and proper maintenance of norms and standards. The other object for which the Act was enacted is reproduced below:

Accordingly, the powers and functions assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institution, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions, As part of this overall coordination and development responsibilities, the AICTE will also give grants to institutions for identified development purposes. In addition, the AICTE will promote innovation, research and development, linkage with industry and greater access to technical education by women, handicapped, and the weaker sections of the society.

39. Section 10 of the Act defines the powers and functions of the AICTE. Some of the functions are given below:

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new, technologies to meet development requirements and "for over all improvement of educational processes;

(g) evolve suitable performance appraisal system for technical institution and Universities imparting technical education, incorporating norms and mechanisms

for enforcing accountability;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees; (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(n) take all necessary steps to prevent commercialization of technical education;

(O) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(p) inspect or cause to inspect any technical institution;

(q) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for ensuring compliance of the directions of the Council;

Section 11 empowers the AICTE to make inspection which is reproduced below.

11. Inspection (1) For the purposes of ascertaining the financial needs of a technical/institution or a University or its standards of teaching examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct.

(2) The Council shall communicate to the technical institution or. University the date on which any inspection under Sub-section (1) is to be made and the technical institution or University shall be entitled to be associated with the inspection in such manner as may be prescribed.

3. The Council shall communicate to the technical institution or the University, its views in regard to the results of any such inspection and may, after ascertaining the opinion of the technical institution or University, recommend to that institution or University the action to be taken as a result of such inspection.

4. All communications to a technical institution or University under this section shall be made to the executive authority thereof and the executive authority of the technical institution or University shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such" recommendation as is referred to in Sub-section (3).

40. Section 22 empowers the Central Government to make rules for carrying out the purposes of the Act, whereas Section 23 empowers the AICTE to make regulations to carry out the purposes of the Act. In exercise of powers conferred by Sub-section (1) of Section 23 read with Section 10(b)(g), (i), (k), (p) and (v) and Section 11 of the Act the AICTE has framed regulations. Regulation 2.5 deals

with requirement of grant of approval. Regulation 2.6 deals with procedure for processing of proposal, Regulation 2.7 deals with approval process for processing applications and Regulation 2.10 deals with power to relax which are reproduced below:

2.5 Requirement of grant of approval

(1) No new technical institution of Government, Government Aided or Private (self financing) institution, whether affiliated or not affiliated to any University shall be started and no new courses or programs shall be introduced and no increase and/or variation of intake in the existing Courses/Programs shall be effected at all levels in the field of "Technical Education" without obtaining prior approval of the Council. The Council may take legal action against such defaulting institution/Society/Trust/Company/Associated Individuals as the case may be for contravening provisions of this regulations by conducting courses/programmes in "technical Education" without obtaining prior approval from AICTE.

(2) No existing technical institution of Government, Government Aided or Private (self financing) institution whether affiliated or not affiliated to an University shall conduct any technical course/programme without prior approval of the Council.

(3) No University including Deemed University shall conduct technical courses/programmes without ensuring maintenance of the norms and standards prescribed by AICTE,

(4) No University, Board or any other body shall affiliate technical courses/programmes not approved by the AICTE.

(5) No admission authority/body/institution shall admit students to a course/programme of technical education not approved by AICTE.

2.6 PROCEDURE FOR PROCESSING OF PROPOSALS FOR GRANT OF APPROVAL FOR ESTABLISHMENT OF NEW TECHNICAL INSTITUTIONS FOR CONDUCT OF TECHNICAL COURSES/PROGRAMMES.

SUBMISSION OF APPLICATIONS/PROPOSALS.

The proposals Forms for establishment of New Technical Institutions for conducting technical programmes can be submitted by the following;

- (a) Registered Societies and Trust
- (b) Central State Government Institutions
- (c) Government Aided Institutions

The proposal Forms can be downloaded from the AICTE website; www.aicte.ernet.in. However, a DD for Rs. 500 towards application form drawn on a nationalized bank in favour of "The Member Secretary AICTE", payable at New Delhi must be enclosed with the proposal form failing which the application

shall not be considered.

2.6.1(a) The approval process for establishment of new institutions shall be open ended, allowing: the applicant Society/Trust to submit proposals to the concerned Regional Office of the Council any time round the year. The proposal for the new Institution received by the Council shall be valid for three years.

(b) Duly filled in and signed Proposal Form in four copies along with requisite processing Fee and the requisite documents in support of the proposals shall be submitted to Concerned Regional Office of AICTE.

(c) The proposals received shall be scrutinized and deficiencies, if any, be communicated by the Regional Office of the Council to the applicant Society/Trust within 15 days from the date of receipt of the proposal.

(d) the Regional Office shall also forward a copy of the proposals to AICTE HQs at New Delhi within 15 days from the date of receipt of the proposal.

2.6.2 (a) The Regional office shall in parallel, forward, within 15 days from the date of receipt of the proposal one copy each of the proposals to the concerned State Govt./Union Territories and Affiliating University for obtaining their views within 30 days.

(b) The State Govts. and the Affiliating Universities shall forward its views within 30 days from the date of receipt of the proposals from the Regional office. The State Government and the affiliated university shall provide reasons and justification to substantiate their stand and do so by the date stipulated by the Council from time to time. The views of the concerned State Government/Universities shall be taken into consideration while processing the proposals for establishment of new technical institutions. No Objection Certificate (NOC) by the applicant Society/Trust from the concerned State Govt/University is not required.

(c) The Council shall have the right to overrule the recommendations of the State Govt./University while deciding the matters of establishment of new technical institutions.

2.6.3(a) The proposal shall thereafter be considered by the following Hearing Committee at AICTEHQ.

? Here Expert members at the level of Professor

? Two members of. the Regional Committee (including Regional officer concerned)

? Advisor/Director of the AICTE HQ as convener, (b) The Hearing Committee shall be headed by an academician/professional of repute.

(c) The Hearing Committee shall meet headed once in a month to process the proposals.

2.6.4(a) The Applicant Society/Trust shall make a presentation before the Hearing Committee with necessary Documents/information as prescribed by the

Council.

(b) The list of documents/information to be placed before the Hearing Committee by the Applicant Society/Trust shall be notified by the Council in the Approval Process Hand Book from time to time.

2.6.5. Based on the recommendations of the Hearing Committee, the AICTE may issue a Letter Of Intent (LOI) which shall be valid for three years from the date of issue of LOI during which time the applicant Society/Trust shall obtain letter of approval from the Council after fulfilling the norms and Standards and other Conditions prescribed from time to time. On expiry of the 3 years duration, the Applicant Society/Trust shall make a fresh application for issuance of Letter of Intent.

2.6.6. (a) In case where letter Of Intent is denied for non fulfillment of norms and standards and conditions as may be stipulated by the Council, shall be informed along with grounds of denial.

(b) The Applicant Society/Trust shall be free to make representation anytime thereafter before the Hearing Committee (referred to para 6.3 above) on payment of prescribed fees etc. for reconsideration.

2.6.7 The applicant Society/Trust to whom a Letter of Intent has been issued shall be required to make an application to the Council, after fulfilling the norms, standards and requirements laid down by the Council from time to time, seeking suitable dates for visit of the Expert Committee along with the following documents:

(1) A non refundable processing fee of Rs. 50,000/-drawn in favour of the "Member Society, AICTE" payable at New Delhi (Government Institutions are exempted from payment of processing fee).

(2)(a) A Refundable Performance Guarantee Fee (RPGF) in the form of a Demand Draft in favour of "The Member Secretary, AICTE payable at New Delhi" for an amount as applicable to the category of the institutions indicated below (Government Institutions and Govt. Universities are exempted from payment of RPGF).

Category	of	the	Institutions	Refundabl	Performance	Guarantee fee

Engineering		&	Technology	Rs.	35,00	Lakh

Pharmacy/HMCT/Architecjure/Pianning/Applied. (Degree)			MCA/MBA/	Rs. 15.00	Lakh Arts & Crafts PGDM/	PGDMB

(b) The Refundable Performance Guarantee Fee (RPGF) shall be refunded to the concerned institution after a period of 8 years but could be carried forward in

case of any violation of Norms, conditions, and requirements and/or non performance by the institution and/or complaints against the institution, AICTE would keep the amount in the form of FDR and remit the interest to the institution on yearly basis strictly for the purpose of providing Freeships/ Scholarships etc. to meritorious and needy students and/or such other purposes as decided by the Council from time to time. On successful completion of 8 years of existence, the Refundable Performance Guarantee Fee shall be released to the Institution for the purpose of the development of the Institution.

2.6.8(a) An Expert Committee shall visit the proposed premises of the institution on payment of requisite processing fee by the applicant Society/Trust and examine the preparedness of the institution to impart quality education as per the norms & standards and conditions prescribed by the Council from time to time.

(b) The Expert Committee shall comprise of the following members:

? Three Expert members at the level of Professor nominated by the Chairman, AICTE

? Expert members nominated by the State Govt. and the respective Affiliating University.

? Concerned Regional Officer or an Officer of the Council as convener nominated by the Chairman AICTE.

(c) The Expert Committee shall be headed by an academician/professional of repute.

(d) The documents to be made available to the visiting Expert Committee shall be notified in the Approval Process Handbook from time to time.

2.6.9(a) The Report of the Inspection Committee shall be placed before the EC Sub-committee comprising:

? The Vice Chairman of the Council as Chairman of the EC Sub-Committee

? Two members of the Executive Committee nominated by the Chairman AICTE and

? Advisor AICTE as convener.

(b) The EC Sub Committee shall meet at least once in a month.

(c) Based on the Recommendations of the EC Sub Committee and other relevant information, final decision shall be taken by the Chairman AICTE on behalf of the Council to grant of "approval" or otherwise for establishment of new technical institution.

(d) The Letter of Approval shall be issued to the Applicant Society/Trust within 30 days of the date of the decision which shall be valid for two years from the date

of issue of letter of approval.

(e) In cases where approval is denied for non fulfillment of norms & standards and conditions as may be stipulated by the Council, shall be informed along with grounds of denial.

2.6.10(a) The Applicant Society/Trust may prefer an appeal any time and the appeal shall be heard by an Appellate Committee constituted by the Chairman AICTE from time to time with the following members:

? An educationist/academician of repute as Chairman

? Director of IIT/NIT/IIM (For Management Proprogrammes)?

? Vice Chancellor of an University

? Advisor (AICTE) as convener

(b) The Appellate Committee shall meet quarterly.

2.6.11 (a) Based on the Recommendations of the Appellate Committee and other relevant information, a final decision shall be taken by the Chairman AICTE on behalf of the Council for grant of "approval" or otherwise on establishment of new technical institution, (b) The decision on grant of approval or otherwise shall be communicated to the institutions" throughout the year. It shall be the responsibility-of the applicant institutions to obtain necessary affiliation/ permission from the concerned affiliating University/State Govt. etc. as per the prescribed schedule of the University/Admission Authority etc. Thereafter the Applicant Society/Trust shall furnish information about commencement of Institution within 30 days to AICTE for updating its database.

2.6.12 (a) Cases where approval is denied on the recommendations of the Appellate committee due to non fulfillment of norms & standards and conditions as are stipulated by the Council, grounds Applicant Society/Trust.

(b) The Applicant Society/Trust shall be free to make representation anytime thereafter, before the Hearing Committee on payment of prescribed fees etc. As and when the Council decides to depute an inspection committee for verifying the claims made by the Applicant Society/Trust, all costs incurred oil this account shall be borne by the Applicant Society Trust 2005.

2.7 APPROVAL PROCESS FOR PROCESSING APPLICATIONS FOR EXTENSION OF APPROVAL TO EXISTING TECHNICAL INSTITUTIONS AND ENSURING MAINTENANCE OF STANDARDS OF TEACHING, EXAMINATIONS AND RESEARCH IN AN UNIVERSITY INCLOUDING DEEMED TO BE UNIVERSITY:

2.7.1 AICTE approved technical Institutions whether affiliated to an University or not conducting technical education courses/programmes:

(a) The AICTE approved technical Institution shall submit two copies of Compliance Report in the prescribed format along with mandatory disclosure

information as defined at para 7.1(7) and a demand draft towards processing fee of Rs. 40,000 drawn in favour of Members Secretary, AICTE payable at New Delhi to the concerned Regional Office of the Council by 31st August every year.

(b) The institution shall also submit an undertaking in the prescribed format stating that the information provided in the compliance report is factual and correct and that the Council can take appropriate action, including withdrawal of approval and appropriate legal action, if found that any information provided in the compliance report is false.

2.7.1(a) The compliance report shall be processed through an Appraisal Committee comprising:

? Three Expert members at the level of Professor in the concerned subject/fields/ area of specialization or equivalent from R&D organizations or from the industry no below the rank of Scientist (F) and General Manager respectively.

? Two members of the Regional Committee including Regional Officer.

? An Officer of the Council as convener.

(b)The Appraisal Committee shall be headed by an academician/professional of repute.

2.7.1.2 (a) Based on the recommendations of the Appraisal

Committee, the Chairman AICTE may take a decision on behalf of the Council to grant of Extension of approval or otherwise. Such decision shall be communicated by 31st January every year.

(b) In those cases where extension of approval is denied for non fulfillment of norms & standards and conditions as may be stipulated by the Council grounds of denial shall be communicated to the institution and authorities concerned.

2.7.1.3 (a) The Applicant Institution may prefer an appeal, after rectifying the deficiencies and complying with the norms, standards and conditions prescribed by the Council from time to time. The appeal shall be considered by an Appellate Committee constitute by the Chairman AICTE comprising the following members:

? An educationist/academician of repute as Chairman

? Director of IIT/NIT/IIM (For Management Programmes)

? Vice Chancellor of an University

? Advisor (AICTE) as convener

(b) The Appellate Committee shall meet quarterly.

2.7.1.4. Based on the Recommendations of the Appellate Committee and other relevant information, a final decision will be taken by the Chairman, AICTE on behalf of the Council for grant "Extension of approval" or otherwise.

2.7.1.5. AICTE may carry random visits round the year any time for verifying the status of the Institutions to ensure maintenance of norms and standards.

2.7.1.6. The AICTE may cause to conduct inspections with or without notifying the dates in cases where specific complaints of mis-representation, violation of norms and standards, mal practices etc. are reported to verify the facts AICTE shall take appropriate punitive actions for any violations on false information furnished to it.

2.7.1.7. (a) The technical institutions, shall publish an information booklet before commencement of the academic year giving details regarding the institution and courses/programmes being conducted and details of infrastructural facilities including faculty etc. in the form of mandatory disclosure. The information booklet shall be made available to the stakeholders of the technical education on cost basis. The information shall be revised every year with updated information about all aspects of the institution.

(b) It shall be mandatory for the technical institutions to maintain a Web site providing the prescribed information. The website information must be continuously updated as and when changes take place.

(c) If a Technical Institution fails to disclose the information or suppress and/or misrepresent the information, appropriate action could be initiated including withdrawal of AICTE approval.

2.7.2 Universities including Deemed to be Universities conducting technical education courses/programmes:

2.7.2.1 The Universities including Deemed to be Universities conducting technical education courses/ programmes shall submit Compliance Report along with mandatory disclosures in the prescribed format to the concerned Regional Office of the Council by 31st August every year. Besides the hard copy, the Universities including Deemed to be Universities shall also be required to send the Compliance Report online in the format prescribed.

2.7.2.2. The Universities Deemed to be Universities shall submit an undertaking in the prescribed format stating that the information provided in the compliance report is factual and correct and that the Council can take appropriate action if found that any information provided in the compliance report is false.

2.7.2.3. Based on the compliance report received from the Universities, including Deemed to be Universities conducting technical education courses/programmes the Council may cause an inspection to any University, including deemed to be university for the purpose of ascertaining the financial needs, or its standards of teaching examination and research etc. The Council may also cause inspections with or without notifying the dates in cases where specific complaints of misrepresentation violation of norms and standards, mal practices etc. reported to verify the facts.

2.7.2.4 In case an University or Deemed to be University found to have been violating norms and standards of teaching examination research etc. the Council may communicate its findings and action to be taken as a result of such findings for appropriate action as deemed fit to:

1. The University/Deemed University concerned.
2. University Grant Commission.
3. MHRD Govt. Of India/State Govts concerned.

2.7.2.5. The Council may publish in newspapers and display in its website and/or any other means to inform the general public about its findings cautioning the general public.

2.4.2.6. (a) The Universities including Deemed to be Universities shall publish a information booklet before commencement of the academic year giving the details regarding the courses/programmes being conducted and details of infrastructural facilities including faculty etc. in the form of mandatory disclosure. The information booklet shall be made available to the stakeholders of the technical education on cost basis. The information shall be revised every year with update information about all aspect of the institution.

(b) It shall be mandatory for the Universities including Deemed to be Universities to maintain a web sue providing the prescribed information. The website information must be continuously updated as and when changes take place.

(c) If an University including Deemed to be Universities conducting technical education courses/programmes fail to disclose the information or suppress and/or misrepresent the information appropriate action could be initiated by the Council.

2.10 Power to relax.

The Council may in exceptional cases, for removal of any hardship or such other reasons to be recorded in writing, relax any of the provisions of these Regulations in respect of any class or category of institutions.

41. From a perusal of the aforesaid provisions we find that AICTE has been given absolute power to maintain standard of technical education and to take action in the event the Institution is not complying with the directions. It has also been empowered to relax the provisions of the regulations in case of hardship or for any other reasons. The procedure for grant of approval and for extension of approval are different.

42. In the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, the Apex Court has held as follows:

22... the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of

such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is, further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all parts of the country uniformly; that there will be a coordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country as is well-known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiencies but for want of opportunities to develop and contribute to the total good of the country.

43. In the case of Bharathidasan University (supra), the Apex Court has held that the AICTE Act does not require a University to obtain prior approval of AICTE for starting a department or unit as an adjunct to: the university itself to conduct technical education courses of its choice. However, the University is Obligated to conform to the standards and norms laid down by the AICTE.

44. Coming to the merits of the case we find that the plea of claiming parity of the appellant with other institutions merits consideration. It is not in dispute that in respect of about 85 institutions which had the deficiency spread over the entire country the AICTE had relaxed the regulations in respect of the deficiencies pointed out in the inspection report. The appellant is therefore, claiming parity under Regulation 2.10 which empowers the AICTE to relax the regulations for removing the hardship or for any other reasons. No explanation has come forward from the AICTE as to why this power could not be exercised in

the case of the appellant.

45. In the case of Nitasha Paul (supra) the Apex Court has held that the Vice Chancellor must abide by certain norms for deciding the

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49. In the case of B. Prabhakar Rao (supra) the Apex Court has held

NOW if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced, it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, there was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying, them as a separate group merely because of the delay in taking the remedial action already decided upon. We do not doubt that the Judge's friend and counsellor, "the common man", if asked, will unhesitatingly respond that it would be plainly unfair to make any such classification. The commonsense response that may be expected from the common man, untrammelled by legal lore and learning, should always help the judge in deciding questions of fairness, arbitrariness etc. Viewed from whatever angle, to our minds, the action of the Government and the provisions of the legislation were plainly arbitrary and discriminatory.

50. In the case of State of Bihar and Ors. v. Kameshwar Prasad Singh (supra) the Apex Court has held as follows:

30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them, Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court.

51. In the case of Neeraj Awasthi (supra) the Apex Court has held that past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 the Constitution will have no application. Article 14 has a positive concept. No equality can be claimed in illegality is now well settled.

52. From the aforesaid decisions of the Apex Court it is seen that the benefit of Article 14 of the Constitution of India cannot be pressed into service where by way of an illegal action of the State some benefit has been conferred upon some person. However, if that benefit has been conferred in exercise of statutory powers then the State cannot deny others from conferring the same benefit in exercise of discretionary power. In the present case we find that AICTE had been empowered to relax any of the regulations for removing hardship or for any other reasons. It had been relaxing the regulation for various institutions which were having deficiency and did not fulfill the requirement of the Act and the Rules framed therein for running technical courses like lack of building, faculty members, infrastructure etc. etc. as the case may be. In the present case also the AICTE ought to have considered the question of relaxing which power has been conferred under Regulation 2.10. It is to be remembered that if a power has been conferred upon Statutory Authority it has to be exercised upon fulfillment of the conditions enumerated therein. See *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, *Sri R.N. Singh* submitted that the appellant are not claiming parity in some illegal action of the AICTE but claiming parity in respect of the discretionary exercise of powers by it in respect of other institutions. The present is not a case claiming parity with any illegal order or purported illegality.

53. We further find that in the order of withdrawal of approval, dated 17.9.2005, AICTE had held that the institution has been found to have conducted a large number of courses in the same premises utilising the infrastructure, faculty and other facilities intended for AICTE approval courses, resulting in diluting the standard of education and several courses are being conducted in collaboration with foreign universities without obtaining mandatory approval from AICTE. It has further held that the institution is indulging in commercialization of education by charging exorbitant fees from students and lacks requisite built up area as per AICTE norms and the institution has violated the building laws and the admission process followed by the institution is not transparent.

54. The order dated 17.9.2005 did not consider the reply and the explanation given by the institution. The representation was made by the institution and AICTE vide order dated 28.7.2006 has found that the institution had not submitted the advertisement, selection committee's recommendations, minutes and the affidavits of each faculty members stating that he/she had been appointed and working exclusively for Amity Business School, Noida. It had further found that some of the faculty members do not have the requisite qualifications. So far as conducting of unapproved courses are concerned, AICTE had found that 8 institutions are being run in the same location, i.e., Sector 44, NOIDA, without the permission of AICTE which dilutes the standard of the approved courses. It has further held that the building space is not sufficient and the infrastructure and other facility including the built up area is being used for a large number of unapproved courses. The institution is further charging fee in excess of what has been prescribed by the U.P. State Level Fee Committee and the admission has been done without following transparent procedure.

55. From the records we find that a notarised certificate signed by each of the faculty members including the appointment letter of the Director of the institution, namely, Dr. Sanjay Srivastava, has been filed before this Court as part of the affidavit of Sri Sanjay Srivastava, Director. We further find that in another affidavit of Sri Sanjay Srivastava filed before this Court, a list of 85 institutions which were having deficiency of running unapproved courses, have been granted approval for the academic year 2006-07, which has been taken from the website of AICTE. We further find that the appellants have brought on record the lay out plan and the site plan alongwith the proposal seeking approval filed by the institution on 17.10.1994, In the said lay out plan, the building plan has been given and in the site plan we find that a small portion of Sector 44 has been earmarked for the purpose of running the institution. It has also been stated in the affidavit that in Sector 44, Noida, the society is possessed of 15 acres of land which has separate buildings, known as Blocks A to K, where different courses are being run. The Amity University which has been established and incorporated under the Amity University U.P. Act, 2005, possessed 60 acres of land in Sector 125, Noida and out of 15 acres campus in Sector 44, Blocks H, J, and K, Sector 44, are being used for running the courses of Amity University till the building for running the said courses is completed in Sector 125. The details of the various courses/school/colleges run in different Blocks A to K in Sector 44 has also been stated as follows:

- (a) Blocks A, B, C, D, E & G - Amity Intel-national School (10+2).
- (b) Block F - Hostel for the residence of the students of higher education.
- (c) Blocks H, J, & K. - Courses of Amity University running as a temporary measure till completion of additional Blocks for their courses in 60 acres Campus in Sector 125 NOIDA [kindly see annexures to letter dated 19.01.06 sent by ABS to AICTE in compliance of Single Judge order (Annexure -1 to Affidavit of Stay Appeal 136410/06) and the Amity University Brochure).
- (d) Block 1 - Amity School of Computer Science affiliated to U.P. Technical University and approved by AICTE.
- (e) Block D - in 1996 Amity Business School shifted to "D" Block in Sector 44. ABS is running its AICTE approved PGDM Programme in this D Block exclusively earmarked for this purposes. No other courses except AICTE approved PGDM runs in this Block D. (Approved Building Plan of Block D by Noida Authority is already on record in this proceedings - Part of AESS Affidavit with 2nd stay application no.136410/06). Copy of the approved building plan was last submitted to AICTE again on 17.10.06 in response to the letter dated 03-02-06.

56. Block D is being exclusively used for the purpose of running the private courses by the institution.

57. So far as charging of fee is concerned, it has been submitted that prior to fixation of fee by the State Level Committee, there was no fee structure

prescribed and the fee prescribed by the State Level Committee would apply prospectively and will be enforced.

58. From the aforesaid it is seen that AICTE before taking the decision, did not have full material before it. For one reason or the other, the appellants had not placed full and complete material before AICTE.

59. It may be mentioned here that this Court in Civil Misc. Writ Petition No.14255 of 2006 Doon College of Education, Sundarpur and Ors. v. State of U.P. and Ors. allowed on 8.3.2006, has observed as follows:

Refusing to continue an existing temporary affiliation or cancelling a permanent affiliation should be resorted to only where the Chancellor is satisfied that the college in question will not be able to properly serve the purpose for which the college has been established, viz., imparting proper education to the students admitted to the college. Technicalities, which do not adversely affect the aforesaid purpose, should not be allowed to persuade discontinuation of an existing temporary affiliation or cancellation of a permanent affiliation as the consequences of such discontinuation not only adversely affect the college but also adversely affect the past and future of prospective students.

It would not be desirable to unnecessarily cut down the number of educational institution on technicalities and thereby deprive the students from getting the education which they desire. If the number of education institution is cut down, the remaining institutions get a monopoly, which is capable of being misused.

60. This Court vide order dated 19th July, 2006 had directed AICTE to take a decision in the light of the observations made in the case of Doon College of Education (supra) which we find that the AICTE had failed to do.

61. In the case of Shivaji University (supra) the Apex Court has held that it is a University which must decide whether or not it can support the proposal for the commencement of a new college, If in a given case the University has gone wrong in declining such permission by relying upon ground which is arbitrary or unreasonable or otherwise defective, the Court should set aside such refusal and return the matter to the University for reconsideration in the light of its judgment.

(underlined by us)

62. In the case of Surya Dev Rai (supra) the Apex Court has held as follows:

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining

a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

... .. (9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the "act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof.

63. In the case of S.B. Vohra (supra) the Apex Court has held that the matter as regard fixation of the pay of the officers working in different High Court, must either be examined by an expert body, like the Pay Commission or any other body and the Court should not ordinarily interfere with the performance of a statutory duty by statutory authority.

64. In the case of K.S. Jagannathan (supra) the Apex Court has held as follows:

20. Thus there is no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

65. The material which had been placed before us in the form of affidavits, have to be considered by AICTE as it is the final authority to extend the approval granted to the institution running technical courses or granting a fresh approval. This Court while exercising jurisdiction under Article 226 of the Constitution of India cannot substitute itself in place of an expert body, like AICTE.

66. It is not necessary to go into the various cases cited at the Bar by the

counsel for the respective parties except those mentioned hereinbefore, in view of the findings and conclusions arrived at by us.

67. We are, therefore, of the considered opinion that the two orders passed by AICTE, namely, dated 17.9.2005 and 28.7.2006, should be set aside and AICTE be directed to decide the entire matter afresh in accordance with law. An apprehension has been raised by the learned Counsel for the appellants that the Officer In-charge of the AICTE namely Sri Yadav is against the appellants and they may not get justice, which Sri Sudhir Chandra has stated is wholly unfounded. We are of the considered view that AICTE being a responsible statutory body acts impartially and we hope and trust that it will decide the matter strictly in accordance with law and the directions/observations made in the judgment. The apprehension of the appellants is wholly misplaced.

68. We may mention here that if the institution is having a separate building for running the approved courses, the question of running unapproved courses from the said building should not be taken to be an impediment while considering the question of approval provided the unapproved courses, if any, is not run at the same time for the reason that the Amity University which is running various management courses, does not require approval from AICTE. AICTE should keep in mind the above principle while considering the use of infrastructure and other facilities including faculty members.

69. So far as the faculty members are concerned, notarised certificate which has been filed by each of the faculty members before this Court, should be taken into consideration and accepted by AICTE unless it has anything in its record to show otherwise.

70. If AICTE finds that any faculty member does not possess the requisite qualification, it may consider relaxing the requirement for a specific period and taking action thereafter.

71. The plea that the inspection report was not confronted to the appellants before passing the order dated 17.9.2005 by AICTE loses its significance as the copy of the report has now been made available to the appellants in the present proceeding.

72. The appellants shall file the requisite documents, as mentioned hereinbefore, before AICTE within two weeks and AICTE will take a decision in accordance with law and in the light of the observations made above and in the case of Doon College of Education (*supra*) while deciding the application within one month thereafter.

7. In view of the foregoing discussions the Special Appeal succeeds and is allowed. The judgments and order of the learned Single Judge is set aside. However on the facts and circumstances of the case parties are left to bear their own costs.