

(2006) 06 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (Civil) No. 9265 of 2006

Amity School of Engineering and Technology

APPELLANT

Vs

All India Council of Technical Education and Others

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11
Constitution of India, 1950 — Article 14

Citation : (2006) 06 DEL CK 0042

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Rajiv Nayyar, Arun Jaitely, Sunil Gupta, Vinay Garg and Kanchan Singh, for the Appellant; Sudhir Chandra Chava Badri Nath Babu and S.N. Arora, for the Respondent

Judgement

Anil Kumar, J.

C.M. No. 6877/2006

1. This is an application for interim relief by the petitioner. The petitioner has sought setting aside of orders dated 24th February, 2006 and 25th May, 2006 placing the petitioner institution in the category of "No Admission" for the academic year 2006-07 and consequently direction to the respondents to immediately communicate to the Secretary/Director, Training of Technical Education, Delhi and to Guru Gobind Singh Indraprastha University, Kashmere Gate, New Delhi permitting the petitioner to take admission in the academic year 2006-07 and direct the respondent to remove remarks "No Admission" for the academic year 2006-07 from its website shown against the name of the petitioner.

2. Brief facts to comprehend the controversy are that petitioner is one of the institutions of Ritnand Balved Education Foundation which is a registered society established in 1986 which runs various educational institutions in the name of

AMITY including the petitioner. Petitioner was granted a no-objection certificate by the State Government on 29th August, 1998. Thereafter, petitioner applied to Guru Gobind Singh Indra Prastha University (GGSIPU) for grant of affiliation. The affiliation was granted to the petitioner on 14th January, 1999. A certificate/letter of viability was also granted to the petitioner by All-India Council for Technical Education (AICTE) for establishment of the institution and to conduct engineering decree programme in four courses.

3. Petitioner contended that in order to ascertain the fulfillment of prescribed norms, every year inspection is conducted by Joint Assessment Committee comprising of experts and officers of the University and the State Government and on compliance of the norms, the affiliation is extended with or without conditions.

4. It was asserted that the inspections were conducted annually and thereafter the affiliation has been extended. Pursuant to the joint inspect conducted by the Joint Assessment Committee for the academic session 2006-2007, the petitioner institution was awarded 592 points out of 1000 points. Since the petitioner does not have land in the institutional area with proper land use, he was awarded 25 points out of 150 points, however, on account of availability of built-up area, as per norms of statutory bodies/University, the petitioner has been awarded 100 points out of 150 points. The petitioner produced a copy of the report of the Joint Assessment Committee as Annexure P4. Since the petitioner was awarded 592 points out of 1000 points, he was placed in category B and was recommended for various programmes for 2006-2007 subject to further approval by respondent No. 1 (AICTE).

5. So far as All-India Council for Technical Education, respondent No. 1, is concerned, by its letter dated 23rd June, 2005, it had extended approval for intake of 300 students, however, while granting approval, three deficiencies were pointed out which were for providing eight number of faculties in place of nil faculty; appointment of a Director with requisite qualification and experience; and about running the institution on a temporary site and asked to run it from a permanent site.

6. The Government of NCT had also issued policy guidelines for issue/revalidation of no-objection certificate for courses imparted especially for the existing institutions running from temporary premises, which are as follows.

Existing institutions in temporary premises

1. All such institutions running in temporary premises are give a time limit of two years 2005-06 to 2006-07) to shift to their permanent campus.

2. The institutions running in school premises/buildings will also be considered in category (i) above and they will also have to make arrangements to shift within two years to their permanent campus (i.e. 2005-06 to 2006-07).

3. Revalidation of NOC will be needed for existing institutions in temporary

premises by the concerned Department of Govt. of Delhi. The institutions should apply for the same to the concerned Department of Govt. of Delhi which shall decide for the revalidation or otherwise.

7. The petitioner, it seems, applied for allotment of land in the institutional area in order to have a permanent place. An Institutional Allotment Committee of the Delhi Development Authority in its meetings held on 13th February, 2003 and 17th February, 2003 under the Chairmanship of Commissioner (Land Disposal) recommended a plot of land measuring 12000 square meters in Sector 17, Dwarka for the petitioner engineering collage. Subsequently, the recommendation for allotment was modified and it was decided by Delhi Development Authority to auction the plots to the institutions and consequently an auction was held for the plots for management, technical and higher technical institutions. The petitioner participated in the auction and gave the highest bid of Rs.29.00 crore in auction which was held on 6th March, 2006 and also deposited 25% of the bid amount amounting to Rs.7.25 crore.

8. The averment of the petitioner is that keeping in view the delay in making the land available for construction of building, etc., the State Government has permitted for running of engineering collages from the temporary sites up to 2006-2007.

9. The grievance of the petitioner is that though the approval for 2005-06 had been granted after inspection, an inspection was conducted on 16th September, 2005 without advance notice in consonance with Section 11 of the AICTE Act which contemplates sufficient notice before inspection. The plea of the petitioner is that hardly any time was spent by the team inspecting the collage as the Inspecting Committee came around lunch time and spent just one and a half hour in the petitioner institution and thereafter rushed to other institutions. Section 11 of the Act is as under:-

For the purposes of ascertaining the standards of teaching, examination and research, the Council may cause an inspection of the technical institution in the following manner:-

(a). the Council shall communicate to the technical institution the date on which any inspection is to be made and the technical institution shall be entitled to be associated with the inspection;

(b) the Council shall communicate to the technical institution its views in regard to the results of any such inspection and may, after ascertaining the opinion of the technical institution, recommend to that institution the action to be taken as a result of such inspection;

(c) the technical institution shall report to the Council the action, if any, which is proposed to be taken for the purposes of implementing any such recommendation.

10. Thereafter, a show cause notice dated 14th October, 2005 was issued to the

petitioner that pursuant to inspection conducted on 16th September, 2005, a number of deficiencies have been noticed. The petitioner institution was, Therefore, asked to show cause as to why approval for the year 2005-2006 be not withdrawn on the basis of deficiencies which were noticed by the Inspecting Committee on 16th September, 2005. The deficiencies which were invoked for withdrawal of approval on inspection conducted on 16th September, 2005 were as under:-

- (a) built up area and land - Institute is running in rented building and the land available is 1.5 acres thereby causing a shortfall of 3.5 acres;
- (b) mechanical engineering lab and workshop are located in basement;
- (c) big spaces have been partitioned with wooden panels which may lead to fire hazard;
- (d) the built up area is not suitable for imparting technical education as there is inadequate ventilation in the corridors/stair cases etc.
- (e) Faculty- Director with the institute is over-aged (more than 65 years and hence against A.I.C.T.E. norms);
- (f) Faculty deficiency and cadre ratio deficiency still exists;
- (g) Lab facility Physics and Chemistry labs are poorly equipped;
- (h) Computer Facility Computer are short by 50 numbers;
- (i) Hostel Facility Hostel facility is not available for boys and girls in the institutions which is an important amenity;
- (j) Misrepresentation of facts institute has indicated that ECE, CSE, IT, MAE and ICED are accredited but they are not;
- (k) Others Students common room is not available, foreign University collaboration have been done without AICTE approval and private company Excel is running in the same building.

11. That prior to the inspection on 16th September, 2005 abruptly by AICTE, a communication dated 23rd June, 2006 was sent granting approval subject to certain conditions for the year 2006-07. The communication categorically stipulated that deficiency in respect of faculty could have rendered the petitioner liable for punitive action including placing them in 'No Admission' category, however, the Council decided to take a lenient view and to give yet another opportunity to rectify the deficiency, particularly with regard to faculty shortage, proper cadre ratio and requisite qualification. The relevant para of the communication dated 23rd June, 2006 are as under:-

The deficiency in respect of faculty (including proper cadre ratio and qualification etc.) could have rendered your institution liable for punitive action including being placed in no admission/reduced in take category. However, the Council has

decided to take a lenient view and give you yet another last opportunity to rectify the deficiencies particularly with regard to faculty shortage, proper cadre ration and requisite qualification. Course-wise approved intake in respect of AMIT SCHOOL OF ENGG and TECHNOLOGY, BIJWASAN, PALAM VIHAR ROAD, TEMPORARY, ISAPUR, NAZAFGARH, DELHI., your institution for the year 2005-06 is as under:-

Course (s)	APPROVED INTAKE 2004-05	APPROVED INTAKE 2005-06
COMPUTER SC and TECHNOLOGY	ELECTRONICS and COMM.	ENGG. INFORMATION TECHNOLOGY
INSTRUMENTATION and CONTROL	MECHANICAL ENGG	60 60 60 60 60 60 60 60

The deficiencies which were pointed out were as under:-

Course (s)	Number of Faculty Required	Number of Faculty Available	Shortfall in faculty
Instrumentation and Control Engg.	8	Nil	8

12. That the compliance of deficiencies were communicated by the petitioner on 14th September, 2005 and the inspection was done on 16th September, 2005 and thereafter show cause notice dated 14th October, 2005 was issued. The petitioner categorically made a grievance about respondent No. 3, Dr.R.A. Yadav that his attitude was very revengeful and resenting. It was stated that he made undesirable remarks and even communicated indirectly that hearing which was to be given to the petitioner pursuant to the show cause notice dated 14th October, 2005 issued pursuant to inspection dated 16th September, 2005 would be a mere formality to overcome the legal hurdle to ruin the petitioner institution. The petitioner categorically communicated this fact to AICTE by a letter dated 27th December, 2005.

13. The petitioner communicated and pointed out to the respondents that the decision to allot the land was taken by the Delhi Development Authority, however, the decision was rescinded and thereafter plot was auctioned. In the auction for purchase of plot of petitioner institution, he gave the highest bid of Rs.29.00 crore on 6th March, 2006 and also deposited 25% of the bid amount, amounting to Rs.7.25 crore however, the bid was rescinded. The petitioner also pointed out about the removal of other deficiencies regarding faculty of course Instrumentation and Control Engineering and about the Director.

14. The petitioner filed the reply to show cause notice on 18th November, 2005 giving the details of facts leading to non allotment of permanent site; appointment of permanent faculty; there being no deficiency regarding laboratory facilities; adding of fifty more civil computers even prior to the visit of the inspection committee which were not noticed at the time of inspection; renting of 12 houses for hostel which were however not utilised by the students and Therefore renting of less house according to the students" requirement which are lying vacant and replied to all other deficiencies alleged in the show cause notice. A list of faculty which had joined along with the date of joining and qualifications were also given. The petitioner gave the details leading to non

allotment of permanent site as follows:

Built up area and land You would kindly recall that on the recommendation Govt. of Delhi, DDA allocated a piece of land for our institute at Dwarka in February 2003 during the meeting of the land allotment committee. However, due to the CBI case against the then Chairman DDA and ensuing land scam, the allotment could not be materialised. Now the government has taken a decision to allot land to the institutions of higher education/technical education only through auction. We are constantly following up the matter with DDA for allotment of a suitable land for the institute. As per our meeting with Mr.O.P. Mishra, OSD, DDA on 25th August, 2005 we have been made to understand that the advertisement by DDA is likely to be released very shortly and we are hopeful of getting the land. We will very much appreciate if Govt. of Delhi/AICTE may help us in this direction for getting the land from DDA. We assure that once the land is given to us we will construct the building as per requirement of AICTE within a period of six months. We are pursuing DDA, Govt. of Delhi and the Central Government to allot the land continuously as per Diary maintained by us, Annexure II. Further it is submitted that the Government of NCT of Delhi has permitted to continue on temporary site up to 2006-07 due to change in rules for allotment of land for institutions of higher learning as per Government of India Notification, copy enclosed (Annexure III). We are not aware of, nor have we been able to find, any AICTE norms against workshops being in the basement or wooden partitions and would appreciate if they can be pointed out to us.

15. The petitioner produced various documents in support of their plea of fulfilling the alleged deficiencies and also communicated about irrelevant documents demanded by the respondent within a very short time. In the communication dated 27th December, 2005 regarding the hearing on the same date at 11.00 A.M the petitioner pointed out in the following terms:

During the course of the so called hearing which ended at about 5.15 p.m. the committee desired us to submit numerous documents including information which do not relate to the institution concerned, till 12:00 noon on 27th December, 2005. We bring to your kind notice that the time is too short and it is virtually impossible to compile all the documents for submission to the Committee. We do not know whether the requisite information has anything to do with the merits of our case pertaining to the institution or not. In these circumstances, it is necessary that we may be communicated in writing all the information you need from us, so that we are in a position to give you the relevant information within reasonable time. As already requested, we once again reiterate our request for hearing after the submission of the documents, so that we are in a position to explain each and every document and query which the members of the Hon ble Committee may have.

16. The behavior of respondent No. 3 was also complained of during the hearings and a few senior professors also made a note about various remarks made by the respondent No. 3 which are as follows: Note on meeting at AICTE Office:

Dr. R.A.Yadav (Vice Chairman) was dominating the proceedings and was often sarcastic and had preconceived views and ideas. The whole environment was more of interrogation. He would hardly let us complete our statements. He pressurised us to give answers in `Yes" or `No" and asked one numerous type of evidence on the spot. Some of the remarks are as follows:

1. You should run the Institution as academic institution and not like corporates.
2. What is this Acting Director Is he an actor
3. Prof. Raj Singh, do you have any association with any Institution as Director or Director General Please clarify in writing.
4. On explaining that Delhi Government has permitted to continue from Temporary site till 2006-07, Dr. Yadav said, Delhi Govt. Might have given you extension, that does not mean anything. Any babu can give any clearance that does not mean that we approve it.
5. We have met hundred of institutions everybody says we are quality institutions . You are not saying anything new.
6. If you have exclusive faculty and computer, how can you be financially viably
7. For everything they were asking, what is the evidence, prove it within next 15 minutes.
8. You need to prove your points. Do it now, there is no time available after this.
9. On seeking the list of papers written by ASET faculty, said this is no research.
10. To prove the address of some programs, submit brochures, letter heads, receipt of fees, photographs and certificates and approved land documents.
11. Regarding hostel, they want evidence in the form of room numbers, names of occupants, fees receipt and address of the hostel.
12. If you have common room with music when is the time for students to use it.
13. We don t belief you that the faculty is exclusive for the program. We want details of all programs of Amity with names of programs, faculty, salary, TDS, appointment letters, joining report and time table for the last one year as evidence.
17. After the meeting of 26th December,2005, the petitioner submitted the following documents which are as follows:

1. Faculty Line
2. Appointment letters of faculty
3. Joining reports of Faculties
4. TDS Certificate

5. Salary Statements of Faculties
6. Time Table showing Physics and Chemistry Labs.
7. Computer Installed
8. Photographs of Student's common room
9. Admission list showing general + Management quota for 2004 and 2005
10. Letter from DDA dated 8th December, 2005 regarding Section and Delhi Govt. permission.
18. In the hearing held on 16th January, 2006 details about fulfillment of all the deficiencies and documents in support thereof were relied on and a specific communication dated 16th January, 2006 was also sent. However, by order dated 24th February, 2006 without considering the documents produced and pleas raised by the petitioner, the petitioner has been put in the category of 'No admission' for the year 2006-07.
19. The petitioner, in the facts and circumstances, have challenged the action of the respondent in putting the petitioner institution in no admission category as arbitrary, discriminatory and violative of Article 14 of the Constitution of India. According to the petitioner, the order has been passed intentionally very late so that the petitioner may not be able to avail the opportunity to get the appeal decided within time which was also decided on the same date when the petition was filed by the petitioner on 25th May, 2006. The orders passed by the respondents have been termed as unreasoned and vague and the grounds for passing the order putting the petitioner in no admission category has neither been mentioned in the show cause notice or in the order dated 24th February, 2006. The petitioner invoked the principle of natural justice to contend that they have been violated.
20. The petitioner made a grievance that the show cause notice was for the proposed withdrawal of the approval for the year 2005-06 whereas an order has been passed putting the petitioner in no admission category for the year 2006-07 and thus the respondent has travelled beyond the scope of the show cause notice. According to the petitioner putting him in no admission category will have far-reaching consequences and will have negative impact on the careers of the students already studying in the school and will also deprive various candidates from taking admissions in the engineering institution.
21. Categorical averments were made regarding bias of respondent No. 3. It was contended that the respondent No. 3 was a Director of Lal Bahadur Shastri Institute of Management before his appointment with AICTE. The said institution despite having various deficiencies and lack of proper infrastructure have been granted approval for two years at a stroke. The petitioner also cited the various instances where despite the various deficiencies, such an action has not been taken and petitioner has been singled out from amongst the various engineering

collages and thus the action of the respondents being discriminatory.

22. Regarding the deficiencies pointed out by communication dated 23rd June, 2006 and their rectification till 31st May, 2006 for extension of approval for the year 2006-07, it was contended that the land has not been allotted to the petitioner on account of various acts of the Delhi Development Authority and the Government. It was contended that no adverse action can be taken against the petitioner on account of land being not allotted as the Government has already permitted running of petitioner engineering collage from the temporary site for the academic year 2006-07. The petitioner also referred to an order dated 9th February, 2005 passed in Writ Petition (Civil) No. 2459-60 in case of Bhagwan Mahavir Education Society Versus D.D.A and Anr. order dated 17th April, 2006 in Writ Petition No. 1669-92/2004 titled Society for Employment and Carrier Counselling (Registered) and Ors. v. Chairman and DDA, to contend that on the ground of non-allotment of the land, the petitioner cannot be denied the approval and/or the petitioner can be put in no admission category .

23. The petitioner also emphatically contended that a permanent Director of the Institute was appointed and the faculty was also appointed so as to comply with the three deficiencies pointed out by the respondent which were to be fulfilled by 31st August, 2005 to entail approval for the year 2006-07.

24. Per contra the respondents have refuted the plea of the petitioner for grant of interim order emphatically contending that the show cause notice was issued to the petitioner institution for the purpose of giving an opportunity to the institution to fulfill the deficiencies and otherwise to take an action against the petitioner including withdrawal of approval for the session 2006-07. According to the respondents, a lenient view has been taken by AICTE in spite of persistent violation of the norms and standards prescribed by the AICTE as the penalty imposed is only for putting the institution under on the ground for one year, i.e., 2006-07. The grounds for putting the petitioner in no admission category as stipulated in the order dated 24th February, 2006 and in the show cause notice were reiterated. The learned Counsel for the respondents was emphatic that not only the requirement of the land has not been fulfilled ,the present building from where the petitioner is running the institution has serious deficiencies. Great emphasis was given on the inadequacy of faculty including the qualified Director. According to the respondent the laboratory equipment, computers, built up area and other essential facilities are also not in consonance with the norms of AICTE.

25. Regarding the inspection without giving prior notice, it was asserted by the respondents that under the norms of the respondents, the inspection could be carried out and, Therefore, it was done on 16th September, 2005 and thereafter show cause notice dated 24th October, 2005 was given. Before taking action, the petitioner institute was give reasonable opportunity to reply to show cause notice and even personal hearings on 26th December, 2005 and 16th January, 2006 were given. According to the respondents, the petitioner failed to demonstrate and show that the deficiencies have been rectified by the petitioner. Regarding

the institution not possessing the land, it was stated that no document was submitted regarding acquisition of land and no documents were submitted to show that the existing building is sufficient for intake of 1200 students @ 11.7 sq.mtrs. per student. According to the respondents, Therefore, there is not only the deficiency of petitioner institution in possessing land as per the norms but there is serious shortfall with respect to total built up area especially for institutional purposes. The deficiencies pointed out regarding laboratories and workshop of mechanical engineering were also held to be against the petitioner as the petitioner has not submitted any documents regarding shifting of laboratories from the basement to a proper location and the deficiency regarding partition of big halls by wooden partition was also held against the petitioner on account of non-production of documents regarding removal of partition.

26. Regarding the deficiency of the no permanent Director being appointed by the petitioner, it was stated that no documentary evidence regarding minutes of Board of Directors, bio-data of candidates and appointment letter regarding appointment of Director and faculty had been provided leading to the inference that the petitioner institution does not have permanent Director. On account of non-production of bio-data of candidates and various other documents, it was inferred that there exist a deficiency with respect to availability of faculty and cadre ratio as per norms and Physics and Chemistry laboratories were also found to be poorly equipped and adequate number of computers were also not available. Hostel facilities for girls and boys and students common rooms were also found to be inadequate as no evidence providing adequate hostel facilities for students had been produced. Similarly, it was contended by the respondent that no evidence of shifting of a private company being run from the same institutional premises was provided leading to the inference that the various deficiencies exist and consequently holding that the petitioner is not entitled for admission of any students during the session 2006-07.

27. Regarding discrimination, the respondents contended that none of the institutions referred to by the petitioner were found to have land deficiency except Guru Prem Sukh Memorial Collage of Engineering, Delhi. So far as Guru Prem Sukh Memorial Collage of Engineering is concerned, it was asserted that a show cause notice has already been issued against him as to why an action be not taken and a representation has been made by the said institution which is under consideration. Regarding other institutions, it was contended that there are no major deficiencies warranting putting those institutions for no admission/withdraw of approval. It was stated that all these other institutions have been asked to comply with and remove the deficiencies by 31st August, 2006.

28. Referring to the inspection carried out by the respondent on 16th September, 2005, it was stated that even by letter dated 23rd June, 2005, it was communicated to the petitioner that surprise inspection could be carried out and Therefore the petitioner could not contend that the surprise inspection could not be carried out by the respondents. The respondents have relied on Section 10(p)

of AICTE Act to contend that the respondents could cause inspection at any time without prior notice. It was also contended by the respondents that various complaints had been received from various authorities of the Government of India alleging that AICTE is showing favors to the petitioner institute and, Therefore, in order to protect the dignity and the honour and in order to ensure due discharge of statutory duties, inspection and issuance of show cause notice and hearing by an expert committee was carried out by the respondents as a part of their statutory duty.

29. According to respondents had the petitioner complied with the deficiencies in accordance with the notice put up by AICTE at its website, the impugned order would not have been passed. In the circumstances the averment of the respondents was that AICTE had acted bona-fide and the petitioner failed to rectify the deficiencies despite various show cause notices and various opportunities and consequently in order to mitigate the enormous pain and agony which may be caused to the innocent students, the action has been taken to put the petitioner in "no admission" category. Regarding the deficiencies of having a permanent site for the institution, respondents contended that no institution has been put under no admission category if the deficiency was only regarding running the institute from a temporary location and the institute not having a permanent land and consequently in case of petitioner, a lenient view has been taken in the larger interest of the students and particularly the interest of technical education in the country.

30. Referring to the averments of petitioner against Lal Bahadur Shastri Institute of Management, New Delhi it was stated by the learned Counsel for the respondents on the basis of the affidavit of Dr.K.Madhu Murthy, Advisor (Admn) that the said institute was earlier granted approval for a period of three years i.e 2000-2003 by letter dated 3.8.2000. According to the respondents, Lal Bahadur Shastri Institute of Management, New Delhi is one of the best 20 institutions in the country on account of various surveys. According to the respondents that institute is governed by the professional board and after the respondent No. 3 was appointed in AICTE he had nothing to do with Lal Bahadur Shastri Institute of Management where the charge of the director has been taken over by Dr.Roshan Lal Raina and this information was communicated with effect from 4.10.2005. In the same breadth it was admitted that the respondent No. 3 still continued to be editor-in-chief of Lal Bahadur Shastri Journal of Management and Research which was stated to be irrelevant as it is not a salaried job or assignment that respondent No. 3 is holding as editor-in-chief in the said institute. It was stated to be purely an honorary nomenclature attached to the people of high repute as a gesture of goodwill and honour.

31. An affidavit was also filed by respondent No. 3 reiterating the averments made by Dr.K.Madhu Murthy regarding Lal Bahadur Shastri Institute of Management, New Delhi. According to him also the said institute is rated one of the best 20 institutions in the country by various surveys and that after joining

the AICTE, he has not been associated with Lal Bahadur Shastri Institute of Management, New Delhi in any manner. The averments of respondent No. 3 for their true perusal are extracted as under:-

2... It is pertinent to mention here that Lal Bahadur Shastri Institute of Management, New Delhi is rated as one of the best 20 institutions in the country by various surveys. The said institute is governed by the professional Board, whose chairman is Shri Anil Shastri, son of Late Shri Lal Bahadur Shastri Ji, the former Prime Minister of India. It is submitted that after joining in the AICTE, the respondent No. 3 has not associated with the Lal Bahadur Shastri Institute of Management, New Delhi in any manner as alleged by the petitioner institution. It is submitted that Dr.Roshan Lal Raina has assumed the charge as Director of the said institute w.e.f 4.10.2005 and the said information was duly communicated to the AICTE vide letter dated 6.10.2005 of the above institute. It is thus absolutely wrong to say that the respondent No. 3 is still holding the charge of Director of Institute. It is absolutely unfair to name the Respondent No. 3 in the present writ petition. The petitioner deliberately dragging several unnecessary and irrelevant issues in the present writ petition instead of dealing with the deficiencies that are required to be complied with. It is totally irrelevant and unnecessary to refer that Respondent No. 3 is still Editor-in-Chief of LBS Journal of Management and Research. In this regard it is most respectfully submit it is not a salaried job or assignment that the respondent is holding as Editor-In-Chief. It is purely an honorary nomenclature attached to the people of high-repute as a gesture of good-will and honour.

32. On these grounds the learned Counsel for the respondents very emphatically submitted that the petitioner does not have a prima facie case and will not suffer any irreparable loss in case the orders passed by AICTE putting the petitioners in "no admission" category is not stayed. It was also contended that in the circumstances inconvenience caused to the petitioners shall not be much more than that of respondents and the students and consequently the balance of convenience was also stated to be in favor of respondents.

33. In this factual matrix what is not disputed is that the petitioner was granted no objection certificate by the Government of NCT and the petitioner was also affiliated to Guru Gobind Singh Indraprastha University. The petitioner was granted approval by the respondents since 1999. The petitioner was given a show cause notice dated 16th/19th March, 2001 pointing out the deficiencies and asking him to show cause as to why the petitioner be not put in `no admission" category on account of deficiencies pointed out. It seems most of the deficiencies were rectified as neither the approval granted was withdrawn nor the petitioner was put in `no admission" category. Thereafter on 8.12.2003 and 14.5.2004 other show cause notices were again issued to the petitioners for his failure to shift the institution to a permanent site but no other deficiencies were spelled out. Later on the petitioner was again put to notice in 2004 that against the requirement of 255 computers the institution only had 205 computers thereby

having a shortfall of 50 computers and against the requirement of 60 journals, the institution had only 8 journals and thereby a shortfall of 42 journals and against the requirement of 22 Assistant Professors the institution had no Assistant Professor. No other deficiencies were pointed out.

34. Thereafter till 23.6.2005 no other show cause notice was given nor the approval granted was withdrawn nor the petitioner was put in 'no admission' category. By a communication dated 23.6.2005 conditional approval was granted to the petitioner for 2006-07 on taking a lenient view despite the deficiency of proper cadre ratio and qualification etc. The deficiencies which were pointed out were pertaining to petitioner not having number of faculty of 8 in the course of Instrumentation and Control Engineering; director not with requisite qualification and deficiency of running the institution at a temporary site. Approval for 2006-07 was to be granted subject to full filing these deficiencies by 31st August, 2005. The approval of petitioner institute was granted for the courses of Computer Science and Technology; Electronics and Commercial Engineering, Information Technology, Instrumentation and Control, Mechanical Engineering; 2006-2007.

35. The petitioner filed the response regarding rectifications of these three deficiencies which were pointed out by communication dated 23.6.2005 in order to get an approval for 2006-2007 on 14th September, 2006. However, before considering these rectifications and Explanations, an inspection was carried out on 16.9.2005 on the basis of which a show cause notice was issued, raising many deficiencies which were not pointed out earlier, as on 23rd June, 2005 only three deficiencies were pointed out. Some of these deficiencies were raised in earlier notices in 2002 also but on showing their compliance, in subsequent notices they were not pointed out for granting extension of approval. If only three deficiencies were pointed out in June, 2005 then how all other deficiencies arose, ought to have been justified by the respondents by producing the inspection report or any other documents to show that these deficiencies were not rectified earlier. The learned Senior counsel for the respondents Mr. Chandra was very emphatic that if deficiencies had not been mentioned earlier, it would not mean that the deficiencies had been overcome or cured. This submission is not acceptable. If an institution has number of deficiencies, the supervising or controlling authority cannot raise and insist on fulfilling only some of them according to controlling authority's whims and fancies. If the deficiencies were pointed out earlier and despite the deficiencies, if the approval was extended, it will be natural to infer that the deficiencies were cured or full filled. If one sees the show cause notices given since 2001 it is apparent that the number of deficiencies pointed out in successive notices decreased. This is not the case of the respondents that despite the deficiencies the approval has been extended from year to year. No doubt that the deficiency of permanent site was not rectified and is also not insisted on by the respondents in consonance with the decision of the other statutory authorities and bodies. Had some of the deficiencies which were pointed out pursuant to inspection on 16th September,

2005 not pointed out in 2001, it could be inferred that they escaped the attention of the controlling or supervising authority. But after noticing these deficiencies earlier also and giving a show cause notice and on the basis of them seeking rectification, if the approval was extended, it will not be possible to believe that these deficiencies were not rectified.

36. The respondents could have justified the deficiencies noticed in the inspection on 16th September, 2005 by producing a copy of the report and the earlier reports to show that the deficiencies persisted and not cured and/or rectified by the petitioner. However nothing has been filed by the respondents. The petitioner has produced various documents in order to substantiate that there is no other deficiency except the permanent site for which despite his effort, which cannot be doubted in the facts and circumstances, the land has not been allotted to him. None of these documents seems to have been considered by the respondents while passing the order dated 24th February, 2006. The order seems to be just reproduction of the show cause notice given by the respondents. Such a reproduction of the show cause notice allegations, in the order would have been justifiable, had no documents filed by the petitioner. But this is not the case in the present facts and circumstances. The documents filed by the petitioner to substantiate his plea that there are no deficiencies, could be irrelevant, but the irrelevancy can be culled only after its consideration.

37. The respondents have filed a counter affidavit dated 28th May, 2006, an additional affidavit dated 29th May, 2006, a reply affidavit dated 29th May, 2006 of Respondent No. 3 and yet another additional affidavit dated 1st June, 2006 and 2nd June, 2006 of the respondents. In the successive affidavits fresh reasons have been given to supplement the orders dated 24th February 2006 and 25th May 2006 or the reasons have been improved. The orders impugned on their perusal rather reflect that they do not have any reasons for rejecting the pleas and contentions of the petitioner that the deficiencies have been cured or rectified.

38. On the basis of the regulations it was argued very emphatically that the faculty is very inadequate as for 1200 students, minimum 80 faculty member are required, comprising of eight professors, 16 Assistant professors and 56 teachers. However, it is not mentioned so in the show cause notice. The show cause notice just refer to inadequate faculty. Controverting this the Learned Counsel for the petitioner had pointed out that the student strengthen for the courses is 1080 and not 1200, as one of the course started only one year back as the other bodies permitted that course only some time back. Having 60 students every year, there can be only 120 students till the session 2006-07. In any case by letter dated 23rd June, 2006 it was pointed out that the deficiency in the faculty was only in the course of Instrumentation and control engineering and not in any other course.

39. It is no more res-Integra that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so

mentioned and cannot be supplemented by fresh reasons. The orders dated 24th February 2006 and 25th May, 2006 are rather crypt and do not have any cogent reasons. In the circumstances efforts by the respondents to supplement their orders will be fruitless. The Apex Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, had held that the orders can not be supplemented by fresh reasons as otherwise an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. Consequently the respondents cannot validate their orders on the grounds now raised in the various affidavits filed by them and on their behalf.

40. An attempt has been made by the respondents to shake off the allegation of discrimination by alleging that most of the institutions against whom no action has been taken despite deficiencies is on account of such deficiencies being not major ones. Perusal of the regulations of the respondents do not show any categorisation or classification on the basis of major and minor deviations. It is apparent in the facts and circumstances that the respondents have not resorted to same yardstick while granting extension of approval or penalising an institution for not fulfilling the deficiencies. The regulations of the respondents do not contemplate relying on the alleged surveys conducted by various persons or organizations. Yet the yardstick to assess the Lal Bahadur Shastri Institute of Management seems to be such surveys.

41. The conflicting stand taken by respondent No. 3 that he has no concern with the said Lal Bahadur Shastri Institute in any manner and then also admitting that he is associated as the editor of its magazine and totality of various facts and circumstances, do not rule out the possibility of prejudice and bias of the respondent No. 3 against the petitioner and favoritism to some of the institution. This is an inevitable inference in totality of facts and circumstances on the prima facie view of the matter. The respondents have failed to explain as to how other institutions have been given time to fulfill their deficiencies by 31st August, 2006 whereas the petitioner has been penalised by putting him in the category of 'No Admission'. There is no cogent Explanation as to how action has been taken for 2006-07 on the basis of a show cause notice for withdrawal of approval for 2005-06.

42. The learned senior counsel for the respondents has emphasized that a public notice was put up on the website of respondents seeking institutions to host their mandatory disclosures as per prescribed format on the website by 31.5.2006. Under the said notice all institutions are entitled for considered for restoration of intake for the year 2006-2007. Considering the facts and circumstances of the present case it was asserted that time may be extended for the petitioner for making mandatory disclosure regarding faculty deficiencies and built up area deficiency Ors. so that the petitioners may be restored the intake of the students.

43. It was very emphatically contended on behalf of respondents that the petitioner has given the list of 67 members of faculty and has not submitted

copies of the minutes of the selection committee, bio-data of the selected candidates. Regarding the report of 10 faculty members it was stated that they were not given and in respect of 36 faculty members there was no mention of the post on which they had joined and consequently effectively the petitioner institution has only 24 lecturers, two professors and thus only a total of 26 full time faculty members appointed as per AICTE norms as against the requirement of 8 professors, 16 Assistant Professors and 56 lecturers. The respondents very vehemently submitted that salary certificates/TDS certificates of many faculties were not furnished and consequently unless they fulfill all the requirements petitioner will not be entitled for any interim relief.

44. Relying on Union of India Vs. Era Educational Trust and Another, it was asserted that interim order should not be issued as a matter of course and the Court should not interfere even if interference is required in a case of unsustainable order and rather the authority should be directed to reconsider the case on the norms prescribed under the Act and or rules.

45. Mr.Jaitley, learned senior counsel for the petitioner has drawn my attention to another affidavit dated 2.6.2006 filed by the respondents which negates the plea of the respondent that there was effectively only 24 lecturers and two professors. This averment regarding 24 lecturers and two professors has been made on behalf of the respondents from the affidavit dated 1.6.2006. However in another affidavit dated 2.6.2006 which also has been annexed by them, a chart showing the deficiencies communicated; compliance submitted; observation of the hearing committee; meeting held on 26.12.2000 and the status were submitted before the hearing committee. The respondents own tabulation of various facts reflect that the compliance was submitted in respect of 66 permanent faculty and 7 visiting faculty members and along with faculty list, letters, joining reports and TDS certificates and salary statement of faculty members. It seems according to the tabulation prepared by the respondents the TDS certificates which were submitted were of poor zerox quality and so they could not be read and Therefore they were not read. This fact apparent from the affidavit of the respondents is at complete variance with the depositions made on behalf of the respondents in other affidavits filed on their behalf.

46. In the affidavit dated 1.6.2006 it was stated Except giving list of 67 members of faculty, the petitioner institution has not submitted copies of the minutes of the selection committee; biodata of the selected candidates."` It was also stated in the said affidavit, ``.... Though appointment of 67 faculty members were submitted, the joining reports of many were not placed along with the documents submitted by the petitioner. It is also relevant to mention here that the selection committee's minutes were also not produced as per the requirements. The salary certificates, TDS certificates of many faculties were not furnished."` From these it is apparent that the respondents are taking different conflicting stands.

47. The respondents have guidelines for extension of approval to the existing

technical institution on the basis of compliance report/expert committee visit reports (2006-2007). These guidelines categorically provide that the institutions which fulfill the minimum of 75% of required faculty should be granted extension, however, regarding cadre ratio the institution should be issued a warning letter regarding appointment of faculty in proper cadre ratio of 1:2:6 on or before 31.8.2006. The relevant guidelines are extracted as under:-

GUIDELINES FOR EXTENSION OF APPROVAL TO THE EXISTING TECHNICAL INSTITUTIONS ON THE BASIS OF COMPLAINTS REPORT/EXPERT COMMITTEE VISIT REPORTS (2006-2007) ENGINEERING and TECHNOLOGY

1. Head of the Institutions:

The institutions, which have not yet appointed qualified Directors/Principals as per the norms of the Council, may be granted the extension of approval for one year with the condition that the same should be recruited by 31st August, 2006.

2. Faculty:

For UGC Courses Institutions which fulfill the following conditions will be granted extension of approval. Minimum of 75% of required faculty should be available excluding cadre ratio. However, the institutions will be issued a warning letter regarding appointment of faculty in proper cadre ratio i.e.1:2:6 on or before 31st August, 2006. If the shortfall is and up to 50% the intake is to be reduced by 25%. If the shortfall is then the institute is to be placed under no- admission category. If a new course is sanctioned last year i.e.2005-2006 at least one faculty member in the said specialization should be available. All institutions would be communicated that faculty and built up area for the incoming batch (2006-2007) should be provided before the commencement of the next academic session. Faculty for a particular course would be calculated on the basis of the total sanctioned strength of IInd, IIInd and fourth year divided by 15 as the first year faculty is common for Engineering and Technology. However, the institution will be required to have common faculty for teaching the syllabus of the first year in the ratio of 1:15.

48. The plea of the respondents that since the approval was granted for the courses in 2002-2003, Therefore, besides the four courses, in the fifth course also the strength will be 180, that is 60 students per year, has been countered by the petitioner on the ground that the Government of NCT and the affiliating University had granted approval only in 2004-2005 and, Therefore, there could not be more than 120 students and in the circumstances the students strength cannot be more than 1080. On the basis of the students strength of 1080 the cadre strength will be 72 and the petitioner has a cadre strength of 67 which is well within the limits prescribed under the guidelines by the respondents. These guidelines were produced by the petitioner by an affidavit dated 1.6.2006 in response to an additional affidavit dated 1.6.2006 filed by the respondents. Despite these guidelines being produced by the petitioners and not denied by the respondents, the respondents have not referred to same or tried to explain as to

how the petitioner could be placed in the category of 'No admission' for 2006-2007. The respondent themselves have given 25% relaxation and on account of non conformity of cadre strength what is contemplated is not the lenient penalty of 'no admission during 2006-2007' as has been done by the respondents but only issuance of a warning letter asking the institution to appoint the faculty in proper cadre ratio of 1:2:6 on or before 31.8.2006. The respondents have not even whispered about their guideline either in the orders dated 24th February, 2006, 25th May, 2006 or in any of the affidavits filed before the Court. Perusal of all the affidavits in juxtaposition show unequivocally the attempt has been made to justify the orders by progressively giving improved reasons in the affidavits, which reasons can not be culled either from the orders or the show cause notice which was given by the respondents after sudden inspection on 16th September, 2005. The action of the respondents is no doubt on account of sudden inspection. The respondents have power to do so but the way the reasons have been improved and non disclosure of their own circular granting relaxation will not supplement their orders.

49. The judgment relied on by the respondents is clearly distinguishable. In *Era Educational Trust and Another (Supra)* an ex-parte order was passed allowing the institution to run the same violating the norms for affiliation. The interim order was also passed granting interim relief but in the process the principles of natural justice were violated. In those circumstances the Apex Court with an object to meet the end of justice and to maintain judicial discipline, had interfered with the interim order and held that the authority should have been directed to reconsider the case on the norms prescribed under the Act or the Rules. The cases of the institutions who are not granted approval are clearly distinguishable from the cases of those institutions who are awarded approval but subsequently the approval is sought to be withdrawn for some reasons. The test laid down by the Apex Court are not exactly the same in these two types of cases.

50. The case of the petitioner is clearly distinguishable as the respondents themselves have not withdrawn the approval even for the year 2006- 2007. What has been done is that in the case of the petitioner, he has been put on 'no admission category' on the basis of non compliance of norms which have been termed major norms, whereas the same norms have been termed as minor norms in case of other institutions, the details of some of which are given by the petitioner at page 211 of the paper book. The norms for approval do not stipulate major and minor norms. In case of other institutions, despite non fulfillment of various regulations neither the approval has been withdrawn nor the institutions have been put in the category of no admission which reflects that for withdrawal of approval or putting the institution in the category of no admission some of the regulations can not be insisted for and can be waived. This is apparent from the guidelines for extension of approval to the existing technical institutions which contemplates relaxation and in case of non compliance of the cadre ratio, only issuance of a warning letter to comply with the same till 31.8.2006. In the circumstances by not withdrawing the approval or putting an institution into 'no

admission" category, the respondents have not committed any illegality or irregularity but have not taken an action in view of the their own circular and have exercised a discretion which vests with the respondents. In the circumstances reliance by the petitioner to give similar concession to him, is not demanding from the respondents to commit a irregularity committed in case of other institution but to exercise the rights and discretion which the respondents have and which they do not exercise in the case of the petitioner.

51. The ratio of the Supreme Court judgment State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, relied on by the respondents, is Therefore, clearly distinguishable. The petitioner's case that the deficiencies have been cured and fulfilled and if any deficiency is still left it is relaxable and Therefore the respondents should not be allowed to discriminate. The discrimination propounded by the petitioner is not based on the alleged irregularities committed by the respondents but the rights which the respondents have which they have exercised in case of other institutions and are declining to exercise in case of the petitioner.

52. The respondents have always been aware of it and Therefore, though in 2002 in the show cause notice seeking action for putting the petitioner in 'No admission' category, various similar deficiencies were pointed out, however, the petitioner was not put in the category of 'No admission' because either they could be relaxed or because they were cured. For this reason by communication dated 23.6.2005 the petitioner was directed to cure or rectify only three deficiencies by 31.8.2005 for having approval for 2006-2007.

53. Even after inspection dated 16th September,2005, the petitioner has filed more than one thousand documents, three sets of volume, regarding various alleged deficiencies. Some of them have been ignored on the ground that the photocopies are not legible. No attempt has been made by the respondents to demand the legible copies, if some of the documents were illegible despite categorical assertion by the petitioner in his communication that if any more documents or any other clarification was required by the respondents, the same be communicated to the petitioner, so that the needful could be done by the respondents.

54. During the hearing also the learned Counsel for the respondents was emphatic that it was for the petitioner to submit and file the documents according to the regulations and the respondents were not liable to spell out every document which was required to be filed by the petitioner. From the regulations filed by the respondents it is not apparent what all documents had to be filed and the copies of guidelines had not been filed by either of the parties.

55. In these circumstances, the inevitable inference is that the plaintiff has been able to make out a good prime facie case. In order to ascertain as to which of the parties will suffer more inconvenience in case the injunction is the not granted, one has to keep in mind that it is not the case where an institution has

applied for approval and pending approval, candidates have been enrolled and after decision not to grant approval, by an interim order approval is to be granted. The case of the petitioner is that the petitioner has been granted approval from time to time and even for the approval for the year 2006-2007, he was asked to rectify only three deficiencies. In the circumstances by not staying the orders passed by the respondents putting the petitioner in no admission category, would rather be detrimental to the students who are already standing there. In order to ascertain the irreparable loss what is also to be considered is whether the deficiencies sought to be rectified are relax able or not. On behalf of respondents the main thrust was on inadequacy of faculty. What was meant by the respondents was that on account of inadequate faculty the students shall suffer. However, it is the guideline of the respondents to relax deficiencies up to 25% in faculty and even for cadre strength, only to give a warning notices to have the proper cadre strength in consonance with the norm of the respondents by 31st August,2006. In totality of circumstances and preponderance of probability it will, Therefore, be logical to infer that the balance of convenience is in favor of petitioner and the petitioner shall suffer irreparable loss and injury in case the interim directions as prayed for by the petitioner is not granted to him.

56. In the circumstances I have no doubt in holding that the petitioner should be granted interim directions as prayed for. The petitioner however, shall be bound and liable to submit all documents showing compliance with the norms by the petitioner in accordance with the norms and the guidelines, if any, of the respondent before 31st August, 2006. On submitting the documents and other details by 31st of August, 2006, these will be perused by the respondents. If they will require any more particular or more documents or details, the respondent shall communicate the same to the petitioner. The respondents shall also be at liberty to approach this Court for modification or variation of this order, if so required after considering all the documents and details to be filed by the petitioner in support of the contentions that they have no such deficiencies which will entail putting them into category of `No Admission`.

57. For the foregoing reasons the petitioners application CM 6877 of 2006 is allowed and the orders dated 24th February,2006 and 25th May,2006 passed by the respondents putting the petitioner institution in the category of `No admission` for 2006-2007 are stayed and consequently and for the reason that the approval of the petitioner was not withdrawn by the respondent for the year 2006-2007, the respondents are also directed to remove remarks `` No admission for the academic year 2006-07 from their website shown against the name of the petitioner forthwith.

58. Needless to mention, the views expressed above are tentative and prima facie conclusions which are not expression of final opinion on the merits of the case. dusty.