

(2012) 10 BOM CK 0183

In the Bombay High Court

Case No : Writ Petition No. 4400 of 2011 with Writ Petition No. 5181 of 2012

Bharatiya Gramin Punarrachan Sanstha's Hi-Tech Institute of Technology and Hi-Tech Polytechnic, P-119, Bajaj Nagar, Pune Road, Aurangabad APPELLANT

Vs

The State of Maharashtra and Others
 Bharatiya Gramin Punarrachan Sanstha's Hi-Tech Institute of Technology and Hi-Tech Polytechnic, P-119, Bajaj Nagar, Pune Road, Aurangabad Vs The All India Council for Technical Education, The State of Maharashtra and Director of Technical Education, for Maharashtra State, 3, Mahapalika Marg, Dhobi Talav, Mumbai RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Citation : (2013) 1 BomCR 527 : (2012) 114 BOMLR 3478

Hon'ble Judges : Sunil P. Deshmukh, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : P.M. Shah, instructed by Mr. A.M. Karad, in both the Petitions, for the Appellant; S.G. Nandedkar, Assistant Government Pleader for Respondents 1 and 2 in W.P. No. 4400/2011 and for Respondents 3 and 4 in W.P. No. 5181/2012, Shri S.V. Adwant, Advocate for Respondents 3 and 4 in W.P. No. 4400/2011 and for Respondents 1 and 2 in W.P. No. 5181/2012 and None Appears for Respondents 5 and 6 in W.P. No. 4400/2011, for the Respondent

Judgement

Sunil P. Deshmukh, J.—Considering the nature of controversy, both petitions are heard finally by making Rule returnable forthwith with consent. The Petitioner is a registered public trust and society running Hi-Tech Institute of Technology and Hi-Tech Polytechnic. Writ Petition No. 4400 of 2011 has been filed on 21.06.2011 seeking extension of approval to Engineering and Polytechnic Colleges run by the petitioners for the Academic Year 2011-12. The petition has been amended as per orders dated 06.07.2011 to challenge the order passed by recording withdrawal of approval, if any, with further direction to mention intake capacity of the petitioner-institution as 60 in each Branch and Division for the year 2011-12.

The petitioner thereafter filed Writ Petition No. 5181 of 2012 on 26.06.2012 challenging communication dated 18.06.2012 withdrawing approval to the Courses conducted by the petitioner. This Court has not passed any interim orders in latter petition, however, in earlier writ petition on 28.06.2011, the petitioner was directed to appear before the Appellate Authority on 29.06.2011 at 11.00 AM and the Appellate Authority was directed to grant them an opportunity of hearing and pass appropriate orders by 30.06.2011. Because of these orders and hearing granted, amendment was thereafter permitted on 06.07.2011. On 15.07.2011, the Court passed interim orders holding students entitled from Central Admission Process for the Academic Year 2011-12 to the extent of intake capacity already sanctioned by All India Council for Technical Education (AICTE).

2. The withdrawal of approval is on account of alleged fraud or misrepresentation by the petitioners about the land held by it initially in the year 2000-01 and thereafter in 2004-05. The respondent AICTE, by relying upon its regulations, submits that the Engineering College required minimum 25 Acre of land and Polytechnic College required minimum 5 Acre of land. Thus, total holding with the petitioners ought to have been 30 Acre, however, it was never more than 4.78 Acre. The approval has been withdrawn in the year 2011-12 for the first time on this ground.

3. The petitioner had submitted a proposal intending to open and establish an engineering degree college with various courses to All India Council for Technical Education, New Delhi (hereinafter referred to as "AICTE") a statutory body established under the All India Council for Technical Education Act, 1987 seeking its approval. Said proposal received approval from AICTE, in 2001. Since then the petitioner has been running an institute called "Hi-Tech Institute of Technology" (hereinafter referred to as "the Institute") conducting courses leading to bachelor's degree in various branches of engineering viz. Electronics and Tele Communication, Computer, Information and Technology etc. Approval has been granted by AICTE from 2010-2011 to the Institute to conduct courses for degree in Mechanical and Civil Engineering.

4. Petitioner claims that while engineering college had been approved in 2001, AICTE had conducted various inspections and got itself satisfied about the institute being conforming to the requirements prescribed by AICTE and being complying with applicable norms and regulations, including the one about land.

5. The petitioner has been holding about 4 Acre, 78 Are land under a lease. At the relevant time, the petitioner had been in possession of plot No. P-119. Additionally, on 23.3.2001, M.I.D.C. had issued a letter proposing allotment of adjacent plot to petitioner indicating that the proposal is being processed. It was upon satisfaction by AICTE about petitioner complying with requisite prescribed norms including that about land, it had granted approval to open engineering college under letter dated 26.6.2001 referring to intake capacity and courses.

6. The proposal submitted by the petitioner, refers to that the petitioner is in possession of five acre land and to that 25 acre land is under acquisition. For said purpose, petitioner relies on "Exhibit A collectively" to the petition, containing a lease deed and letter dated 23.3.2001 issued by M.I.D.C. as its constituents starting from letter addressed by AICTE to the Secretary, Higher and Technical Education and Employment Department, Government of Maharashtra, communicating that approval has been accorded to the petitioner for establishment of Hi-Tech Institute of Technology on plot No. 119, M.I.D.C., Waluj, Aurangabad, for academic year 2001-02 for courses and intake capacity given therein with specific condition that admissions shall be through Central Council of Government of Maharashtra. It has been further stated in the same that approval is for one academic session before end of which, an expert committee shall visit the premises to assess if norms and standards as stipulated by AICTE are fulfilled and only then continuation would be intimated.

7. Aforesaid communication appears to have been preceded by letter of viability dated 31.5.2001 issued by AICTE to petitioner communicating, inter alia, that the proposal of petitioner had been found to be prima facie acceptable and for processing the proposal further, petitioner was directed to submit documents to Western Regional office of AICTE amongst other, such as, registered sale deed in original showing absolute ownership and title of proposed land and building in the name of the trust/society, land use certificate by competent authority with a rider that the requirements indicated at items 1 to 6 viz. About land, FDR etc. are to be fulfilled latest by 11.6.2009 which was the cut off date.

8. The registered lease deed dated 17.4.2001 annexed to the petition between M.I.D.C. and petitioner appears to be for a period of 95 years commenced on 1.5.1998 (which appears to be the date of agreement to lease between the parties) having an area of 19340 square mtrs. user of which has been referred to under clause (r) for the purpose of industrial training institute, but not for the purpose of factory or any other obnoxious industries specified in the third schedule to the agreement. The land user was endorsed for the purpose of High-Tech Institute of Technology.

9. Aforesaid, had been followed by correspondence to Higher and Technical Education Department by AICTE on 14.6.2002 about increase in intake/additional seats and extension of approval for 2002-2003 to the Hi-Tech Institute of Technology on plot No. 119, Waluj, Aurangabad, containing the same conditions as before, that the approval is subject to fulfillment of conditions to be communicated separately and norms and standards and general conditions stipulated by the AICTE and that in the event of non compliance of norms and standards during last approved academic year, the AICTE would take further action to withdraw approval during subsequent academic year and that AICTE reserves right to visit the institution at any time for verification of compliance, with a further request to the State Government department to monitor progress made by the institution about fulfillment of norms and standards of the AICTE.

10. A similar communication was issued in April/May, 2003 about extension of approval to Hi-Tech Institute of Technology for the academic year 2003-04 referring to that the approval accorded is subject to fulfillment of conditions mentioned in items 9 and 10, suggesting some improvements in respect of building, laboratory, computer centre, library etc. with a note that contravention/non compliance with the conditions may lead to further action like reducing intake capacity or no admission or even withdrawal of approval.

11. On 14.5.2004 similar communication had been issued by AICTE extending approval for academic year 2004-05 containing similar conditions and referring to deficiencies in some respects. Once again on 24.6.2005, a similar communication had been sent giving approval for academic year 2005-06.

12. This was followed by further extension to approval for academic year 2006-07 referring to 5.75 per cent deficit in built up area. For the academic year 2007-08 a communication had been issued on 14.5.2007 referring to little deficiency in computer facilities. Then, again on 2.5.2008 extension had been granted for academic year 2008-09 referring to that the deficiencies are not fully met with, in regard to built-up area being made available as per the AICTE norms/standards and the same be made available. Similarly, approval had been given for academic year 2009-10 and also for next academic year 2010-11 with approval to mechanical and civil engineering courses. In none of these correspondence, communications, deficiency about inadequate land holding by the Institute had been complained of.

13. Petitioner around 2005, sent a proposal to AICTE for permission to open a polytechnic-diploma level technical education institute. It has been contended that on following required procedure, inspection and satisfaction of AICTE, petitioner's institute under the name "Hi-tech Polytechnic" had been granted approval under letter dated 30.6.2005 in the engineering disciplines viz. Mechanical, Electronics and Tele Communication etc. with intake capacity mentioned therein for the academic year 2005-06. Aforesaid communication had been issued by the Western Regional Office of the AICTE to the Secretary, Higher and Technical Education Department, Government of Maharashtra, according approval to establishment of Hi-Tech Polytechnic on plots No. P-119 and P-120, Bajaj Nagar, Aurangabad, to conduct courses mentioned therein referring to that approval is subject to fulfillment of norms and standards of AICTE and also fulfillment of specific conditions to be communicated later. Extensions to approval of Hi-tech Polytechnic had been granted by AICTE for subsequent academic years 2006-07 to 2010-11 with various conditions, inter alia, that land building and other infrastructure facilities should not be shared with other programmers/institutes. During all these years, the AICTE or its authorities had no complaint against the petitioner in respect of its land holding.

14. Petitioner claims that since 2001, it has further improved and developed facilities from time to time making huge financial investments. About 2000 students are taking and enjoying benefits of education being imparted by

petitioner's aforesaid two institutes. The institutes have been duly affiliated to the concerned University-Dr. Babasaheb Ambedkar Marathwada University and Maharashtra State Board of Technical Education.

15. A show cause notice dated 13.01.2010 (which, according to the petitioner, should be 13.1.2011) was issued by AICTE addressed to the two institutes of the petitioner, viz. Hi-Tech Institute of Technology-degree college and Hi-Tech Polytechnic-diploma courses, communicating that a complaint had been received by the AICTE that the institutes had not been functioning as per norms laid down and the expert committee on visiting and inspecting said institutes had found improper functioning as also some deficiencies viz. Hi-tech institute of technology-degree courses and hi-tech polytechnic-diploma courses are being run on the same land i.e. plots No. 119 and 120, that the purpose of allotment of plot No. 120 is not clear and only plot No. 119 has been shown for education purpose, unapproved programmes are conducted in the premises and there is shortfall in faculty at higher level.

16. It had been referred to that AICTE had confined extension of approval to degree courses for academic year 2010-11 subject to institute adhering to guidelines, regulations and instructions of AICTE and in the event of non compliance by the institute of degree courses with regard to guidelines, norms, standards prescribed from time to time, AICTE shall be free to withdraw its approval or recommendation without consideration of any related issue and that the liability arising therefrom would be solely of the institute of degree courses and had asked to show cause as to why it should not be held that AICTE was misled by the petitioner-institution by giving false information, why it should not be considered as violation of terms and conditions and as to why appropriate action, including that for withdrawal of approval be not initiated. The petitioner institution was directed to submit land records of both the institutes, the building plans and faculty/directors' details.

17. Show cause notice addressed to the institute of diploma courses refers to the same reasons as in respect of the degree course institute save the short fall in faculty at higher level.

18. The institutes, Hi-tech institute of Technology and High-Tech Polytechnic had submitted their reply on 20.1.2011 to the show cause notice dated 13.1.2010 (13.1.2011). According to reply, the degree courses and diploma courses are run on plots No. 119 and 120 and that as per the agreement of lease between MIDC and the petitioner, plot No. P-120 is to be used for educational purpose-engineering courses and that the same is clearly stated in the deed of lease and the letter from the concerned authority is also enclosed and also that unapproved programmes were being conducted only on the excess area of land available with the petitioner which had temporary tenure since the built up area for Hi-tech Institute of Technology was 8815.00 sqm. mtrs. and that of Hi-tech polytechnic 8384.00 square mtrs. whereas total built up area was 19274 sq. mtrs. and the balance area had been temporarily used for other programmes, according to

request of Raja Shivaji Higher Secondary School and that those are no longer being conducted since been shifted. The shortfall in faculty appeared due to unavailability of permanent incumbents despite several advertisements and interviews. However, the posts of professors and associate professors were not being kept vacant as those were being filled up by temporary appointments of assistant professors.

19. The scrutiny committee of the AICTE had prepared its report on 18.05.2011 which has been annexed to the Writ Petition No. 4400 of 2011 (Exh. H-page 168) in respect of degree courses and the committee had found no deficiencies in respect of post of Principal, faculty, computer facilities, infrastructural area or of land and the only deficiency noted was regarding administrative area. The petitioner had submitted land records of both the institutes, their building plans etc. The original document verification had been made and accepted and the scrutiny committee had recommended approval to Institute accordingly.

20. The case of Hi-tech polytechnic-diploma courses had also been recommended by the scrutiny committee for approval for academic year 2010-11 and it had found no deficiencies with regard to land though it had noted some deficiencies in respect of computer facilities and library.

21. A hearing pursuant to the notices appears to have been given to the petitioner on 18.5.2011 at New Delhi. The degree course institute under its letter dated 16.5.2011 had submitted original lease deed and communicated to the Advisor (Approval) AICTE the purpose of land plot No. P-120 and that unapproved programmes had been shifted to campus on plot No. P-112.

22. We have extensively heard arguments advanced on either side. Several citations have been relied on, on either side.

23. It is submitted that despite the replies to show cause notices had been submitted on 20.1.2011, there had been no further communication from AICTE which necessarily meant that AICTE had been satisfied with the replies given by the petitioner, as such, petitioner had been awaiting extension to approval, increase in intake capacity and starting new courses in its said two institutes for the academic year 2011-12.

24. It has been submitted that the scrutiny committee on verification had not reported any major deficiencies, save some minor ones in respect of administrative area for degree courses. The petitioner has pointed out that about 870 students had been studying in degree courses in engineering and 420 in polytechnic. There is permanent working staff of about 105 for the degree courses and of 85 in the diploma courses. Both these institutes have complete and more than sufficient infrastructure viz. building, laboratory, workshop, other equipments, library etc. The petitioner has invested huge amounts over the institutes and it has a huge liability to discharge, including salaries of its staff.

25. It had been submitted that there has been unreasonable delay in taking

hearing in respect of show cause notice, pushing the petitioner's back to the wall. As a matter of fact, all the norms and standards as prescribed by AICTE are not only complied with, but have been excelled. The petitioner has also alleged that there has been further unreasonable delay since the hearing had taken place on 18.5.2011 and yet its result/outcome had not been made known for a long time thereafter. It would be pertinent to note that the scrutiny committee had made its report on 18.5.2011 i.e. on the very day on which hearing had taken place at New Delhi. The Petitioner submits, it ought to have been considered that show cause notices were dated 13.1.2011 and were replied on 20.1.2011 and no hearing had taken place till 18.5.2011 by which time the CET had been held for admissions to engineering courses for the academic year 2011-12 and the result of the CET was also declared on 13.6.2011.

26. However, the status of approval for academic year 2011-12 in respect of the two institutes of the petitioner had been displayed by AICTE on its web portal on 14.06.2011 under caption "withdrawal of approval". Immediately, petitioner under a letter had requested AICTE to issue letter with reasons for withdrawal. On 15.6.2011, the petitioner had submitted an appeal against the aforesaid withdrawal of approval in respect of its two institutes. It appears that on 14.6.2011, admission notification for the academic year 2011-12 came to be issued for submission of on-line applications, document submission and verification for admissions to engineering by the Directorate of Technical Education, Maharashtra State, wherein petitioner's institutes' names did not figure.

27. The petitioner had approached the High Court under W.P. No. 4400 of 2011 since its institutes' names figured under withdrawal of approval category. AICTE had been directed to consider the appeal of the petitioner and communicate to it the decision thereon in writing and also to upload the same on web portal of AICTE on or before 30.6.2011 and accordingly the petitioner had appeared before AICTE on 29.6.2011. However, despite directions of the High Court to communicate to the petitioner the decision in writing as to why its approval had been withdrawn, the AICTE web portal on 30.6.2011 showed intake capacity of petitioner's two institutes for academic year 2011-12 as zero and, therefore, the petitioner had once again written to AICTE on 1.7.2011 with reference to the High Court order dated 28.6.2011 in Writ Petition No. 4400 of 2011 and requested for reasoned order for withdrawal of approval and zero intake capacity.

28. This Court had passed a further order on 15.7.2011 wherein it was directed that petitioner's institutes' names be included for centralized admission process for the academic year 2011-12 and had also stayed effect of order by appellate committee of AICTE regarding withdrawal of approval of petitioner's institutes.

29. Writ Petition No. 5181 of 2012 had been filed by petitioner on 26.6.2012 based on the subsequent events whereunder approval had been declined to petitioner's two institutes under a communication dated 18.6.2012 and as such, direction had been sought to declare intake capacity of petitioner's institutes for

academic year 2012-13 as per its earlier intake capacity sanctioned for academic year 2010-11 and to remove "approval removed" remark against petitioner's two institutes and provide said institutes students from Central Administrative Process for the academic year 2012-13.

30. In the same, it has been referred to that the Maharashtra State Board of Technical Education had declined to accept the forms of the institutes of the petitioner and as such said writ petition No. 4400 of 2011 had been filed and this court under order dated 25.7.2011 had granted relief in terms of prayer clauses "E", and "G-2" which read thus:

(E) Pending hearing and final disposal of this Writ Petition, the Respondent No. 2-Director of technical Education be directed to include the name of petitioner's institution namely Hi-Tech Institute of Technology and Hi-Tech Polytechnic College for Centralized Admission Process, which is started for the Academic year 2011-12.

(G-2) Pending hearing and final disposal of this Petition, the order passed (if any) by the Appellate Committee regarding withdrawal of approval of the institutions run by the petitioner namely Hi-Tech Institute of Technology and Hi-Tech Polytechnic College, be stayed and suspended.

31. It has been referred to that its proposal for approval, for submission of which last date was 31.12.2011 for academic year 2012-13 pursuant to Approval Process Hand Book for 2012-13 being not accepted, the petitioner had to approach this Court under Writ Petition No. 1972 of 2012 wherein this court had directed Respondents to accept the petitioner's proposal for extension of approval and for allotment of students as well.

32. In said writ petition No. 1972 of 2012, this court on 26.3.2012, directed the concerned authorities to decide proposal of the petitioner for increase in intake capacity and introduction of post graduate courses in accordance with law after taking into account the order of this court dated 15.7.2011 in Writ Petition No. 4400 of 2011. Yet, no action was being taken at the end of concerned authorities, impelling the petitioner to lodge contempt proceedings in which respondents were called upon to show cause.

33. While Writ Petition No. 1972 of 2012 came to up for hearing on 22.6.2012, this court had been informed about order passed on 18.6.2012 withdrawing approval to two institutes of the petitioner. Under the circumstances, writ petition No. 1972 of 2012 had been withdrawn and as the last date for submission of applications for Centralized Admission Process had been approaching, petitioner had moved writ petition No. 5181 of 2012 in earnest, praying for reliefs referred to hereinabove.

34. According to the petitioner, communication/order dated 18.6.2012 passed by AICTE authorities is without consideration of AICTE Act, 1987 and the orders passed by this court and disregarding the recommendations of its own committee

and the observations of the High Court. According to the petitioner, as on the date, requirements of land as mentioned in Appendix 4 to Approval Process Hand Book for academic year 2011-12 and 2012-13, are conforming to the stipulations in the Approval Process Hand Book and that the only reason for which there is refusal to continue approval is erstwhile land requirement. Petitioner has contended that it has made huge investments of about 50.00 crore for establishment of two institutes. It has been contended that reliance could have been placed on the report of the committee which had been placed before this court while order dated 15.7.2011 had been passed in Writ Petition No. 4400 of 2011. It has been submitted that the land deficiency had not been the reason at all for all these years from 2001-02 to 2011-12 during which period regular visits were paid and inspections were carried out with a view to monitor compliance with the norms and regulations issued by AICTE. The action of the Respondent-authorities is unjustifiable for it is apparent that the land holding, even going by respondents' norms, satisfies the criterion stipulated under Approval Process Hand Book for academic year 2012-13. It cannot be gainsaid that the area wherein the land is situate is in Aurangabad metropolitan area and as such, petitioner's land holding is more than the requirement for establishment of engineering college and polytechnic. The administration and infrastructure of the two institutes of the petitioner are separate and independent and, there is no dispute about the same. There are no deficiencies for which approval could have been refused.

35. Perusal of the impugned order dated 18.6.2012 shows that it was on complaint that the institutes of the petitioner were not functioning as per norms laid down by AICTE and on deputation of expert committee to visit the institutes, it transpires that the institutes were being run on plot Nos. 119 and 120, that the purpose of plot No. 120 was not clear, that unapproved programmes were being run on the campus and that there is shortfall in staff. A report was accordingly made.

36. The petitioner has relied on interim order passed in Writ Petition No. 460 of 2011 in Principal Seat of High Court at Bombay by Division Bench dated 28.2.2011 wherein the High Court had granted interim stay of impugned revocation of approval dated 7.1.2011 until further orders and on further order dated 29.6.2011 issuing "rule" in the matter with continuation of ad-interim relief of stay to impugned order of revocation of approval dated 7.1.2011 till final disposal of the petition. Under said order, the Directorate of Technical Education, Maharashtra State had been directed to include said petitioner's college for admission process for engineering courses in the State of Maharashtra and also AICTE had been directed to include petitioner's college in the list of colleges approved by AICTE confining the intake capacity to 270 students, further clarifying that there was no expression on merits of the controversy involved.

37. It has been referred to that as on the date, as per AICTE norms, pursuant to the regulations and requirements for the academic year 2010-2011 for degree

courses, in metropolitan region, land area requirement is 2.50 acre and that for diploma level, the same is 1.50 acre as referred to in Appendix IV of the Handbook for the academic year 2010-11.

38. The petitioner refers to notification issued by the State Government dated 26.9.2008 and the letter issued by Divisional Commissioner on 21.2.2011 to support its claim that the two institutes of the petitioner fall in metropolitan area and as such, land holding of the petitioner satisfies requirement in that respect according to norms under Appendix IV of the Handbook for the academic year 2010-11. The petitioner contends that it has properly explained that user of both the plots viz. P-119 and P-120 is for educational purpose and that its claim is supported by authentic documents.

39. The petitioner has denied the allegations with regard to conducting unapproved courses on its premises, by submitting that temporary accommodation was made available to Raja Shivaji Technical School over excess built up area of the petitioner and now the same has been removed and therefore allegations on that count are untenable. It has been submitted that qualified candidates as per the norms of AICTE to occupy higher posts are not available despite several advertisements issued for appointment to said posts. However, the posts have not been allowed to go vacant and have been occupied by temporary appointees like assistant professors and as soon as eligible and suitable candidates would be available temporary appointments would be replaced them.

40. The petitioner makes grievance that its efforts over a decade and huge investment of crores of rupees made for the purpose of creation, development, improvement of the educational facilities, would all go waste and junk on flimsy and untenable grounds. No specific reasons had been coming forth for non approval for the academic year 2011-12. The withdrawal of approval came to the knowledge of the petitioner only on 14.6.2011 i.e. on the date of which it was displayed on web portal of AICTE because though date of the same is mentioned as 10.6.2011, its status had been displayed on web portal only on 14.6.2011. It is in these circumstances that the petitioner had been constrained to file writ petition. The petitioner submits present holding of five acre of land on plot No. 119 fulfills the requirement to run both the institutes as per the norms appearing in Appendix IV of Handbook for the year 2011-12. The petitioner therefore, impugns withdrawal of approval for the academic year 2011-12 as according to the petitioner, the same is not only contrary to and against the recommendations of the scrutiny committee but also in breach of principles of natural justice, since at no point of time withdrawal of approval was made known to petitioner by any sort of communication. In fact, the authorities concerned had given no reasons for the same. No independent order has been passed after reply had been given to show cause notice and there had been no communication in respect of withdrawal of approval and as such petitioner assailed the said withdrawal condemning it as illegal and requested to quash and set aside the same.

Petitioner urges to note the fact that despite request by it to inform reasons for withdrawal of approval, no reasons in respect thereof have come forward and the petitioner had been in pressing urgency since the first round of centralized admission process had started on 21.6.2011 and as such filed writ petition No. 4400 of 2011. The petitioner has claimed withdrawal as illegal and that there has been no deficiency. Career of almost 2000 students has been put in peril by callous, unsympathetic and harsh withdrawal of approval. The petitioner, therefore, prays for grant of extension of approval to its institutes to provide admissions through centralized admission process and also seeks directions to Respondent No. 5 to issue appropriate affiliation order for the academic year 2011-12 and to remove its name from the category under the caption "approval withdrawn" from the AICTE's web portal and for further directions to permit to fill in intake capacity of petitioner's institutes for academic year 2011-12 as per sanctioned intake capacity for academic year 2010-11.

41. It had been submitted that this court under its order dated 28.6.2011 had directed AICTE's Appellate Committee to hear the petitioner and to communicate its decision to the petitioner on 30.6.2011 itself. Subsequently, the petitioner had moved civil application No. 7763 of 2011 seeking amendment to writ petition to bring on record further developments which came to be duly granted. It had been submitted that the petitioner had appeared before the Appellate Committee of AICTE on 29.6.2011 and was informed by the Committee that orders would be passed on 30.6.2011. The petitioner did not receive any communication from AICTE authorities regarding extension to approval. Finally, on 1.7.2011, official web portal of AICTE started showing "No intake" capacity for the two institutes of the petitioner. No reasoned order had ever been displayed on internet nor any communication of the order had been sent to the petitioner. It has been submitted that the State Government, as well as the University-Board had recommended extension of approval to the two institutes of the petitioner, yet it appears that the same had not been considered by the appellate authority of AICTE. The petitioner as such, had been constrained to challenge the status report as displayed by AICTE on its web portal. The petitioner, on 1.7.2011 itself had sent a representation to the chairman of the AICTE, requesting him to issue impugned order with reasons.

42. It appears that on 15.7.2011, after hearing parties and referring to the submissions about inadequate land holding, justifying the impugned action of AICTE, it had been appreciated by the Court that the only ground for withdrawal/cancellation of approval had been that land possessed by the petitioner in 2001 was insufficient and that the recommendation of the committee had not commented on infrastructure or any deficiency and having regard to that about 2000 students were taking education in petitioner, ad-interim relief in terms of prayer clauses (E) and (G) was granted confining its operation only to the academic year 2011-12 to the extent of intake capacity sanctioned by AICTE.

43. In reply, it has been submitted by respondents No. 3 and 4 that there has

been misrepresentation to the AICTE about land holding of petitioner and that it holds plots No. P-119 and P-120 of M.I.D.C., Waluj, Aurangabad. It has also been submitted that the petitioner had fraudulently obtained approvals to its institutes and that withdrawal of said approvals has been after following due process. It has been contended that the petitioner had concealed and suppressed material facts while seeking relief in the petition and that the petitioner has attempted to mislead the court. According to the respondents, petitioner has not approached the Court with clean hands and as such, is not entitled to any equitable relief. It has been alleged that the petitioner had withheld the documents in relation to plot No. 120 of M.I.D.C., Waluj. The action of AICTE of withdrawal of approval is being justified for the reason that it is subjectively satisfied that the information given by the petitioner while submitting proposal for approval to new engineering college that it holds 30 acre of land is false and since the falsity of the same has been exposed, it called for withdrawal of approval. On similar grounds, as in the reply to W.P. No. 4400 of 2011, reliefs claimed in W.P. No. 5181 of 2012 have been opposed, with similar submissions as had been made while opposing earlier writ petition.

44. In their reply filed on 5.5.2012, the action of AICTE is justified by the contesting respondents, alleging that the petitioner had misrepresented to AICTE and its officers about land holding. It has been claimed that approval to a technical education institute by AICTE is on the basis of depiction of facts relating to acquisition of right to property by the organization running educational institutes on the date of its declaration. It has been submitted that the moment it had been found ("traced") that the petitioner had misled and induced approval in its favour, the approval "disappeared". It has been submitted that on subjective satisfaction about land holding of the petitioner, approval had been granted to Hi-tech institute of Technology in 2001 and upon realization that the claim of the petitioner is false, AICTE has a right to withdraw the same. According to AICTE, the basic criterion of land requirement of 25 acre being lacking, it is justified in withdrawal of approval. It has been contended that misrepresentation is a breach of duty which gains an advantage to the person misleading another to his prejudice which has been done by the petitioner having misled the AICTE on the requirement of land holding for starting engineering college.

45. The petition has also been tried to be impeached on the ground that the person who has purportedly signed and filed the petition on behalf of the petitioner had, in fact, no such authority and has not been legitimately authorized and hence, would not be able take up the cause for the petitioner having regard to the scheme of the trust.

46. Opposition to reliefs claimed in the petition are on the basis that there had been misrepresentation while starting the college, about petitioner being holding 25 acre of land, according to AICTE norms during academic years 2001-02 to 2004-05. It has been submitted that requirement of land holding to start a new engineering college had been reduced from 25 acre to 10 acre for rural area in

the academic year 2007-08 and continues to be so till date. It has been further submitted that for starting a new engineering college, the criterion with regard to land holding has been changed to 5 acre from 2008-09 under AICTE norms and that the land requirement has been further decreased to 2.5 acres for starting a new engineering college in metro/urban area from the academic year 2011-12. It has been referred to that, every year existing technical institutions have to seek extension of approval by displaying mandatory information as required by AICTE and that AICTE has discretion to reassess approval earlier accorded. In the event, any information given by an institution like petitioner is false and distorted, the institution does not have any right to claim continuation of the same. Approvals to petitioner's institutes had been obtained on misrepresentation and as such the acts and actions of the petitioner cannot be excused or pardoned and the AICTE cannot be prevented from taking appropriate action. It has been submitted that the petitioner has, in fact, admitted, and is a substantive evidence "proprio vigore" that the petitioner had not been allotted 25 acre of land as had been necessary for establishing a new college then and as such no further evidence is necessary to justify action of withdrawal of approval.

47. It has further been submitted that the AICTE has all the rights to give surprise visits, make inspections and issue show cause notices, if needed and, therefore, the committee of the AICTE had carried out surprise inspection and on submission of report by the committee, two show cause notices had been issued to the petitioner. Thus, the AICTE has acted with bona fide cause. According to the reply, circular issued by the government in 2008 would apply to institutes which intend to start new engineering colleges and not to the institutes which had already started running colleges and such institutions would be required to follow norms those had then been subsisting. It is contended that the certificate issued by the Divisional Commissioner on 21.2.2011 about petitioner's institutes being covered in the area of Aurangabad metropolitan area would seldom be able to support the petitioner. The thrust of the submission of the AICTE is, even as per norm 4.1 in Appendix 4 to Approval Process Hand Book for academic year 2010-11, requires 10 acre land for technical institutions in rural area and as such, recourse to said handbook is misconceived. It has been contended that the petitioner would not be able to derive any right under the present rules in operation and such an attempt by the petitioner would be required to be smothered. It is further contended that the rights of the petitioner are governed and guided by set of rules of AICTE for academic year 2001-02 which "postulate" the land requirement to be 25 acre and as such, reliance being placed by petitioner on new rules, is improper, not correct and void. It would be worthwhile to refer to that AICTE is taking note of the fact that the State Government has classified in 2008, Aurangabad as metropolitan area.

48. According to the affidavit in reply, the petitioner has indulged into "sharp" practices and its case suffers inherently incurable lacuna for which AICTE cannot be blamed. It is also submitted that the "Council" is subjectively convinced about the fact that plot No. 120 was not held by the petitioner on the date of grant of

approval in 2001 and had declined to buy-line of petitioner on that, the two institutes run by the petitioner are now free from deficiencies.

49. An additional affidavit has been filed by Respondents on 15.7.2012, wherein it has been asserted that plot No. 120 was given to third person under an agreement dated 17.8.1998 and that its sub division had been allowed in 2003 by M.I.D.C. It has been thus claimed that fraud played by petitioner has been exposed. The respondent has in several communications and affidavits affirmed and declared that in the event of non-compliance with the guidelines, norms and conditions prescribed by AICTE, it has all the powers to refuse approvals. For that purpose, reliance has been placed on regulation No. 4.37 of the AICTE (Grant of Approval for Technical Institutions) Regulations, 2010. It has been claimed that the petitioner in its declaration on 9.6.2012 has stated that in 2003-04, 25 acre of land was applied for and allotted, however, the documents showing the same were not available. Support for opposition to reliefs is taken from the observations of the Supreme Court in the case of Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others, , as also from order in Civil Appeal No. 4318 of 2012 dated 8.5.2012 in the case of Priya Gupta vs. State of Chattisgarh that regulations framed by the AICTE are binding and the standards therein cannot be deviated from.

50. The claim of the petitioner that subject-matter of Writ Petition No. 460 of 2011 in the Principal Seat of High Court, is the same as involved in the present petition, is disputed.

51. Respondents purport to decline to acknowledge receipt of representation dated 15.7.2011 by petitioner and claim that misrepresentation is uncondonable and that there can be no concession to AICTE's directives. We find this effort immaterial in present scenario.

52. Petitioner has cited in support of its submission, following judgments, viz.

- (i) Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, .
- (ii) Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, .
- (iii) Shivamrut Dudh Utpadak Sahakari Sangh Maryadit vs. State of Maharashtra, 2004 (3) Mh.L.J. 668
- (iv) State Govt. Houseless Harijan Employees Association vs. State of Karnataka (2001) 1 SCC 610.
- (v) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

53. Mr. Shah, learned Senior Advocate, has referred to the decision in HPCL vs. D.S. Chenai to urge that hearing of objection must be effective and not a mere formality. There must be proper application of mind to purpose, by considering

relevant factors and ignoring irrelevant ones. Right to establish and carry on education institution is a fundamental right and interference and obstruction to the same on the purported allegation of non compliance with the norms which have been flexed, varied and altered favouring the petitioner, will have to be objectively viewed. Having regard to the requirements under present norms, permitting establishment and allowing to carry on an education institution, the impugned order dated 18.6.2012 withdrawing approval falls far too short of relevant considerations.

54. It has been submitted that having regard to the record available before this court, it will have to be considered that all allegations are about so called misrepresentation, which is over-stretching of alleged aberration/irregularity occurring under a bona fide impression. Alleged misrepresentation about information at the highest would be an aberration, according to him, petitioner had not concealed nor there was any promise in the information supplied to AICTE about petitioner being in possession of 25 acre land on the date on which application had been made. He has categorically referred to that the application shows that the petitioner is in possession of 4.78 acre of land bearing plot No. 119 in M.I.D.C. Area, Waluj, Aurangabad and that 25 acre of land is proposed to be acquired. He has placed strong reliance on clause 10 of the document at Exh. B to Writ Petition No. 5181 of 2012 and has submitted that approval has been granted, inter-alia, after considering the same and has pointed out that the location of the institution has been referred to as the district headquarters which has been additionally highlighted by typing it again and further that the land holding has been shown to be 5 acre in possession and 25 acre has been referred to as under acquisition.

55. For aforesaid purpose, Mr. Shah takes support of the lease deed which has been executed in favour of the petitioner by M.I.D.C. and the letter dated 23.3.2001, by which M.I.D.C. communicating that proposal for allotment of land adjacent to plot No. P-119 is under process. He has thus submitted that having regard to the factual position, allegation of misrepresentation is not at all attributable to the petitioner and there had been an implied assurance by M.I.D.C. about making available 25 acre land to the petitioner. Mr. Shah submitted these documents had been part of the application made for approval to AICTE in 2001 and as such, attempt to find fault with the petitioner is pricking holes. He has also referred to that in all its further applications for extension of approval for the next consecutive ten academic years, the petitioner had supplied similar information to AICTE that it has in possession of about 5 acre land. According to the procedure, as envisaged under AICTE Act and the regulations thereunder for each and every academic year, the information supplied by the petitioner had been got verified and re-verified by competent authorities under AICTE Act, rules and regulations and the AICTE had been carrying out physical inspection, as well. At no point of time prior to academic year 2010-11, the question about genuineness and authenticity of petitioner's claim had been raised as the concerned authorities of the AICTE had found the same to be in

order as per the applicable norms.

56. Not only this, wherever on inspection and verification of some deficiencies had been found with regard to certain norms, those were communicated to the petitioner and were asked to be removed. By way of example, he has relied on letter extending approval to engineering degree college. It had been referred to in that there is short fall of 5.75 per cent of built up area as only 7939 square meters built up area was existing as against required area of 8424 square mtrs. as well as to short-fall in faculty and computer equipment. At no point of time prior to show cause notice for the academic year 2010-11, deficiency with regard to land had ever been alleged. He had further pointed out that even in the report just before show cause notice had been issued, there had been no deficiency pointed out as far as criterion of land had been concerned. Learned Senior Advocate had, therefore, vehemently emphasized, if at all there had been intention of AICTE to take action for academic year 2010-11, or for that matter for 2011-12, it ought to be based on deficiencies contained in the report. He thus submits that there had been no basis whatsoever even according to the record relied on by AICTE for issuing show cause notice on such untenable ground.

57. According to Mr. Shah, allegation with regard to shortfall and deficiency in land requirement have been rendered of no significance and do not have any efficacy. The effort had been to show that having regard to the norms in operation presently, even a show cause notice on ground of deficiency of land holding could not be issued and the AICTE would not have any power to issue such notice for, according to him, it is an admitted position that as per applicable norms in metro area the petitioner's land holding is more than requirement.

58. Mr. Shah has tried to contend that as a matter of fact, the M.I.D.C. had issued an allotment letter to petitioner in respect of plot No. P-120. However, its purpose had been shown only for manufacturing activities.

59. Mr. Shah has relied on Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, , to support his contention that impugned orders are untenable for those suffer absolute non application of mind to the factual position vis-a-vis requirements under the current norms and that the real reasons are on the hind side and the reason given is only an ostensible one which is devoid of any substance. It has been submitted that reasons given are no reasons in the eye of law and are absolutely untenable for refusal of extension to approval.

60. Relying on judgment in Shivamrut Dudh Utpadak Sahakari Sangh and Others Vs. The State of Maharashtra, Ministry of Animal Husbandry Dairy and Fishery Department, The Collector, The Joint Registrar, Co-operative Societies (Dairy) and Maharashtra Rajya Sahakari Dudh Mahasangh, , it has been contended that validity of an order passed by statutory authority has to be judged by reasons recorded and is not amenable to be construed in the light of subsequent explanation given by the authority or by filing an affidavit. It has, therefore, been

contended that it is absolutely not a case of fraud and it is even less open to the authorities of AICTE to allege fraud without hearing petitioner and by subsequently filing a reply. Such an allegation is thus not available as a ground to justify the impugned order. Mr. Shah has, in support of said submission, relied on *Mohinder Singh Gill vs. Chief Election Commissioner*, AIR 1978 SCC 851, and *State Govt. Houselss Harijan Employees" Association vs. State of Maharashtra*, (2001) 1 SCC 610.

61. According to Mr. Shah, though the petitioner had been purportedly heard, its submission ought to have been objectively considered, however, the case is otherwise. The impugned order thus, is in violation of true spirit underlying principles of natural justice. According to Mr. Shah, the impugned action, under the circumstances, is not bona fide.

62. On the other hand, Mr. S.V. Adwant, learned Counsel appearing for respondent-AICTE, has relied on as many as ten citations which are:-

(i) *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, ,

(ii) *Shri Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College Vs. National Council for Teachers Education and Others*, .

(iii) *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, ,

(iv) *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, ,

(v) *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, .

(vi) *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, .

(vii) *Priya Gupta vs. State of Chattisgarh*, Civil Appeal No. 4318 of 2012 and Civil Appeal No. 4319 of 2012 decided by the Supreme Court on 8.5.2012.

(viii) *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, .

(ix) *Ritesh Tewari and Another Vs. State of U.P. and Others*, .

(x) *State of Orissa and another vs. Mamata Mohanty* (2011) 3 SCC page 436.

63. Mr. Adwant, though relied on citation, namely, *Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others*, , has not pressed the same into service.

64. Other citation relied on by respondents on the principle that fraud vitiates everything and that misrepresentation is a fraud which the party making it knows the same to be false, is *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, . However, it has to be considered that ensuing injury is to be a result of bad motive. Here, in present case, there is no reference to injury suffered due to

alleged fraud by the petitioner. On the same point, he has referred to and relied on Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others, . The thrust of the submissions on behalf of the respondents is, suppression is also a kind of fraud, so is a misrepresentation and it can be under any guise like suppression of document.

65. A judgment and decree obtained by fraud would be nullity and for that purpose, Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others, , and S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, have been referred to.

66. Mr. Adwant submitted that the Supreme Court has in no uncertain terms said that fraud involves two elements, namely, deceit and injury to the person deceived. The Supreme Court has adverted to that injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such other. For said purpose, he has relied on Bhaurao Paralkar's case (supra).

67. For the proposition that the regulations framed by the statutory body are binding and the standards prescribed therein cannot be deviated from, Mr. Adwant has produced a copy of judgment of the Supreme Court delivered on 8.5.2012 in Priya Gupta vs. State of Chattisgarh, Civil Appeal No. 4318 of 2012 and Civil Appeal No. 4319 of 2012. He emphasizes that even the estoppel prescribed has a force of law.

68. Mr. Adwant next submitted that once fraud is proved, it should deprive the person who commits it, of all the benefits enjoyed therefrom and delay in taking action will not give rights in equity and as such, according to him, petitioner is not entitled to any relief on equitable grounds and such a consideration would be highly misplaced.

69. Mr. Adwant for the proposition that, subsequent action or development cannot validate an action which was not lawful at its inception, since the illegality strikes at the root of the order and it would be beyond competence of any authority to validate such an order, has relied on Ritesh Tewari and Another Vs. State of U.P. and Others, . He has submitted that if an order at initial stage is bad in law then all the proceedings subsequent thereto would be non-est and will have to be set aside. In our estimate, the situation here is widely different, for, the approval is to be granted each year and the requirements for the same are to be verified, reverified and inspected every year and therefore grant of approval for earlier academic year hardly has any effect on the approval to be considered for the new academic year. On the strength of valid approval, students then studying pass out validly and that approval may exhaust itself.

70. In State of Orissa and Another Vs. Mamata Mohanty, , the Supreme Court has emphasized need to adhere to minimum requirement as prescribed for eligibility to maintain standard of education and observed that the same cannot

be and should not be relaxed. However, in the said case, the Supreme Court, having regard to the fact that the appointment of some lecturers was not valid at the point of entry in the employment, but subsequently they had acquired prescribed qualification had granted partial relief in their favour. There would not be any dispute about proposition as laid down by the Supreme Court. However, in the present case, the situation now appears to be that erstwhile deficiency with regard to land holding no longer subsists with abatement of area requirement under current norms and, therefore, this citation may not serve purpose for which it has been relied on and may indirectly further petitioner's cause.

71. The land requirement prevailing in 2001 or 2005 is not in dispute. The modifications therein after the area becomes a Metropolitan area is also not in dispute. The petitioners submitted initial application on 03.08.2000 and in that application, they have disclosed their holding to be 5 Acres in possession and 25 Acres in acquisition. Against Clause 7 of their application, they have given address as Plot No. P-119, MIDC and place is shown to be District Headquarters. This application was only for starting Engineering College. They have mentioned land area to be 30 Acres and while answering question whether it is owned by them, they have tick marked the box meant for affirmative response. Subsequent column which depended upon this affirmative answer has again been replied to by filling in area to be 30 Acres or 12 Hectare. Thus, they have mentioned land in their possession and owned by them to be 30 Acres or 12 Hectare. A little later, they have mentioned that it is leased out to them for 90 years and it is earmarked for the purposes of educational institution. Against column No. 17, it is stated that they possess adequate land, building, equipment etc. for the proposed College. On 23.03.2001, the MIDC has issued to them a communication which shows that the allotment of land adjacent to Plot No. 119 was under progress. This adjacent land is having area of 25 Acres, however, in this communication, its plot number is not mentioned. But then it is not in dispute that said Plot No. is P-120. Plot No. P-119 has been leased out to the petitioner on 12.04.2001 and in Lease Deed, its area is shown to be 19340 square meters equivalent to 4 Acres, 78 Gunthas.

72. On 28.06.2001, AICTE has written to the petitioner on the subject of approval and it mentions Plot No. P-119 only. The approval is subject to fulfillment of General conditions, norms and standards of AICTE. Its clause No. 15 cautions them, if information is found to be false or misleading or suppressed, approval accorded can be withdrawn in pursuance of AICTE Regulations, 1994. Clause 16 is again on same lines. On 31.05.2001, the AICTE had called upon the petitioners to produce original sale deed showing ownership and title of the lands.

73. On 14.05.2004, the AICTE has extended approval for the year 2004-05 and it mentions address of the petitioner - College as Plot No. P-119. On 24.06.2005, approval is extended for the year 2005-06 mentioning same plot number and this position holds good even for the Academic Year 2006-07. Term No. 12 of

extension order dated 19.05.2006 shows that AICTE had power to conduct surprise inspection and clause 15 thereof again cautions the petitioner about withdrawal of approval.

74. Respondents No. 1 & 2 have filed additional affidavit in Writ Petition No. 5181 of 2012 and along with it, they have produced a document styled as possession receipt. This document shows that on 22.01.2003, Plot No. P-120 admeasuring 81784.41 square meters was delivered in possession of the petitioner, however, it is not in dispute that said plot was never used by the petitioner for educational purpose. A lease deed dated 29.01.2003 is also placed on record which is in fact an agreement to lease between MIDC and the petitioner. Respondents No. 1 & 2 have also placed on record communication dated 10.10.2003 which shows sub-division of Plot No. P-120 into 12 different plots and its allotment to third person/firms for valuable consideration. This document shows that 30% of the premium was worked out at Rs. 5,12,181/-. This document also shows that said Plot No. P-120 was lying vacant and it was sub-divided and allotted at the rate of Rs. 413/- per square meter. Respondents No. 1 & 2 have also placed on record consent given by MIDC for sub-division of Plot No. P-120. It shows that agreement of lease by MIDC with licensees therein was dated 17.08.1998. All these documents show that Plot No. P-120 was never allotted and was never in possession of the petitioner.

75. The affidavit dated 14.06.2010 by the Secretary of the institute shows that it is in relation to compliance by the petitioner- institute with guidelines, norms and conditions and accepting right of AICTE to withdraw approval, if violations were noticed. On same lines is the affidavit by the Chairman and by the Principal. During hearing on 09.06.2012, the College stated that in year 2001, land requirement was 10 Acres and in year 2003-04, additional land of 25 Acres was allotted. It has stated that said additional land was applied for in the year 2001. During hearing, it was accepted that claim to Plot No. 120 cannot be substantiated by producing any document. The fact that P-120 was sold to another institute/third party was denied by the Secretary, who had attended the hearing. The petitioner moved application seeking approval for new Diploma level Technical institute i.e. Polytechnic on 30.06.2005 and in it, had mentioned address of institute as Plot No. P-119 and P-120. It also gave a declaration that 2 Acres of land was kept separate for Polytechnic. In Application Report for the year 2012-13, Part 1, while giving land details, location is stated to be Metro city and area of 3 Acres is shown for Engineering College. Total area in Acres is shown to be 5 Acres in similar Application Report for the year 2011-12.

76. All these documents filed by or on behalf of the petitioners- institutions and submitted to AICTE are not in dispute. Thus, in the year 2001, when Engineering College was sanctioned by AICTE, the petitioners did not have requisite land and in 2005 when Polytechnic College was permitted to them in addition, situation was not different. The petitioners had submitted title document (lease deed) only about Plot No. P-119 and title document in relation to Plot No. P-120 was never

submitted by them. AICTE also did not choose to demand it at any point of time.

77. The situation above, clearly shows that AICTE suddenly has gone back to lacunae which had been prevailing since the year 2001 or since the year 2005 and has chosen to withdraw the approval extended on year to year basis. Why it has done so has not been explained, though an opportunity has been extended to AICTE for said purpose by us. During the arguments, a complaint to Central Bureau of Investigation and (CBI) inquiry was canvassed but those facts have not come on affidavit before us.

78. It has been submitted that that AICTE is concerned with the building, creation of assets etc. in relation to the petitioner unless the petitioner complies with the requirements laid down under the Act, rules and regulations made thereunder, it will not spare the erring institute for not abiding by the conditions stipulated. It has also been said that petitioner has not made any attempt to file appeal before the AICTE-appropriate authority and as such, there is no question of refusing to accept the appeal. On this background, AICTE goes on to submit that the appellate committee after hearing the matter had closed it for passing order on 30.6.2011. It had placed its recommendations before the appropriate authority in a meeting of its Executive Council on 30.6.2011. The decision confirmed by the appropriate authority had been uploaded on official website of AICTE on 1.7.2011 and further that the official communication to be issued to the petitioner was then prepared and kept for approval of the competent authority and before the same could happen, the petitioner had already been before the court with regard to the same. However, as yet, no such communication has been placed on record and that it has not been controverted that after hearing petitioner, no order has been passed on 30.6.2011.

79. The scenario thus projects, the AICTE is taking up the issue as if it is human species, not accepting "wrong" caused by the petitioner as it has been taken for a ride by the petitioner with regard to land holding since 2001, for that is the only reason for refusal to continue approval to the two institutes run by the petitioner. Since the petitioner had misled in 2001 and had not been eligible then, now even with the changed criterion, AICTE will not consider case of petitioner for continuation of approval though petitioner's land holding now is as required under the present norms, for AICTE had been wronged once and petitioner had cheated it then. The organizations are not supposed to go by emotional upheavals. AICTE nowhere explains why during physical verification, factual matrix was overlooked by it. AICTE and its concerned officials are equally at fault and party to fraud on law.

80. Such an attitude on AICTE's part is biased and may not be conducive to healthy growth, augmentation of development and its very purpose. The AICTE would not be able to take an action, conduct itself and behave like an ordinary human being. AICTE will have to stoically act and would conduct itself in the matter with equanimity. Even otherwise, as an institution and that too a statutory one, it has no freedom to sharply react to erstwhile wrongs done or itch

over past events.

81. Whether each new set of norms as and when framed and settled by AICTE would not be able to substitute the earlier set of norms while governing an existing institute and would throughout its existence be required to be controlled, governed and administered by those very norms which were subsisting when recommendation/approval/permission had been granted to it. The proposition in the present case is a misconceived one.

82. Respondents want to backtrack from the supposed concession earlier made by their counsel with regard to land holding and submit that such concession would not be binding on AICTE as said situation is governed by laws and rules. We do not see any such concession and its acceptance by this Court in its order dated 15.07.2011.

83. It has been submitted that the appellate committee of AICTE is an advisory committee and its recommendations "may" or "may not" be accepted by AICTE and, therefore, the recommendations of said committee would not have binding efficacy. It has been contended that the decision taken by AICTE is after assessing the situation and capabilities of the petitioner to comply with directives and regulations of AICTE which are obligatory and are required to be abided by.

84. Upon hearing petitioner, the committee had recorded that the documents of plot No. 120 were not in order, that short-fall of professors exists, that the documents in respect of plot No. 119 had been in order and further noting that 20 acre of land had been acquired by petitioner in 2003, however, purported to advert to that the institutes had been established in 2001. It expressed surprise over the same and further purported to hold that the documents regarding plot No. 120 are tampered with and that the engineering and polytechnic buildings are over same plot No. 119. The appellate committee had observed that plot No. 120 had been with remark "The lessee shall not use the said land for any purpose except as a factory for manufacture". The committee had observed that there was blatant violation of AICTE regulations. The fact of engineering college having been established on plot No. 119 had been suppressed and since the land is less than 5 acre, approval should be withdrawn. It was observed that since the requirements for opening new engineering college was 25 acre and the institute had less than 5 acres of land, the establishment of college had been illegal and that the institute had failed to substantiate ownership over 20 acre land under plot No. 120 and that the same is admitted to have been sold without seeking permission from AICTE. The committee thus recommended withdrawal of approval in respect of both the institutes and had directed to protect the interest of students. AICTE could have recorded these conclusions on the strength of documents with it year after year till 2009-2010 also. It preferred to turn Nelson's eye to it.

85. It will have to be considered that no other ground has been urged on behalf of the respondent-AICTE before this court other than alleged deficient land

holding at the time of first approval and that the Respondents had been subjectively satisfied and said subjective satisfaction continued for ten long years thereafter. It will further have to be noted that with the passage of time, the matters with regard to the norms for granting approval have also been evolved and altered. Depending on the location, land requirements have also undergone change. While requirement of land had been 25 acre for engineering education institution, has now been reduced to 10 for rural area and that in urban area, for engineering college is 2.5 acre and for polytechnic 1.5 acre. Respondents have not seriously disputed that presently the petitioner's institutes fall in metropolitan area and although respondents do not accept that as per the current norms and its relevance, the land holding of petitioner may meet the said requirement, contention that new norms for metropolitan area would apply for commencement or starting of a new technical education institute is unsustainable. Several batches of Engineering and Polytechnic students have passed out validly and their education in petitioners institutes cannot be viewed as "void" or "still born". Omission of AICTE to take note of facts apparent on record and visible to naked eye also cannot be overlooked and condoned. Extent of land in petitioners possession, two separate buildings standing on it, have never bothered the conscious of AICTE. It has not explained what action it has proposed against its delegates who carried out physical verification, year after year.

86. In hypothetical case, another institute possessing 10 Acres now could have been permitted to establish Polytechnic College on portion of 1.5 Acres. An institute with 25 Acres of land could have been or can be permitted to sub-divide its holding to start other activities. Hence, we cannot accept the contention that new norms are attracted only in case of new proposals. When existing Colleges in Metropolitan area can proliferate, petitioners can also be given advantage of new norms.

87. It is undisputed position that presently, as per the norms which are holding the field, to run programmes of an under-graduate engineering and technical education and diploma education, land requirement is 2.5 acres and 1.5 acres respectively.

88. We have to bear in mind that as far as role of AICTE is concerned, it is to inspect, verify and be assured about an institution possessing required land and complying with all the requirements as are necessary to impart a good quality technical education, whether it be in rural area or in metropolitan area and according to the norms settled by AICTE now, particular land holding in a metropolitan area is good enough to impart technical education and training and if petitioner is possessing the same, why it cannot be considered for grant of approval for the subsequent academic year.

89. The question whether approval to petitioner could be refused, therefore, may not assume significance. Having regard to over all situation, we are of considered view that it would not be open to AICTE, a statutory body, to refuse to verify and/

or inspect the present situation to ascertain compliance of requirements needed under the present norms.

90. We, therefore, deem it appropriate to direct the respondents to consider the case of the petitioner for grant of approval afresh. Even otherwise, it is not the case of respondents at all that alleged deficiency of land holding has affected imparting quality/qualitative education to the students. As a matter of fact, the AICTE has to be alive to the situation that there has been consistent demand for increase in intake capacity and that all the intake capacity is being occupied by admission through Centralized Admission Process rounds.

91. Not only this, but also it will have to be seen that several other incidental developments must have taken place over a period of ten years generating means of livelihood and employment. Several other establishments and persons might have been depending solely on the existence of the education institutes run by the petitioner.

92. Pertinently, in none of the communications in respect of extension of approval, deficiency with regard to land holding had ever been pointed out till the academic year 2010-11. On the whole, it is not a happy state of affairs. Reckless approach has been exposed on either side. In the process, liabilities and responsibilities have been allowed to be created and incurred and as such an abrupt interruption/truncation of the whole activity would have disastrous and wide repercussions affecting a very large section of people.

93. We, therefore, would not assist petitioner in totally doing away with the impugned order withdrawing the approval. However, we leave it to the respondent-AICTE and authorities to consider proposal for grant of approval, if the petitioner chooses to make application afresh and it would be open for the authorities concerned to consider the same objectively without being rankled by the past events. We see that both the parties are contributory to the activity taken upon by the petitioner and the state of affairs has been quite poignant.

94. An affidavit is subsequently filed by respondents to indicate that even assurance with regard to 20 acres of land of Plot No. 120 has been vague one as is revealed from the documents which were sought to be relied on and annexed to the said affidavit. However, we are not going to go into it as the same would not benefit any one, including the M.I.D.C. and even if the same is assumed to be correct, that is not going to serve any purpose. We leave it to the concerned to take appropriate action with regard to the same. However, since we are directing that consideration of the proposal of the petitioner afresh, the same is of little significance for the purpose underlying the writ petitions as well as the grounds on which the same are being opposed.

95. The exact extent of lands with the petitioners, availability of two separate buildings to have Engineering and Polytechnic Colleges, situation of land in Metropolitan area are all questions left open for consideration by AICTE. We direct the petitioners to submit a true and correct proposal supported by affidavit

of its President, Secretary and Principals of both Colleges within four weeks from today. The AICTE shall consider it as per existing norms within a further period of eight weeks and communicate it to the petitioners. AICTE shall carry out physical verification, obtain necessary building plans from the petitioners or concerned local authority and hear the petitioners, if necessary.

96. We impose costs of Rs. One lakh each upon the petitioner as well as the AICTE and direct them to pay the same to Aurangabad High Court Legal Aid Services Authority, within four weeks. If costs are not paid, the same shall be treated as contempt of this court by respective Presidents and Secretaries of the petitioners and/or AICTE. With these directions, we make Rule absolute accordingly and dispose of the present Writ Petitions.