
(2003) 07 AP CK 0083

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23987 of 2002 and Batch

C.V.S. Krishna Murthy Teja Charities

APPELLANT

Vs

All India Council for Technical Education and Another

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for the Courses or Programmes) Regulations, 1994 — Regulation 7, 8, 8(4), 8(4)(3), 8(8)

All India Council for Technical Education Act, 1987 — Section 10(1)(K), 23

Citation : (2003) 5 ALD 97 : (2003) 4 ALT 775

Hon'ble Judges : Devinder Gupta, C.J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Koka Raghava Rao and E. Manohar, for J. Srikanth Reddy, L. Ramchandra, K.S. murth, S. Narayan Reddy, S. Niranjana Reddy, P. Rama Rao, C.V. Mohan Reddy, N. Ram Mohan Rao and V.R. Reddy, for P. Sri Raghuram, T. Nagarjuna Reddy, M. Surender Rao, H. Prahalada Reddy, S. Prabhakar Reddy and S. Sriram, for the Appellant; S. Satyanarayana Prasad, SC for AICTE, C. Kodand Ram, SC for JNTU and Government Pleader for Higher Education, for the Respondent

Judgement

1. All these writ petitions are being dealt with under a common order since issue requires to be adjudicated in all the writ petitions is similar.

2. As factual position being undisputed, a brief reference thereto would suffice:

The All India Council for Technical Education, New Delhi (for short "AICTE") issued a notification for consideration for applications for establishment of new technical institutions for the academic year 2003-2004. The said notification was published in the newspapers on 18-8-2002. As per the said notification the last date for submission of completed application forms was 30-9-2002. All such applications were required to be verified at concerned regional office on or before 15-11-2002 from the original documents along with certified English version in

case of documents in regional languages. All the applicants had to enclose No Objection Certificate (NOC) from the concerned State Government for establishment of the technical institute for the academic year 2003-2004 as per the format given in the application form and made it clear that only such of those applicants who would produce all the documents in one lot on or before 15-11-2002, which was subsequently extended to 25-11-2002, will be invited for the presentation and other applications will be summarily rejected. It is also indicated in Clause-7 that all those applicants who had submitted the application under AICTE advertisement of August, 2001 and have not been issued Letter of Intent (LOI) need not apply again. However, they were required to produce all the documents to the concerned regional office as indicated at Clause 5 including NOC from the State Government for establishment of new technical institution for 2003-2004. In response to above notification the petitioners made their applications seeking permission for establishment of technical institutions for the academic year 2003-2004. Some of the institutions, namely petitioners in W.P. Nos. 24668 of 2002, 1401, 1798 and 1799 of 2003 had already registered their applications for the academic year 2002-2003 and their applications were transferred for the academic year 2003-2004. The State Government through its letter dated 9-11-2002 informed the AICTE that as on date there were 217 Engineering Colleges in the State with an intake of 62,750 and the availability of Engineering seats per 1.00 lakhs population is 82.86 and the State of A.P. is at number 2 position in the country, in respect of the number of Engineering Colleges and the intake in the college making its policy on sanction of new private Engineering Colleges and forwarded its recommendations to the AICTE which reads as under;

"I am therefore, directed to request you not to sanction any new Engineering Colleges in the State except in the uncovered Revenue Divisions and the places identified in G.O. Ms. No. 501, dated 4-8-2001 which do not have Engineering Colleges (list enclosed) and also not to sanction colleges to the societies to whom NOCs were not issued by the State Government. I am further directed to request you to sanction additional seats, if any, may be considered in the interior rural colleges as per the norms of AICTE."

While the applications were pending scrutiny the AICTE through the notification dated 20-11-2002 amended the regulations, namely All India Council for Technical Education (Grant of approval for starting new technical institutions introduction of courses or programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994 (for short "Regulations, 1994") and 1997 by introducing Clause 8(4)(e). The same was published in the Gazette on 25-11-2002.

3. In view of the above, the present writ petitions have been filed to declare the insistence of NOC from the State Government for establishing new technical institutions as illegal, arbitrary and unconstitutional and to have the applications processed without reference to NOC from the State Government and the letter

issued by the State Government dated 9-11-2002 is without jurisdiction. The Recommending authority, namely the State Government cannot take any policy decision and can request the AICTE not to sanction any other Engineering Colleges except uncovered Revenue Divisions and the places mentioned in G.O. Ms. No. 501. Once AICTE Act governs the field relating to establishment of technical institutions and the Regulations made thereunder in view of Entry 66 of List 1 of the Constitution, issuance of letter by the State Government is without jurisdiction.

4. The petitioner in W.P. No. 24668 of 2002 who obtained NOC from the State Government for establishment of new technical institution for the academic year 2002-2003 and whose application is transferred to the academic year 2003-2004 challenged the notification contending that action of the respondents in insisting for production of NOC is unsustainable in view of letter dated 9-11-2002 wherein the State Government informed the AICTE that the petitioner is one among the 21 colleges in whose favour it had issued NOCs for establishment of new colleges for the academic year 2002-2003 and approval from AICTE is yet to be received. In view of the same, invalidating the application on the ground that NOC for the year 2003-2004 from the concerned State Government has not been produced is arbitrary and illegal.

5. The AICTE in its counter stated that proposal for setting up the Engineering College is in consonance with the policies, prospective plan for technical education of the concerned State Government. As the State Government felt that there is an appreciable increase in the availability of the facilities for Engineering Education all over the State, there is need to identify potential growth centres where infrastructure for technical education can be created. On a survey made in this regard, the State Government had realized that the State average is only 38.02 seats in Engineering Colleges per one lakh population. In about 14 districts availability of seats in Engineering Colleges was below the State average, whereas in 9 districts availability of seats is above average. In the neighbouring States like Karnataka and Tamil Nadu the average is above 50 seats per one lakh population. Accordingly, the State Government has identified the Revenue Divisional Headquarters in each district in the State where there is need for growth and increase of engineering seats and declared its policy in G.O. Ms. No. 501, dated 4-8-2000 identifying the places. While that was the position in 2000 the availability of engineering seats for one lakh population is 82.86 and in view of increase of State average of availability of seats the State Government identified the Revenue Divisions, which are not covered so far. The notification issued by the AICTE is uniform to the entire country as regards time limit and any deviation will affect the functioning of the Council, and if similar request from all over the country is entertained the AICTE will not be able to process the applications and will not be in a position to issue its sanction within the period prescribed by it. To have uniformity in the country such schedule was arrived at after consulting the agencies concerned. The petitioners are not entitled to have their applications considered without NOC from the State Government and the

action of the Council in rejecting the applications is in accordance with the Regulation and they are not discriminated against since it is applied uniformly to all the applicants. The petitioners who have applied pursuant to this notification, knowing fully that NOC from the State Government is mandatory, it is not open for them to say that NOC is not necessary.

6. The 1st respondent-State Government filed a counter stating that while reviewing the growth of technical education in the State it has constituted three member committee to examine the issue of necessity of further Engineering Colleges in the State and pending receipt of the report from the Committee the Government decided to keep an embargo on sanction of fresh Engineering Colleges in the State except in Revenue Divisions which are not covered so far. Accordingly, it has requested the AICTE not to sanction any new Engineering College in the State except in the uncovered Revenue Divisions and the places identified in G.O. Ms. No. 501, dated 4-8-2001, which do not have Engineering Colleges and also not to sanction colleges to the societies to whom the NOCs were not issued by the State Government, keeping in view the interest of the State.

7. The arguments addressed on behalf of the writ petitioners lead by Sri E. Manohar were:

(i) Insisting NOC from the State Government by AICTE is arbitrary, illegal and contrary to the Regulations and AICTE cannot surrender its power to the State Government.

(ii) Amendment of Regulation 8(4) (e) published on 25-11-2002 is prospective in operation and cannot be made applicable to the petitioners.

(iii) The policy decision of the State Government not to permit new colleges through its letter dated 9-11-2002 will not bind AICTE and the State Government being the recommendatory authority cannot take any such policy decision as held by the Supreme Court in Shivaji University Through Director Vs. Bharti Vidyapeeth Through Joint Secretary and Others, , and Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others,

(iv) The rejection of the application for non-compliance of Regulation 8(4)(e), namely for non-production of NOC, is contrary to Regulations and before such rejection notice, as contemplated under proviso to Regulation 8(7)(ii) has not been issued and AICTE has to consider the applications independently of the petitioners who have invested considerable amount.

(v) In the absence of any guidelines issued for issuance of NOC, AICTE cannot delegate its power to State Government for issuance of such NOC.

(vi) It was lastly contended that Regulation 8(4)(e) was introduced only to defeat the writ petitions and the same cannot be made applicable for 2003-2004.

8. Sri V.R. Reddy, learned Senior Counsel supplemented that the petitioner in

W.P. No. 24668 of 2002 was granted NOC for the year 2002-2003 and the same was revalidated through proceedings dated 3-1-2003. In view of the Same, rejection of the petitioner's application through proceedings dated 31-1-2003 is arbitrary and illegal. When the petitioner's college is in the pipeline, which is evident from the letter dated 9-11-2002, revalidating is only a formality and the same can be treated as NOC. The petitioner has been discriminated in issuing LOI whereas in case of Bhandari Educational Society LOI was granted.

9. Sri Koka Raghava Rao, learned Counsel representing the petitioners in W.P. Nos. 23987, 24033 and 25700 of 2002, apart from general submissions, referred to above, contended that condition to obtain NOC does not indicate the power of refusal to State Government and the petitioner in W.P. No. 23987 of 2002 submitted his application seeking approval of Engineering College for the academic year 2002-2003 and the same was rejected on 17-6-2002 stating that it can be considered for the academic year 2003-2004. The petitioner submitted the same again for the academic year 2003-2004 and completed 75% of the construction legitimately expecting that permission will be granted to it. In spite of the petitioner's request for hearing before the Committee for submission of NOC merely the State Government decided to return the D.D. paid towards inspection fees through its letter dated 14-11-2002 in view of declaring holiday for establishment of new Engineering Colleges till a survey is conducted by AICTE. Similarly the petitioner in W.P. No. 24033 of 2002 complied with all the formalities and legitimately expected for grant of approval and the AICTE is estopped from rejecting the application.

10. Sri Nuty Ram Mohan Rao, learned Counsel for the petitioners in W.P. Nos. 24609, 24701 of 2002, 1798 and 1799 of 2003 contended that Regulations do not contemplate the production of NOC on the date of submission of application. What was not contemplated in the Regulations cannot be made as a condition precedent by way of amendment.

11. Sri Philkhana Rama Rao, learned Counsel for the petitioner in W.P.No. 24474 of 2002 would contend that application made by the petitioner has to be considered as per the Regulations but not as per the amendment effected. When there is no provision under AICTE Act requiring approval of the State Government and obtaining NOC, the same cannot be incorporated in the Regulations. Regulations cannot override the provisions of the Act and such Regulations, if any, is repugnant to Section 10(1)(k) of the Act. The petitioner has already completed 75% of the construction and is entitled to approval even without NOC.

12. Learned Counsel for the petitioner in W.P. No. 24669 of 2002, Sri P. Sri Raghu Ram would contend that policy to reject the application should be uniform and there cannot be any discrimination,

13. Sri 5. Niranjan Ready, learned Counsel while adopting the general submissions further submitted that Section 20 of the A.P. Education Act, 1982

cannot be made applicable for establishing technical institutions which is now recognized as occupation under Article 19(1)(g) of the Constitution. NOC is only a form of recommendation and medium of consultation. Even if the power to grant NOC is conferred on the State Government, no opportunity was given to the applicants before rejection of NOC. In view of the State Government's letter dated 9-11-2002 Revenue Division is a unit for such consideration and it is not in accordance with any other conditions specified by AICTE. Under Regulation 6(7) AICTE cannot include condition opposed to or in conflict with the Act or Regulation. When AICTE Act does not provide for any role to the State Government with regard to desirability/feasibility of any institution or any location, State Government cannot take a decision for establishing such institutions in the Revenue Division. In the absence of any material before the State Government its decision to declare a holiday for grant of NOC is arbitrary and illegal.

14. Sri S. Sreeram, learned Counsel for the petitioners in W.P. Nos. 4630 and 4683 of 2003 contends that late issuance of NOC cannot be attributable to the petitioners as approval will be given in June, 2003. In view of the same, the applications of the petitioners have to be considered in the light of NOCs issued by the State Government.

15. Learned Senior Counsel, Sri S. Satyanarayana Prasad representing AICTE as well as the State Government in answering the above arguments would contend that none of the petitioners have challenged Regulations/amendment. In the impugned notification it is made clear that non-production of documentary evidence will entail the rejection and no notice is required before rejecting the case. AICTE has to adhere to All India Calendar and in order to see that National Calendar is adhered to it has to act fast. Inspection and all other formalities have to be completed by June. Four committees were constituted to process the applications. The petitioners have not challenged the orders of rejection of applications. The State Government only indicated its polity to AICTE through letter dated 9-11-2002 and the same cannot be challenged. Regulation framed u/s 23 of the AICTE Act as amended in 1997 for processing the applications neither creates any right, nor extinguishes the rights. The amended Regulation will be applicable to all such applicants. Even as per the amended Regulations, 1997, the State Government has to send its recommendations. The insertion of Regulation 8(4)(e) is nothing but as stated in the notification. In the absence of any mala fides attributed, it is not open for the petitioners to challenge the requirement of NOC. In the absence of State Act, which requires NOC, Regulation is made under Central Act itself, which itself requires NOC, therefore, the petitioners cannot plead any repugnancy. When the State Government identified needs of the locality for establishing new institutions, it does not encroach into the domain of AICTE. The date of consideration will be material date and on the said date Regulations, which are in force will be applicable for such consideration by placing reliance on the judgment of the Supreme Court in *State of Tamil Nadu Vs. Hind Stone and Others*, . The consultation process between the State

Government and the AICTE cannot be communicated to the petitioners in the absence of petitioners acquire any right. The NOCs were received belatedly in W.P. Nos. 24668 of 2002; 1401,1798 and 1799 of 2003 i.e., after due date. Therefore, the same were not considered, as AICTE cannot put back the clock and the same will upset the whole system. The role played by the State Government is only recommendatory and it is one of the decision making process u/s 10(1)(k) of the AICTE Act where the AICTE shall consult the State Government/ Union Territories before permitting any new colleges. By placing reliance in St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, , learned Counsel contends that such a consultation process cannot be termed as arbitrary and illegal. The NOC given to the petitioner in W.P.No. 24668 of 2002 is only for the academic year 2002-2003 and revalidation is after the cut off date. Admittedly, the NOCs. issued in favour of petitioners in W.P. Nos. 1038, 1401, 1798, 1799,1816, 2370, 2717 and 2732 of 2003 were belated. In the absence of any vested right, the petitioners cannot insist that they are entitled for grant of letter of permission by issuing Letter of Intent.

16. Learned Counsel for the petitioner in W.P. No. 21831/2002 submitted that AICTE has not undertaken any survey for the need of establishing new colleges and granting approval for establishing new colleges will only result in falling down of standards, Which is contrary to the aims and objects.

17. For deciding the issues that arise for consideration in this batch of writ petitions, it is necessary to notice the object in enacting the AICTE Act and various provisions which have a direct bearing on these issues.

18. The All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert Body to advice the Central and the State Governments for ensuring the coordinated development of technical education in accordance with approved standards. Taking into account the growing erosion of standards, the Council at its meeting held in 1981 came to the conclusion that a stage had reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country. In pursuance of the above resolution and other recommendations, a National Working Group was set up in November, 1985 to look into the role of the AICTE and it has recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education, 1986, also stipulated that the AICTE will be vested with statutory authority for planning formulation and the maintenance of norms and standards, accreditation, finding or priority, areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education in future. Accordingly, the power and functions assigned to the AICTE inter alia provide for laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for

admission of students and the charging of fees, and inspecting, and evaluating institutions periodically with a view to maintaining standards and accordingly to provide recognition or withhold recognition of programmes and institutions. To achieve the said object AICTE Act was enacted with the following objectives:

- (1) proper planning and co-ordinated development of the technical education system through the country;
- (2) promotion of qualitative improvement of technical education in relation to planned quantitative growth; and
- (3) regulation of the system and proper maintenance of norms and standards.

Section 10 of the Act deals with powers and functions of the Council and reads:

10. Functions of the Council :--(1) It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may,--

(a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education;

(b) co-ordinate the development of technical education in the country at all levels;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

19. Section 14 of the Act requires the Council to establish Regional Committees to advice and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region.

20. Section 22 empowers the Central Government to make rules to carry out the purposes of the Act.

21. Section 23 empowers the Council to make Regulations and specifically mandates the making of such Regulations only "not in consistent" with the provisions of the Act and the rules.

22. In exercise of the powers conferred by Sub-section (1) of Section 23 of the Act, the AICTE framed Regulations, 1994.

23. Section 24 obligates that the rules and regulations made under the Act have to be placed before the Parliament. It is not disputed that Rules and also Regulations framed have been placed before the Parliament, as required u/s 24 of the Act.

24. Regulation 4 obligates grant of approval for establishing new technical

institution or University by the AICTE and Regulation 6 provides conditions for grant of approval made under Regulation 5. Every application under Sub-regulation (1) of Regulation 4 shall be considered subject to the fulfilment of various conditions, which may be specified by the Council from time to time under Regulation 6(vii). The application so submitted will be scrutinized by the Bureau Regional Committees of the Council constituted u/s 14 of the Act, which shall invite the comments/ recommendations on the application, referred to in Sub-regulation (3) of Regulation 7 from the following:

- (1) the State Government concerned;
- (2) the affiliating University/State Board of Technical Education
- (3) Bureaus MPCD;
- (4) Bureau BOS;
- (5) Bureau RA;
- (6) the Regional Office.

The time schedule and sequences of processing applications for approved proposals shall be given as per the schedule appended to the Regulations.

25. Regulation 8 deals with scrutiny of applications and reads :--

8. Scrutiny of Applications :--(1) On receipt of a copy of the application submitted to the Council for obtaining a letter of viability, the concerned University or the Directorate of Technical Education, having jurisdiction in the area in which the new technical institution is to be started, shall make arrangements for scrutiny and verification of the information contained therein.

(2) (4) On receipt of the report containing the recommendations of the University or the Directorate of Technical Education, as the case may be, under Sub-regulation (3), the State Government or the University Grants Commission, as the case may be, shall forward the report and its recommendations to the Council specifically dealing with the viability of the proposal having regard to the following requirements:

(a) Requirement of Land:

The Application shall identify suitable land for starting the new technical institution. The minimum requirement of such land shall be as indicated in Table below:

Table-I

Serial Number	Locality	Minimum requirement of land (Engineering and Technology)
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(1)	(2)	(3)
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1. Rural area 10 Hectares 8 Hectares
2. Taluk or District Headquarters 4 Hectares 4 Hectares
3. Metropolitan Cities or State Capitals 2 Hectares 2 Hectares

Note: It shall not be necessary for the applicant to have ownership or title of the land proposed to be utilized for starting the new technical institution at the state of making the application in Form VI. The ownership or title shall be required only after issuance of the letter of viability.

(b) Funds: (i) the minimum requirement of funds for starting of new technical institution by a registered society/trust shall be as detailed in Table-II below.

Table-II

Serial Number Level of Engineering and Technology Institutions Minimum Fund required

(1) (2) (3)

1. Degree Rs.50 lakhs

2. Diploma Rs.25 lakhs

Note : It shall not be necessary to produce any fixed money deposit receipt from a bank in the joint name of an applicant society/trust and the respective Regional Officer, at the stage of making an application in Form-VI. This will be required only after issue of a letter of viability.

(c) Notwithstanding anything contained in Clauses (a) and (b), the requirement of land and funds in the case of new institutions in Architecture, Hotel Management and Catering Technology, Pharmacy and Applied Arts and Crafts shall be as per the relevant norms and standards specified by the Council in respect of such institutions.

(d) Track Record: Where the applicant is a registered society or trust it shall have a sound track record of running an educational institution for a minimum period of five years.

(7) After considering the recommendations of the agencies concerned and after making such further enquiry as it may deem necessary, the Council may, by 15th April,--

(i) issue a letter of viability on the proposal to the applicant stating therein that the proposal is viable and that the applicant may proceed to take further action for getting final approval of the Council under these Regulations; or

(ii) issue a letter of regret to the applicant stating therein the specific ground or grounds on which the application has been rejected:

Provided that no application shall be rejected unless the applicant has been given

a reasonable opportunity of being heard in the matter.

26. Regulation 9 contemplates processing of application by two bodies and says:-

9. Processing of application by bodies :--(1) The Council may process the various applications made under these regulations through its following bodies namely;

(a) Regional Committee concerned;

(b) Board of Studies concerned;

(2) Before giving its recommendation on the application, the Regional Committee or the Board of Studies, as the case may be, may hold a meeting with the Secretary of the State Government dealing with technical education and the Director of Technical Education of the State Government, the Vice-Chancellor, a Director of Indian Institute of Technology, a member from the Executive Committee, nominee of the University Grants Commission, expert members nominated by the Chairman of the Council, Adviser Bureau ET, Adviser Bureau AIB, Regional Officer, Adviser Bureau Man Power, representative of Technical Bureau of the Ministry of Human Resource Development, Department of Education and any other special invitees.

27. The various contentions urged on behalf of the petitioners in the light of statutory provisions as referred to above can conveniently be brought under the following heads:

(1) Whether the notification issued by the AICTE requiring the institutions to obtain NOC amounts to abdicating its power to the State Government in the absence of any guidelines issued for issuance of NOC by the Government.

(2) Whether Regulation 8(4)(e) is beyond the power u/s 23 of the AICTE Act, if not the same will be only prospective in operation and will not govern the applications and whether AICTE is under an obligation to grant approval de hors NOC issued by the State Government for establishing a new technical institute in the State.

(3) Whether the rejection order passed by the AICTE refusing approval for establishment of technical institutions for the academic year 2003-2004 in favour of institutions which were already granted NOCs for the previous year can be sustainable or not.

28. The legal position as to the occupied field for "grant of approval" vis-avis the powers of State Government in the said field is now well settled by the decisions of the Supreme Court and various High Courts.

29. In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, , after considering the requirement of approval by the State Government contained in Clause 9 of Kerala University First Statute for establishing new technical institution and after referring its earlier judgment in

State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , it was held that once Section 10(k) occupied the field relating to the "grant of approvals" for establishing technical institutions and the provisions of the Central Act alone were to be complied with. So far as the provisions of the Mahatma Gandhi University Act or its statutes were concerned and in particular Statute, 9(7), it merely required the University to obtain the "views" of the State Government and there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the Act. While holding so, the Supreme Court held that the University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act.

30. The Supreme Court in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Educational and Charitable Trust v. State of Tamil Nadu (supra) while considering the repugnancy between proviso to Section 5(3) of Medical University Act inserted by State of Tamil Nadu and Section 10(a) introduced in Indian Medical Council Act held that after enactment of Section 10A by the Central Government, the Medical Council, by notification dated 20-9-1993, has made the Regulations whereby a scheme for application for permission of the Central Government to establish a new medical college has been made. In the said scheme qualifying criteria for applying for permission to establish a new Medical College have been laid down. One of the conditions for the qualifying criteria laid down is that essential certificate regarding desirability and feasibility of having the proposed medical college at the proposed location should be obtained from the State Government. The said condition about obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone. The Supreme Court in Para 36 of the judgment further held as under:

"The question that arises is whether the State Government should again be directed to consider the matter of grant of essentiality certificate. On a careful consideration of the matter, we are of the opinion that since the Trust has already established the infrastructure for establishing a medical college and the reports of the inspection conducted by the Medical Council as well as by the University indicate that the facilities that are available adequate for starting a medical college, it would serve no useful purpose insist upon obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location, We are, therefore, of the view that the matter of grant of permission for establishing

a new medical college by the petitioner-institute should be considered by the Central Government without insisting upon the condition regarding obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location.

31. In *Shivaji University v. Bharti Vidyapeeth* (supra) the Supreme Court considered the validity of the resolution passed by the State of Maharashtra wherein, as a matter of policy, it was decided where there was a single college in a district of the State, no other law college will be permitted, and held that such a policy is arbitrary and unreasonable. What is relevant and what should be taken into consideration is the population which the existing Law College serves and whether, therefore, there is need for an additional college. While setting aside the decision the Supreme Court remitted the matter to the State Government to consider the issue afresh by taking into consideration what population the existing Law College serves and whether the said Law College is, in this light, required.

32. Yet another submission was made by learned Counsel by placing reliance on the judgment of the Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, wherein it was held that in case of private unaided institutions the authority of granting recognition/affiliation can certainly be regulated by the State in the interest of academic standards. In view of the same, it was contended that minority educational institutions have a fundamental right to establish institutions subject to reasonable restrictions only with regard to granting recognition or affiliation, but cannot prevent establishment of new colleges.

33. In none of the cases, referred to above, there was an occasion to consider the Regulations framed under the AICTE Act, which requires obtaining NOC from the State Government for establishing new technical institutions. In all the cases, referred to above, the Supreme Court was dealing with repugnancy of State enactments, which requires obtaining approval and NOC after coming into force the Central enactment, which occupied the field.

34. In *Lords and Angels Teacher Training Institute etc, and Ors. v. The State of Tamil Nadu etc.* 1997 1 LW 787, a Division Bench of Madras High Court held that on coming into force the Regulations issued by National Council for Teacher Education every institution intending to offer a course or training in teacher education shall submit application for recognition with a No Objection Certificate from the State or Union Territory in which the institution is located. While dealing with the contentions that requirement to obtain NOC from the State Government is illegal, the Madras High Court held that the question of inconsistency will come only if there is a provision in the Act which says that recognition should be accorded without reference to the State Government. In the absence of such a provision the Regulation cannot be said to be inconsistent with the Act. Therefore, the requirement of obtaining NOC as per Regulation 5(e) and 5(f) cannot be held to be unreasonable. It cannot also be held to amount to a

restriction, much less an unreasonable restriction on the fundamental right of a religious or linguistic minority.

35. In the case of *St. Johns Teachers Training Institute v. Regional Director, NCTE* (supra) the Christian Minority Teacher Training Institute (appellant) filed an application seeking permission for establishing elementary education training in the year 1999-2000. The respondents replied that in the absence of a No-Objection Certificate from the State Government its application will be treated as incomplete and would not be considered. When a challenge was made before the Karnataka High Court the learned Single Judge held that Regulation 5(e) and (f) are ultra vires and invalid. On appeal by the Council, the Division Bench set aside the order of the learned Single Judge and dismissed the writ petitions. Against which SLP was preferred and it was decided along with connected writ petitions filed under Article 32 of the Constitution of India. It was contended that Regulation 5(e) and (f) which require obtaining of an NOC from the State Government also confers jurisdiction on the State Government in the matter of granting recognition, which is wholly outside the purview of the NCTE Act. The Supreme Court after noticing subsection (3) of Section 14 held that the Regional Committee cannot perform Herculean task and it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason that the assistance of the State Government or Union Territory in which that institution is located is taken by the Regional Committee and this is achieved by making a provision in Regulations 5(e) and (f) that the application made by the institution for grant of recognition has to be accompanied with an NOC from the State or Union Territory concerned. The impugned Regulations in fact facilitate the job of the Regional Committees in discharging their responsibilities and consequently the State Government may refuse to grant NOC on wholly irrelevant considerations is without substance. After taking note of guidelines issued by the NCTE to the State Governments on 2-2-1996 for issuance of an NOC, the Supreme Court held as follows:

"It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary or unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in Sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid."

After considering similar requirement of NOC from the State/Union Territory/ Administration under Regulation 6 it was held that even if the NOC is not granted

by the State Government or Union Territory concerned and the same is refused, the entire matter will be examined by the Regional Committee while taking a decision on the application for recognition. Therefore, the grant or refusal of an NOC by State Government or Union Territory is not conclusive or binding and the views expressed by the State Government will be considered by the Regional Committee while taking the decision on the application for grant of recognition. The role of the State Government is certainly important for supplying the requisite data which is essential for formation of opinion by the Regional Committee while taking a decision under Sub-section (3) of Section 14 of the Act. Therefore, no exception can be taken into such a course of action. While concluding it was desired that it will be proper that the Council frames appropriate regulations fixing the time limit within which a decision should be taken by the State Government on the application moved by an institution for grant of an NOC and till such regulations are made the State Government was directed to take a decision within four months, failing which it shall be deemed that the NOC has been granted.

36. Point No 1: It was urged by the learned Counsel for the petitioners that on coming into force the AICTE Act, 1987, which occupied the field it was not necessary to obtain NOC from the State Government or other authority and the State Government cannot be conferred jurisdiction by the AICTE which amounts to abdicating the power to the State Government and it is beyond the competent under the Regulations. As already noticed Section 10 of the Act enumerates the various powers and functions of the AICTE as also its duties and obligations to take steps towards fulfilments of the objects sought to be achieved as envisaged in the Statement of Objects and Reasons for the AICTE Act. One of such power as envisaged in Section 10(1)(k) is to "grant approval" for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. It is the duty of the Council to undertake survey in the various fields of technical education, collect data on all related matter and make forecast of the needed growth and development in technical education as mentioned in Section 10(1)(a) of the Act. Nowhere in the Act a right is conferred on the applicants for establishment of institutions on mere submission/making an application without there being an approval by AICTE. u/s 14 of the Act Council shall establish Regional Committees for four regions. The Southern Regional Committee with its office at Madras will advice and assist the Council to look into all aspects of planning, promoting and regulating technical education within the region. Section 23 of the Act confers power on the Council to make Regulations not inconsistent with the provisions of the Act and the rules to carry-out the purpose of the Act.

37. In exercise of the powers conferred u/s 23 of the Act the Council has framed Regulations, 1994 and they were amended from time to time. Regulation 7 contemplates making application for approval of the Council. Regulation 8 deals with scrutiny of applications. Regulation 9 contemplates processing of applications in consultation of various bodies. Regulation 9(2) casts a duty upon

the Regional Committee to be specified with regard to large number of applications submitted by the institutions for granting recognition. It is rather impossible for one Regional Committee alone set up for Southern Region to conduct survey in the entire region with regard to establishment of technical institutions and the need of the locality. It is therefore, difficult for the Regional Committee itself to obtain complete particulars and details which are required for establishing technical institutions and other conditions, which are required for grant of recognition. In the process it has to necessarily depend upon some other agency or body for obtaining necessary information. It is for this reason only that AICTE issued notification making it a condition that obtaining NOC from the concerned State Government for establishing a new technical institution, as per the format given in the application form and made it clear that such of the applicants who produce the documents before the due date alone will be considered for grant of approval and such of the applicants who do not produce such documents, as stated in the notification will be rejected in toto. Learned Counsel failed to substantiate imposing the condition of obtaining NOC from the State Government as contrary to any of the provisions of the Act, and the Regulation. Such a condition of obtaining NOC from the State Government will no way affect the rights recognized under the Act.

38. A Division Bench of this Court in *Government of A.P. Vs. St. Mary's Educational Society, Giddalur, Prakasam Dist. and another*, , after considering Section 20 of the A.P. Education Act, 1982 vis-a-vis Section 14 of the NCTE Act, 1987 held that it cannot be said that the State Government's jurisdiction to grant permission for establishing educational institutions including institution offering or intending to offer a course or training in teacher education is affected in any way insofar as it relates to making of an assessment for providing such educational facilities to the people in a locality. However, the State Government's role after the enactment of the NCTE Act is mainly restricted to the aspect relating to the need for establishment of institutions offering or intending to offer a course or training in teacher education. In other words, the State Government is still entitled to make an assessment about the need for establishment of such institutions offering or intending to offer a course or training in teacher education. In that view of the matter, the finding recorded by the learned Single Judge that the State Government's jurisdiction and authority in that regard is in no way denuded by the subsequent NCTE Act is unexceptionable.

39. Council requires production of NOC from the State Government who can make a survey about the requirement of the area for establishing such technical institution and provide necessary data to the Council.

40. It was contended that for submitting application for recognition insisting NOC from the State Government is ultra vires and invalid. The said condition imposed in the notification for obtaining NOC from the State Government in the light of Regulations 8 and 9 where the Regional Committees take assistance of the State Government or the Union Territory or other bodies dealing with technical

education in which the institution is located can be achieved. This is one of the salient processes undertaken by the Regional Committees, which will facilitate its object in discharging their responsibilities while processing the applications. Only after complying the recommendations made by the Regional Committees the applications will be scrutinized by the Council under Regulation 8 and after such recommendation made by the Regional Committee or from the agencies Which are dealing with the technical education in the respective States, which do not amount to delegating the power to the State Government nor conferring any power on the State Government for rejecting the application. In view of the same, it is difficult for us to uphold the contention that prescribing such condition in the notification is arbitrary and illegal.

41. Point No. 2: It was urged that Regulation 8(4)(e) is beyond the competence of the Council and the same will not have retrospective in operation. Sri Koka Raghava Rao, learned Counsel, who contended that such a Regulation is beyond the power of the Council, has not placed any material either in the written argument nor substantiated the same. In the absence of any submission in this regard, we hold that the same do not suffer from excessive delegation or that the same is ultra vires to Section 23 of the Act.

42. The contention of learned Counsel for the Petitioners that Regulation 8(4)(e) will not have retrospective operation has to be considered in the light of right conferred upon the writ petitioner-institutions for establishing such a college. The petitioners are only entitled to make an application pursuant to notification, which clearly prescribes that applicants should enclose NOC from the concerned State Government for establishing new technical institution. Section 10(1)(k) of the Act confers power on the Council for grant of approval in consultation with the agencies concerned. One of the agencies is State Government whom the Regional Committee can consult under Regulation 9(2). Even in the absence of any such Regulations the guidelines issued under the notification will partake the character of Regulation. The condition prescribed in the notification is not in any way inconsistent with the Regulations 8 and 9(2). Sub-regulation (8) of Regulation 8 deals with issuance of letter of viability or rejection of the same. As already noticed, the State Government through its letter dated 9-11-2002 informed the AICTE that there are more number of colleges, which were already granted, the same will be a guiding factor for the AICTE do deal with the applications and take a decision whether to grant approval or not. The writ petitioners/ applicants are only entitled for consideration of their applications by the AICTE. In the absence of any right conferred on them for grant of such approval, it is not open for the petitioners to insist that AICTE has necessarily to grant approval in their favour irrespective of NOC. Prescribing a condition for obtaining NOC cannot be termed as irrational or arbitrary. It is in furtherance of achieving the object sought to be achieved as mentioned in Section 10(1)(k) and the regulations framed thereunder. In view of the same, the amended regulation will also govern the cases of the applicants as the applications will be scrutinized after the introduction of Regulation 8(4)(e).

43. The Supreme Court in *State of Tamil Nadu v. Hind Stone* (supra) categorically held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application.

44. Another submission was made by Sri E. Manohar, learned Senior Counsel that before rejecting the application, no opportunity was given as contemplated under proviso to Regulation 8(7)(ii). Issuance of notice will arise only in case application was forwarded by Regional Council for consideration by AICTE and if the Council rejects the case only in such circumstances a notice is contemplated, but in the notification itself it is clearly mentioned that non-compliance of the conditions specified will entail rejection, no such further notice is required. Yet a feeble submission was made by the learned Counsel that Regulation 8(4)(e) was introduced only to defeat the writ petitions. We see no force in the said submission, as already observed even there being no Regulation, the same was made a condition in the notification itself. In the light of the observations made by Supreme Court in case of *St. Johns Teacher Training Institute v. Regional Director, NCTE* (supra), we desire that it will be but proper for the Council to frame appropriate regulations fixing the time limit within which the State Government has to consider and take its decision in issuance of NOC on the applications moved by the applicants for grant of such NOCs. Till such guidelines are issued, a reasonable time can be fixed so as to enable State Government to take decision which in our view should be four months and hold that if the State Government will fail to take decision and communicate the same either to grant or not to grant NOC within four months from the date of application, it shall be deemed that the same has been granted and the Council has to proceed accordingly.

45. Point No. 3: The petitioners in W.P. Nos. 24668/2002, 1401, 1798 and 1799 of 2003 were granted NOC by the State Government for the academic year 2002-2003. The State Government in its letter dated 9-11-2002 clearly stated about its issuance of NOC for establishment of new colleges in favour of six societies for the academic year 2002-2003, but approval of the Council has not been received so far. The Government also issued NOC to 11 societies for the academic year 2002-2003. The details are mentioned in the letter. Thus altogether the State Government granted NOC for 21 Engineering Colleges which are likely to be established for the academic year 2003-2004 and requested not to sanction any new Engineering Colleges in the State. The application of the petitioner in W.P. No. 24668 of 2002, who obtained NOC from the State Government for the academic year 2002-2003, was transferred for consideration for the academic year 2003-2004 by the AICTE through its letter dated 31-1-2002 stating that it would be communicated to the petitioner by post. Curiously the application of the petitioner was rejected, as NOC for the year 2003-2004 from the concerned State Government has not been produced. Pending writ petition the State Government has granted NOC in favour of the

petitioner. In view of the same, AICTE has to consider the application of the petitioner afresh for issuance of approval. The contention of the Government Pleader for Higher Education that revalidated NOC was not received on the last date therefore, rejection of the application was validly made cannot be accepted for the reason letter dated 9-11-2002 can be treated as granting NOC in favour of petitioner-institution and the State Government's intention to revalidate the same for the academic year 2003-2004. In view of the same, rejection of the application on the technical ground that NOC has not been revalidated cannot be sustainable and it is accordingly set aside. W.P. Nos. 24668 of 2002, 1401, 4299, 1798 and 1799 of 2003 deserve to be allowed for reconsideration by the AICTE in the light of NOC issued. Similarly, the petitioners in W.P. Nos. 4630 and 4683 of 2003 in whose favour NOCs were issued belatedly have to be reconsidered for issuance of approval by AICTE.

46. Yet another submission was made by the learned Counsel for the petitioners that some of the petitioners have completed 75% of construction, which is essential condition for making the application as per the notification, therefore, the respondents are estopped from refusing permission cannot be accepted for the reason that as per the Regulations any prospective applicant has to show necessary infrastructure of the land required for establishment of such institution for consideration of application. That does not mean that the applicants who have made available the land and construction have necessarily to be granted approval and LOI for establishing the colleges. It is fairly now well settled that unless there is a promise by the approving authority for grant of licence or approval and in furtherance of said promise if the applicants acted upon, the promissory estoppel cannot be invoked. By merely raising of construction no right is acquired by the applicants.

47. Lastly it was also contended by the learned Counsel for the petitioners that minorities have a fundamental right to establish an institution subject to reasonable restrictions. In the absence of any reasonable restrictions pleaded nor disclosed by the State Government, the petitioners can establish such institution. Such a submission is devoid of any merit in the light of law laid down in the case of St. Johns Teachers Training Institute (supra). Establishment of new institution is subject to regulations framed under the AICTE Act.

48. For the reasons aforementioned W.P. Nos. 24668/2002, 1401, 1798, 1799, 4299, 4630 and 4683 of 2003 are allowed and the first respondent is hereby directed to consider the applications in the light of NOCs issued by the State Government afresh within a period of three weeks from to-day. W.P. Nos. 23987, 21804, 22535, 22638, 22906, 22972, 23191, 23271, 23281, 23286, 23296, 23319, 23389, 23396, 23428, 23505, 23508, 23518, 24033, 24138, 24164, 24165, 24366, 24401, 24433, 24474, 24515, 24607, 24609, 24648, 24669, 24701, 25051, 25489, 25496, 25700 of 2002 and 708, 1038, 1816, 2370, 2717, 2732 and 4130 of 2003 are dismissed. In view of the disposal of the writ petitions, it is unnecessary for us to go into the contentions advanced in the W.P.

No. 21831/2002, which was filed in the form of Public Interest Litigation, and the same is liable to be dismissed and it (W.P. No. 21831/2002) is accordingly dismissed. Parties to bear their respective costs.