

(1997) 04 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 24515 and 27059 of 1996

Devarakonda Edl. Society

APPELLANT

Vs

All India Council Technical Education and others

RESPONDENT

Date of Decision : 01-04-1997

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 4, 5, 6, 7, 8
All India Council for Technical Education Act, 1987 — Section 10(1), 11, 2, 22, 23
Andhra Pradesh University Act, 1991 — Section 17, 18(1)
Civil Procedure Code, 1908 (CPC) — Order 17 Rule 3, Order 41 Rule 1
Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 3, 4
Education Act, 1982 — Section 2(3)
Evidence Act, 1872 — Section 114, 16
General Clauses Act, 1897 — Section 3(66)
Transfer of Property Act, 1882 — Section 3

Citation : AIR 1997 AP 389 : (1997) 3 ALT 117 : (1997) 2 APLJ 46 : (1997) 2 APLJ 11

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Koka Raghava Rao, for the Appellant; MVS Suresh Kumar, for the Respondent

Judgement

1. The two writ petitions emanate between the same parties involving several common questions of law and facts. Among them. W. P. No. 24515/96 was filed earlier on 19-11-1996 and W. P. No. 27059/96 was filed later on 17-12-1996. The common petitioner is an Educational Society located at Madhapur. Ranga Reddy district, Hyderabad. The common respondents are the All India Council for Technical Education (in short AICTE-1st respondent), the Government of Andhra Pradesh (in short, the Government-2nd respondent), the Commissioner and Director of Technical Education (in short. the Director-3rd respondent). A. P. State Council of High Education (in short, the State Council-4th respondent) and

the Convenor. EAMCET (in short, the Convenor-5th respondent). In W. P. No. 24515/96, the petitioner sought a writ of Mandamus declaring that the petitioner is entitled to the approval by the first respondent and for clearance from respondents 2 to 5 to establish and commence the D. V. R. College of Engineering and Technology at Madhapur. R. R. District with six courses applied for and with an intake capacity of 360 candidates. 60 candidates each into six courses. In the meanwhile, when the first respondent filed a counter, it was made known that such an approval applied for by the petitioner had been rejected by the impugned order in proceedings No. 732-50-079 (NDEG)/ET/95 dated 4-11-1996. Challenging such an impugned order of the first respondent. W. P. No. 27059/96 was filed by the petitioner to declare that the same is arbitrary, illegal and unenforceable apart from being violative of the fundamental principles of natural justice and direct the respondents 4 and 5 to allot 360 students. 60 students for each of the courses, as detailed.

2. The factmatrix as the backdrop of these proceedings require a initial and brief record :--In response to the publication of notification in a newspaper dated 21-12-1995. the petitioner applied on 31 -12-1995 to the I si respondent for permission to establish the unaided private engineering college as proposed. An expert committee inspected the premises wherein it was proposed to have the college viz., at Madhapur village in R. R. District. The expert committee inspected the premises and the college and submitted a favourable feasibility report. A high level committee was constituted by the Government in G. O. Ms. No. 526 dated 25-4-1996 in order to finalise the scrutiny of the applications and to report compliance with the requirements. It appears that it was finalised by 27-4-1996. It appears that the advisors of the first respondent. Hyderabad reviewed and cleared the applications of 11 colleges including the petitioner. In this regard, the petitioner received an intimation from the Southern Regional Office of the first respondent in the communication dated 25-5- 1996 reporting that a joint expert committee constituted by the first respondent, including the nominees of the State Government of Andhra Pradesh consisting of five members including the Chairman and Convenor will be visiting the petitioner college on 30-5-1996.. The proposal of the petitioner in regard to the commencement of such a college to permit six courses viz,. Civil Engineering. Mechanical Engineering. Electrical and Electronics Engineering. Computer Science and Engineering, Telecommunication Engineering and Chemical Engineering with an intake capacity of 60 each (total 360) was considered. It was for the academic year 1996-97 regarding which the committee had to submit its recommendation to the first respondent for its consideration. It is alleged that inspection by such a committee was carried out examining the infrastructure including the building, laboratory, library, equipment etc., and the land earmarked to put up construction. The petitioner has alleged that he personally visited the advisor of the first respondent number of times and requested to finalise the matter. It appears that a personal representation was also presented to the Chairman of the first respondent by the President of the petitioner on 25-10-1996. It is pleaded that the petitioner had made all the

preparations including investment of substantial sum to the tune of Rs. 3 to Rs. 4 crores for the purpose of acquiring the land, to engage a building and to have several facilities as per the requirements to commence the institution and arrange for the entire staff and the members of the facility for the purpose. In the mean while EAMCET examination was conducted for the year 1996-97 selecting about 31000 candidates who had become successful out of the candidates who appeared for the examination. Some of them could be absorbed in the private and Government colleges for the said academic year whereas the remaining candidates who were eligible for admission were to be allotted to various colleges in Andhra Pradesh. It appears that the first respondent cleared admissions regarding eight unaided private engineering colleges from out of eleven colleges cleared by the Advisory Committee of the first respondent. The petitioner did not get such a clearance. It is contended that though the 1st respondent in its proceedings D/-25-3-1996 cleared and afforded conditional approval for the oilier colleges, subject to fulfilment of several conditions, the same thing was not afforded to the petitioner. It appears that some of the colleges approached this Court in certain writ proceedings and obtained some interim orders to get admission of the successful candidates in EAMCET examination to such institutions which were permitted to be commenced subject to fulfilment of certain conditions. It is complained that although some of the colleges did not comply with the specific conditions, the 1st respondent granted approval subject to compliance of certain conditions regarding which the petitioner in W. P. No. 20760/96 is said to be one. Therefore, having failed to get the approval from the first respondent, the petitioner had to approach this Court for the relief initially in W. P. No. 24515/96.

3. While denying certain specific allegations supra, the 1st respondent, in the counter pointed out that the approval given to certain institutions were under the circumstances, particularly in view of the directions of this Court in the writ proceedings and such institutions have fulfilled many conditions barring very few minor conditions. It is pointed out by the 1st respondent therein that the 1st respondent constituted a joint, expert committee which visited the college on 30-5-1996 and submitted a report which was placed before the Southern Regional Committee which met on 25-6-1996. With the recommendations of the Regional Committee, the report was forwarded to the 1st respondent. The 1st respondent, in its letter No. F. 733/52-2/ET/96 dated 15-7-1996 addressed a letter to the Regional Officer, Chennai advising him to refer back the report in respect of the petitioner's proposal to the same joint expert committee and advised them to arrive at a mutually acceptable decision and submit a common report. Such a decision was to be taken in view of the fact that the nominee of the State Government had submitted a separate report disagreeing with the observations made by the other expert committee members. In consequence thereto, the joint expert committee visited the petitioner's college on 19-9-1996 and thereafter submitted a common report which was placed before the 16th Southern Regional Committee meeting D/- 27-9-1996 and the recommendations of the committee

were forwarded to the 1st respondent. Such a recommendation was considered by the State level Committee and the Central task force and based on that the first respondent passed the order in its letter F. 732/50-079/(NDEG)ET/95 D/- 4-11-1996 thereby rejecting the proposal of the petitioner to establish the Engineering College for the year 1996-97. As already pointed out, such an impugned letter, a copy of which is produced along with the counter in W. P. No. 24515/96. is challenged in W. P. No. 27059/96 on several grounds. Reiterating the grounds which were taken up in the nature of the impugned order from the first respondent and that such a fact was learnt only when it was disclosed in the counter affidavit in the other case and when a copy, of it was filed along with the counter affidavit, It is pleaded that such a letter is said to have been addressed to the Chairman/Secretary of the petitioner-trust as against the address of the President of the petitioner institution. It is contended therein that such a communication was designedly sent to a wrong address. It is contended that on the very ground that as there was no communication to the petitioner regarding the impugned order, it becomes inoperative and ineffective and therefore void. The petitioner has denied the grounds on which the approval was rejected by the first respondent under the impugned order regarding certain facilities not being made available as mentioned therein although the petitioner had complied with all the required conditions to get the approval. On the other hand, the petitioner has pointed out as to how such conditions had been fulfilled. The petitioner has challenged the expressions in the impugned order, that the prayer of the petitioner will be considered for the next academic year 1997-98, as arbitrary and unsustainable, although the petitioner had already complied with such conditions well in advance regarding which there was more than one inspection showing that the petitioner had complied with almost all the conditions barring very few pointed out in the impugned order which were also complied with subsequently. It is pointed out that the 1st respondent has failed to perform its mandatory statutory duty within the stipulated time as per the calendar of events published in the notification. Therefore, the reliefs claimed in the second writ petition are sought to be granted.

4. En the counter affidavit filed in W. P. No. 27059/96 also the grounds taken in the other writ petition have been repealed justifying the passing of the impugned order, the petitioner having failed to fulfil the conditions mentioned in the impugned order having checked it more than once in the two inspections one after the other.

5. While issuing rule nisi, this Court directed appointment of Mr. Vijay Ashrit, as Commissioner to inspect and report to the Court whether the petitioner had complied with the conditions laid down by the respondents within two weeks. The report of the Commissioner D/- 1-12-1996 was filed into Court on 4-12-1996. The 1st respondent filed objections to the report of the Commissioner on several grounds including want of notice. The petitioner filed W. P. M. P. No. 30273/96 seeking directions to respondents 2 and 3 to allot 360 candidates for admission to the college for the courses for the relevant year regarding which the Court

passed the orders on 4-12-1996 directing the 1st respondent to visit the site and inspect the premises within a period of one week from the date of communication of copy of the order and to consider the plea of graining approval to start the engineering college. The 1st respondent filed WV. MP. No. 3335/96 on 12-12-1996 to vacate such an order.

6. Apart from the grounds raised in the two writ petitions. Mr. Koka Raghava Rao, the learned counsel for the petitioner has raised specific contentions in the course of arguments, viz,

1. The petitioner, while applying for approval and thereafter, had fulfilled almost all the contentions which were sufficient to grant the approval and even assuming that some conditions were not fulfilled, they were minor in nature and there is no difficulty for the 1st respondent to grant conditional approval giving an opportunity to the petitioner to fulfil such conditions within a reasonable time, which are already complied with as at present.

2. The impugned order is actually not communicated to the petitioner, both on facts and law, and therefore the application of the petitioner for approval should be deemed to be pending as on today for consideration.

3. There was no justification for the 1st respondent to reject the approval under the impugned order based on conflicting reports and with dissenting notes, thereby showing that there is no consistency regarding the grounds on which the approval was rejected.

4. In law there was no ground for the 1st respondent to reject the approval as such by means of the impugned order and calling upon the petitioner to apply for such approval for the next academic year 1997-98.

5. The 1st respondent was statutorily bound to consider the application of the petitioner for approval and grant it as a rule unless for serious reasons without actually rejecting it.

6. There is no obstacle for the 1st respondent even now to take an immediate inspection of the college to know whether such deficiencies noted in the impugned order are complied with or not and afford the approval immediately for this academic year. viz.. 1996-97 only.

7. At any rate, the 1st respondent is expected in least now to take up the matter, consider it and grant the approval to the petitioner even imposing certain conditions to be fulfilled within a reasonable time, which the petitioner is prepared to comply with all seriousness and concern.

7. Mr. .Suresh Kumar, the learned Counsel for the 1st respondent with equal resistance while repelling the above contentions has contended that - -

1. The petitioner has been communicated with the impugned order by addressing the communication to the known address more than once, which were returned with an endorsement "addressee not found", for no fault of the 1st respondent,

which the petitioner cannot make use of to contend that the impugned order was not in existence till it was disclosed in the counter-affidavit and when a copy of it was filed along with the counter.

2. The impugned order should be tale as having been notified to the petitioner when it was disclosed in the counter affidavit and when a copy of it was filed along with the counter affidavit.

3. The impugned order was justifiably passed based on the opinion of the experts and the expert committee and on the recommendations of the Regional Committee of the 1st respondent and for no other extraneous considerations and for no other reason.

4. The impugned order was totally justified,

5. The Commissioner's report bringing out certain things was behind the back of the 1st respondent and has no legal status and relevance to decide the controversies between the parties on facts.

6. The 1st respondent was justified white rejecting the approval of the petitioner in keeping open the right of the petitioner to apply, if so advised, for the next academic year 1997-98 which the 1st respondent is prepared to consider and decide it on merits.

8. The impugned order is in the proceedings No. 732/50/079(NDEG) ET/95 D/-4-11-1996. Admittedly, the petitioner had applied for the approval on 11-12-1995. The joint expert committee inspected the premises of the petitioner twice i.e., on 30-5-1996and 19-9-1996. In both of them certain deficiencies were pointed out in regard to the compliance of the requisites for granting the approval. Based on that the impugned order is said to have been passed by the 1st respondent. It was the specific case of the petitioner that in spite of his application for approval and the inspections supra and the representations including the personal requests, the 1st respondent had not taken any decision in the matter and therefore the first writ petition had to be filed. No counter was filed by the 1st respondent till 9-12-1996. The copy of the impugned order was produced along with the counter. It was only thereafter the second writ petition was filed challenging the impugned order. In para 3 of the counter filed on behalf of the 1st respondent, it was stated that based on the recommendations of the committee, the 1st respondent passed the order in its letter dt. 4-11-1996 rejecting the proposal of the petitioner to start the college for the year 1996-97 and the copy of the letter was addressed to the Chairman/ Secretary of the petitioner's trust. Such a factum has been categorically denied by the petitioner in the second writ petition. Therefore, the controversy to be resolved is whether such an order was in fact and in law communicated to the petitioner by the 1st respondent. Mr. Suresh Kumar, the learned Standing Counsel for the 1st respondent has produced additional material papers to support his stand that actually the impugned order was communicated to the petitioner. According to him, the communication was sent twice viz., for the first time on 13-11-1996 as

has been noted in the despatch register for postal dock maintained with the 1st respondent in view of such a communication having been sent to others like Deputy Director. Regional Office along with the letter DA to-3-1996 and for the second time by registered post on to-12-1996 regarding which the impugned order sent in an envelope was returned to the 1st respondent with the endorsement of refusal. The learned Standing Counsel for the 1st respondent submits that the envelope in which the 1st communication was sent is misplaced. Therefore, barring an entry in the despatch register and the circumstance that similar communications were addressed to other authorities of AICTE, there is no prima facie material in regard to the letter containing the impugned order having been actually sent to the petitioner in any particular form. However, there is an entry in despatch register for postal dock that such a communication was sent by registered post. The human errors and the human incapacities and capacities are not predictable or measurable in regard to the failure of achieving the purpose of performing the job. It is not as if the motives of the 1st respondent are being examined in sending the communication but the reality about it. Even presuming that all steps were taken to communicate the impugned order to the petitioner by the 1st respondent and it is otherwise, the question still remains whether in fact in law whether there was communication to the petitioner. It may not be improbable that the communication which was prepared and intended to be sent by post or otherwise might not have been sent at all for various reasons. Such a serious gap is remaining unfilled in this case without any material to hold that the impugned order was actually communicated to the petitioner on 13-11-1996. Particularly, when the cover and the content of it regarding the second communication has been produced by the 1st respondent, it is unlikely that the first cover and the communication would have been lost or misplaced unless for reasons to be explained by the concerned persons and in the absence of such explanation and materials, it may be difficult to accept such a contention that a communication had been actually communicated to the petitioner in the manner proposed to be sent.

9. It is true that the second communication said to have been sent on 10-12-1996 by registered post No. 5541 along with its purported content was returned to the 1st respondent by the postal authorities with an endorsement "addressee refused". Mr. Koka Ragahva Rao, the learned Counsel for the petitioner points out that there is over-writing in the endorsement on the envelope and therefore no prima facie value can be attached to such an endorsement. Prima facie, it is established that a communication sent by registered post containing a letter D/-4-11-1996 by the 1st respondent on 10-12-1996 has been returned to the 1st respondent with an endorsement, which prima facie reads "addressee refused". This Court is not in a position to examine the genuineness, correctness etc., of such an endorsement for want of material. Adopting a prima facie method of assessment of evidence in such a situation, this Court has to draw inferences. Presuming that the content of the cover was the impugned order, as no suspicion is pleaded or demonstrated and

as counter affidavit categorically mentions that a copy of the impugned order was sent to the petitioner, the question is whether such a course adopted by the 1st respondent satisfies the implications of "communication" of the impugned order to the petitioner. Barring such a communication, there is no other mode of communication established by the 1st respondent.

10. The "communication" in fact and in law, means information and in the strict legal meaning tantamounts to notice. In other words, if there was such a communication, the petitioner should be deemed to have had the notice of the impugned order. Neither the AICTE Act nor the Regulations or the Universities Act or Education Act defines "notice". Normally, the meaning of "notice" apart from the dictionary or the grammatical meaning is being understood within the meaning of the expressions in S. 3 of the Transfer of Property Act. It reads -

"a person is said to have notice of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it."

That implies direct notice and constructive notice or deemed notice. Patently, the petitioner could not have had the notice of the impugned order but for such a communication or but for the production of the impugned order along with the counter affidavit in the first writ petition. It is nobody's case that the petitioner with fully abstained from knowing the decision of the 1st respondent of approval or otherwise or avoided it either wilfully or otherwise except with the alleged conduct in view of endorsement of refusal on the envelope which is yet to be examined. Within the implications of S. 3 of the Transfer of Property Act, a person refusing a registered letter cannot afterwards plead ignorance of its contents has been rule of law in several precedents of Calcutta and Bombay High Courts (Page 31 of Transfer of Property Act by, Mulla-5th Edition. 1966). Mr. Suresh Kumar, the learned Standing Counsel for the 1st respondent also adds that such an inference should be drawn with reference to any communication sent up by certificate of posting, which is out of place to be considered in this case, as such a course was not adopted. Mr. Koka Raghava Rao, the learned Counsel for the petitioner has rightly depended upon Secs. 3 and 4 of the Indian Contract Act to know the further implication's of "communication". More than Sec. 3, it is Sec. 4 of the Contract Act which is more certain in regard to communication. Even the luxury of repetition may be useful :

"4. Communication when complete.-- The Communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The Communication of an acceptance is complete-

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor,

as against the acceptor, when it comes to the knowledge of the proposer...."

If we merely read the provision as above, it may not be supporting Mr. Koka

Raghava Rao. But a further examination of the matter is necessary to know the true meaning of "communication" in the provision. It is stated in law that a notice by registered post returned with an endorsement of refused raises, until the contrary is proved, two presumptions, (i) under Sec. 114, ill. (f) of the Evidence Act that the endorsement was made by the postal peon and was correctly made and (ii) under S. 114, ill. (c) that official acts have been regularly performed. It is for the Court to believe it or not depending upon the facts and circumstances of each case. It is also stated in law that such a presumption is rebuttable. How the presumption is going to be rebutted again depends upon the facts and circumstances of each case (Page 304 and 305 of Sarkar on Evidence. Vol. I 4th Edition, 1993). Now in the present case, if we simply accept the envelope and the impugned order said to have been sent by the 1st respondent to the petitioner, its coming back with the refusal endorsement, strictly speaking constitutes "communication" under Sec. 4 of the Contract Act. But the facts are still to be examined, how it went and how it come back. Because the rule of communication In post, registered or otherwise, is examined with reference to the manner in which an attempt was made to communicate it. The primary, thing is the address and the secondary thing is the conduct of the addressee. As rightly pointed out by the learned Counsel for the petitioner, the address on the envelope in which the communication is said to have been sent to the petitioner is the Secretary. Devarakonda Educational Society. DVR Bhavan. Madhapur. R. R. District, whereas the address given in the application was different. In the application for approval, the petitioner has given the name and" address of the petitioner in Col. No. 1 as "Devarakonda Educational Society, Office: 8-2-293/F/15. Road No. 5. Jubilee Hills. Hyderabad, which is totally different from the address on the envelope. Possibly, there may be two addressee, one on the actual premises and the other regarding the office. But whenever an address is given in an application, unless intimated otherwise, normally it is expected that all the communications should be sent to such an address. A reference to the Gazette publication of the notification calling for applications also confirm- Ibis where there is column. General Information. 1.1 in the application "Name and address of the applicant in Form No. 1, and postal address in Form No. II, which means that such address is given for communication and if that is not adopted for justifiable reasons, it must he taken that there is no compliance of addressing the communication to such an address and that has happened in this case. Possibly, either due to confusion or mistake on the part of the postal authorities white carrying such a communication to such an address, possibly the communication could not be complete. This is a clear case of sending the envelope with the impugned order to a wrong address or at least not to an intended address. Now to state the law, it is settled that neither the implications of S. 4 of the Contract Act nor the implications of Sec. 3 of the Transfer of Property Act regarding the definition of "notice" with be brought out when a communication is addressed to a wrong address. Such a view has been already taken by this Court in Reddy and Brothers v. State of Andhra Pradesh (1976)1 APLJ 5 : 1976 Andh LT 23 NRC: 1976 APHN 148 :ILR (1976) AP 585: 1976 LR

191. Even in English Law such a view has been obviously adopted while dealing with the relevancy and presumption under S.16 of the Evidence Act to state "a letter to a proposer not correctly addressed could not, although posted, be said to have been put in a course of transmission to him" (Page 306 of Sarkar on Evidence supra). Even the meaning of "communication " under S.4 of the Contract Act has been put into, to follow the same legal result. It has been legally noted that the proposer's own want of care cannot extenuate but will if possible aggravate the risk imposed on to complete the communication. It is also legally noted that where a particular letter or writing has been posted delivered or actually received by the addressee, is a question of fact having no more to do with the law of contract than any other matter of fact which it may be needful to prove in order to establish the formation of any kind of contract. (Page 106 of Indian Contract Act and Specific Relief Act by Pollock and Mulla Eleventh Edition, Vol. 1,1994). That equally applies to the implication of definition of "notice" under S.3 of the Transfer of Property Act. Therefore, to conclude the attempt of the 1st respondent to communicate the impugned order to the petitioner has not been fruitful both on facts on fact and in law.

11. Even assuming that a communication of the impugned order was sent to the petitioner at least on the second time, it was patently after filing the counter and not before that as there is no satisfactory proof that such a communication was sent before that. Therefore, the contentions of the learned Counsel for the petitioner that no communication was sent or received has all the basis and there is no reason to doubt it or at least nothing of the kind in the conduct of the 1st respondent as above constitutes any communication of the impugned order to the petitioner. It cannot be forgotten that the petitioner not only applied for approval but also, title the writ petition was filed and title the counter affidavit was filed, was all along anxious to know about the result of such an application and has been agitating even in the writ petition that the 1st respondent should take a decision in that regard. Judged in that background, it is highly improbable that the petitioner would not have any interest in pelting the communication from the 1st respondent or that it would have refused such a communication. Therefore, Mr. Suresh Kumar, the learned Standing Counsel for the 1st respondent has rightly suggested that the legal implications of non communication of the impugned order to the petitioner requires to be examined in this particular case.

12. The case is operated under the provisions of -MI India Council for Technical Education Act, 1987 (in short, the Act) and the Regulations framed thereunder by the Council under S. 23 of the Act called All India Council for Technical Education (Grant of approval for starting new technical institutions introduction of courses of programmes and approval of intake capacity of seats for the courses or programmes) Regulations. 1994 (in short, the Regulations). Regulation No. . 4 deals with requirement of grant of approval. Reg. No 5 Forms for Applications. Reg. 6 conditions for grant of approval. Reg, No. 7 submission of applications and Reg. 8 scrutiny of applications. Regulation No, is although

captioned as "scrutiny of applications" contains the disposal of such applications and other allied matters. Sub-Reg. No. 9 of Reg. No. 8 deals with the decision of the Council regarding the question of grant of approval as sought for in the application. Reg. 8(10) reads :

(10). The decision of the Council shall be communicated to the State Government concerned or the University Grants Commission, as the case may be, the University or the State Board concerned, the Regional Office concerned and the applicant by 30th April in case the application was made before the preceding 31st December."

Not only the Council should decide about the granting or otherwise of the application for approval but also should communicate it to various agencies including the applicant. The expression "shall" used in the provision, normally speaking, should be understood as mandatory or otherwise the applicant cannot know as to what happened to the application, particularly in view of the requirement to communicate before the 30th of April of the ensuing academic year after the application was filed and in view of the time schedule as required under Reg. 8(15) fixing different dates for the purposes of compliance. In the schedule appended to the Regulation also an item No. 6 what is mentioned in Reg. 8(10) is repeated that the communication of the final decision should be completed before 30th of April. In other words, such an expression of the communication as "shall" should be understood to be mandatory. In the absence of any circumstance to think that it is only directory. The expression "shall" used in the Act and the Regulations are held to be mandatory by a Full Bench of this Court in *M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others*, . To interpret it as directory would negate the whole scheme and purpose of the provisions of the Act and also the Regulations framed thereunder. Not only the decision of the Council should be communicated, but it must be legally communicated as has been discussed above. If it is not legally communicated, the net result in law is that there is no communication at all. The communication imports the knowledge of the decision of the Council imparted to the applicant and others. If there is no knowledge, there cannot be any communication. Therefore, when there was no communication to the petitioner regarding the decision of the 1st respondent by virtue of the impugned order, in the eye of law, there is no communication at all and the legal effect is that the application must be deemed to be pending decision or communication. The filing of the copy of the impugned order along with the counter affidavit of the 1st respondent may not constitute notice or communication within the meaning of Reg. 8(10) of the Regulations. It only forms part of the defence taken by the 1st respondent in the writ petition. To conclude this Court is of the confirmed opinion that in so far as the petitioner is concerned, there is no communication of the decision of the 1st respondent in terms of the impugned order and it must be deemed that the application of the petitioner is still pending consideration or communication.

13. Now presuming that the 1st respondent appears to have taken a decision in terms of the impugned order rejecting the approval to start the technical institution viz., the College of the petitioner to impart education in certain courses on certain grounds, presuming that there has been a communication at least from the date of filing the impugned order into court along with the counter affidavit, it is appropriate to examine the legality, propriety and correctness of the same. Apart from the learned Standing Counsel for the 1st respondent seeking a decision on this question, the learned Counsel for the petitioner also desires" to have a decision on merits. In that view of the matter justifiably, the merits of the impugned order will be considered.

14. Admittedly, the petitioner made the application proposing to establish the Engineering College and to start the courses for the academic year 1996-97 on 31-12-1995. It is mentioned in the impugned order that a joint expert committee of the first respondent and the State Government visited the proposed institution and their recommendations were considered by the Southern Regional Committee. State Level Committee and the Central Task Force and based upon that, the 1st respondent decided not to accord approval to the proposal of the petitioner for such purposes. Presumably, those recommendations were based upon the two inspections by the expert, committee held on 30-5-1996 and 19-9-1996. The decision not to accord approval as above was rendered due to the following reasons/ deficiencies:

The temporary accommodation is arranged in a residential house with certain modifications and additions,

1. Furniture, drawing tables and boards "were not made available in drawing hall at the time of visits.
2. No work benches in Chemistry and Physics Labs were available at the time of visits.
3. No provision had been made to lay the pipe lines for water supply, drainage and gas connection for Chemistry labs on the day of visit.
4. No equipments had been purchased for Chemistry and Physics Labs. Nor any action had , been initiated "as on the day of inspection.
5. Civil works were going on at the place earmarked for workshop at the time of visit. No work benches nor tools, implements, and other machineries had been acquired. Lay out had not been prepared. Electrical wiring work was yet to be carried out and connections to be given in the workshop.
6. Library had only about 150 books (45-50 titles) with about 4 multiple copies in each title on the day of inspection. No reading tables, chairs and racks were made available.
7. Drinking water supply was not provided.
8. Non teaching technical staff had not yet been identified.

9. There were only 4 toilet rooms attached to rooms. These facilities are inadequate. Separate toilets for boys and girls as per norms are to be provided,

10. Non teaching technical staff had not been identified on the day of inspection.

Although ten grounds are mentioned, actually there are 11 grounds, since ground No.1 is not numbered. Barring item No. 1 regarding building and items 8 and 10 regarding non identification of teaching staff etc., all the remaining items of "deficiencies have the character of infrastructure. Therefore, the approval was withheld only for non compliance of such items and for no other reason. Mr. Suresh Kumar the learned Standing Counsel for the 1st respondent submits that the merits of the impugned order is not merely confined to the contents therein but has a big background of the overall deficiencies observed at the time of the inspections as narrated in the reports of the expert committee dated 30-5-1996 and 19-9-1996. Therefore, he even tried to assist the Court by producing the original reports. The contents of such reports with the copies filed into Court are not disputed. Both the inspections were conducted by the same members of the committee viz., Prof. R. Subbayan. Chairman. Prof. K. Chandrasekharan, Prof. N. Sriramulu and Prof. B. Punnaiah. In the first report dated 3-5-1996, the following ten deficiencies were pointed out :

1. The society was registered with a document containing no Rules and bye laws.

2. The statement of accounts were not produced

3. The documents produced showed that only Rs. 53,000/- had been available by way of funds for the petitioner.

4. Plan of action year wise was not drawn up regarding building construction, procurement of equipment and purchase of library books.

5. It was not disclosed to the committee that additional funds for development would be contributed from the members" and the Banks were also willing to give loans but no authenticated undertaking was produced regarding recurring expenditure as that was proposed to be met from the tuition fees from the students.

6. The accommodation was proposed to be had in a building meant for residential purposes and inadequate accommodation with rooms not even" sufficient to accommodate 40 students.

7. Separate toilet facilities for boys and girls were not available except the attached bath rooms in the house.

8. No action had been initiated to procure the equipment, furniture in the class rooms, work benches etc.,

9. The computer room had not yet been prepared,

10. There were about 400 books but no accession number had been given nor entered into stock register and seal affixed on the books.

These are the specific deficiencies pointed out by the committee, upon which the committee did not recommend sanction of the approval for the year 1996-97. Patently, a simple comparison of the impugned order and the first report shows that the impugned order contains more deficiencies than what was noted in the first report, Non completion of the sanitary work, civil work, drinking water etc., are not mentioned in the first report. Non identification of leaching staff and teaching technical staff also do not find a place in the first report. Although 400 books were found in the first report in the library, only 150 books are mentioned in the impugned order bearing a contradiction. However, only Prof, B. Punnaiah recorded an opinion that permission may be granted to the petitioner to start the college in the academic year 1996-97 and that he would submit a separate report.

15. As-already pointed out, the second inspection was conducted on 19-9-1996. The note of the Chairman appended to the second report shows that such an inspection was taken up in view of the letter of the 1st respondent dated 18-7-1996, as reports of the expert committee and the report of the State Government were to be reconciled. Obviously, that must have been due to the dissent note given by Prof. B. Punnaiah. In the first report, the same four members recorded their opinion as follows:

"The Committee agreed that the earlier report based on its visit on 30-5-1996 is the report of the actual status prevailed at that time and that recommendation made therein is appropriate."

in view of the actual Mains prevalent at that time. The real stale of affairs in the premises of the petitioner at the time of second inspection are found on the second page of the report. It appears that certain deficiencies observed at the time of the first inspection regarding accommodation for the students, workshop for physics and chemistry etc., had been complied and that is noted. Even the teaching staff identified as such has been noted. The deficiency in regard to the fund made up to the extent of Rs. 35 lakhs by then is also made a note. The only deficiencies actually recorded by the members of the committee at the time of the second inspection are :

1. The toilet facilities are not adequate.
2. There are only 150 volumes of library books with four copies of each title and no furniture like racks for books and reading tables are available, there arc no drawing tables, stools and drawing boards and no other equipment no furniture was available.

Therefore, it must be taken that all other deficiencies noted at the time of the first inspection had been complied with by the time of the second inspection. In fact, such a finding of the committee has been signed by the Chairman as well as the three members of the Committee, presumably on 19-9-1996 with the recommendation of Prof. B. Punnaiah underneath that where he strongly recommended for giving permission to start the petitioner's college during the

academic year 1996-97 including admission of the students from EAMCET '96 batch. However, the Chairman. Prof. R. Subbayan has appended a note of his own with even date 19-9-1996 at pages 3 and 4 recording certain views. He has also noted that the Members who signed the inspection note D/- 19-9-1996 have not recorded the remarks. However, the recommendations of Prof. B. Punnaiah is made a note of. The Chairman has stated that he was duty bound to record his recommendation under the circumstances as follows :--

"In view of the inadequate facilities and major deficiencies enumerated in the report and also given below - it is my recommendation that sanction be not accorded by AICTE to start the College :

The temporary accommodation is arranged in a residential house with certain modification and additions.

1. Furniture, drawing tables and boards are not made available in the drawing hall.
2. No work benches in the Chemistry & Physics labs are available.
3. No provision has been made to lay the pipe lines for water supply, drainage and gas connection for Chemistry Lab. So far no work has been carried out.
4. No equipments have been purchased for Chemistry and Physics Labs, nor action initiated.
5. Civil works were going on at the place marked for workshop. No work benches nor tools, implements and other machineries have been acquired. No action has been initiated. Lay out has not been prepared, electrical wiring work is yet to be carried out and connection to be given in the workshops.
6. Library has only about 150 books (45-50 titles) with about 4 multiple copies in each title. No reading tables, chairs and racks are made available.
7. There are only 4 toilet rooms attached to room* at 4 different places. These are inadequate. Toilet"- separately for boys and girls as per norms are yet to be provided.
8. Drinking water supply not yet provided.
9. Only six teachers have been identified and this is not of adequate strength.
10. Non teaching technical staff have not been identified.

Patently, these findings tally with the items in the impugned order. A simple understanding of the matter shows that it was on the view of the Chairman of the Committee, the impugned order has been passed and not on the views of the Committee, Except that the first report was confirmed by the committee with all its members as above, no decision was recorded by the committee as such except by the Chairman as above. Now if we compare all these materials it is apparent that not only such reports are contradicting with each other but the

deficiencies noted on 19-9-1996 were very few and most of the earlier deficiencies had been complied with and inspite of that the Chairman recorded them which are made a basis to incorporate in the impugned order to withhold the approval. It is also clear that there was no consensus or consent on the part of the members of the Committee either in approve or disapprove. The very fact that the second inspection was taken up in view of the categoric recommendation of Prof. B. Punniah to start the technical institution, with such inconsistent stands on the part of the members, the circumstance is clear that the members of the Committee did not apply their mind by pulling their heads together and moved in different directions at various stages and based upon that the impugned order is passed. Although it cannot be suspected that the report or the note of the Chairman which is separately prepared was a later thought or a out come subsequently, one thing is certain that the main sheet and the note of the Chairman might not have come out simultaneously. The reason is obvious that the note of the Chairman does not bear the signature of all the members whereas the first bears the signature of all the members. Therefore, this Court feels that either there was no proper inspection of the premises of the petitioner or that there was a half hearted inspection or that all the members of the Committee did not uniformly and independently apply their minds regarding the state of affairs regarding the opinion to be rendered about the recommendation to approve or not to approve. The impugned order having been based on such reports and confusion should be obviously called arbitrary and improper.

16. Even presuming that there were certain deficiencies which influenced the expert committee not to recommend approval to the petitioner as prayed and which was based by the 1st respondent to pass the impugned order, the question is w nether in law such a decision by such an authority could have been taken. The parameters of the powers, functions of the Council and the scope of exercising such powers by the Council have been set-at rest by this Court in the Full Bench case supra, of which I had the privitege of being one of the members. It has been authoritatively declared therein that in view of Reg, No. 4 of the Regulations, it is mandatory that but for the approval of the AICTE no technical institution or University Technical Department shall be started, no course or programme shall be introduced, no technical institution or university shall continue to admit students, to approved intake capacity of seals shall he increased or varied. It is also made very clear that it is a condition precedent for such an approval by the Council to seek either recognition of the institution from the Government or affiliation of the same with the University. Undisputedly, the petitioner is a technical institution within the meaning of Sec. 2(h) of the Act which has proposed to impart technical education within the meaning of Sec. 2 (g) of the Act. Therefore, it rightly approached the 1st respondent for approval to start the institution. Sec. 10 (1) of the Act enumerates the functions of the Council among which sub-cl, (k) of Sec. 10 (1)granting of approval for starting new technical institution and for introduction of the new course or programme in consultation with the agencies concerned is one. The Council has also the

function under Sec. 10 (1)(i) of the Act to lay down the norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualification, quality instructions, assessment and examination, It appeal's from the impugned order that the withholding of approval possibly was based on the norms in regard to the physical and instructional facilities. Because the expert committee and the Council were not satisfied about certain deficiencies as stated above in regard to the same. Barring this, there is no provision in the Act as to how the granting or rejection of the approval was to be regulated, But Regulations 4 to 8. as already pointed out, deals with the details in regard to the approval by the Council. In Sambasiva Rao's case. (1997 (1) Andh I.T 629) (supra). the Full Bench, has categorically stated that the Regulations have all the force of law as subordinate legislation against the whole world except not being inconsistent with the provisions of the Act and the Rules and obviously within the constitutional vires, It is also made very clear in the context of the provisions and the Regulations that the expression "shall" used on several occasions cannot be hut mandatory as it is the Council and the Council alone which should deal with such a matter and the consequence of such provisions were to read the expression "shall" therein and similar provisions always as mandatory and not directory or a mere guideline. Such a mandate laments not-only on the persons and the authorities to be governed or operated by such provision but also the Council itself. Understood in that context, even to grant approval or reject the approval is part of such function, being mandatory to be exercised within the powers vested under the Act and the Regulations. (It may be reminded as in the Full Bench ruling that no rules as yet are framed under Sec. 22 of the Act).

17. It may be necessary to examine the requisite conditions to be fulfilled by the petitioner to get the approval. By virtue of Reg. 5 (1), for starting a technical institution an application should be made and it must be in Form No. I as per Reg, 5 (2) and that should be submitted as per Reg. No. 7. It should also be done in accordance with the time schedule enumerated in the schedule appended to the Regulations. There is no dispute that the petitioner has complied with the same. Reg. No. 6 enumerates the conditions for grant of approval, and to repeat:

"6. Conditions for grant of approval:

Every application under sub-reg. (1) of Reg. 4 shall be considered subject to the fulfilment of the following conditions, viz.,

i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructural and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting the annual recurring expenditure:

ii) the courses or programmes shall be conducted as per the assessed technical manpower demands:

iii) the admissions shall be made according to the regulations and direction, of the Council for such admissions in the respective technical institution or

University.

iv) the union and other fees shall be charged within the overall criteria as may be laid down by the Council:

v) the staff shall be recruited as per the norms and standards specified by the Council from time to time:

vi) the Governing body in the case of private technical institutions shall be as per the norms specified In the Council:

vii) any other conditions as may be specified by the Council from time to time."

Patently, the expert committee in the two inspections considered the financial position of the applicant and has noted that Rs. 35 lakhs has been found to be in deposit as disclosed during the second inspection. That satisfies condition No. 1. It is also disclosed that the petitioner was ready with the teaching staff and other staff except non compliance in regard to non teaching staff and non teaching technical staff, which according to the Council, based on the recommendation of the expert committee is yet to be fulfilled to satisfy condition in sub-reg. (v) of Reg. No. 6. The remaining conditions are not germane at this stage as they are yet to be complied with after obtaining approval and starting the institution. The other relevant condition for grant of approval is sub-reg. (vii) of Reg. No. 6 viz., "any other condition as may be specified by the Council from time to time". Both the Act and the Regulations are silent about any other condition to be fulfilled by the petitioner as specified by the Council at any time prior to the petitioner filing the application. However the gazette notification issued by the 1st respondent in the extra-ordinary Part III-Sec, 4. contains the applications in different forms including Form No, 1 which has called for particulars of general information, academic information, infrastructure etc. The 1st respondent has not complained that the petitioner has not furnished the particulars as required in Form No. 1. There are specific columns to give the particulars in regard to (a) faculty, like teaching staff and other staff, infrastructure including building, laboratory, library and to specifically state whether a regular municipal supply of drinking water and water required for labs/Workshops etc.." is available or not and explain the alternate arrangements for a regular supply. However, none of the columns in the application prescribed as to the nature of the facilities or the infrastructure required to be provided as it can be understood that the 1st respondent was interested in knowing whether the petitioner has complied with the required conditions to consider the application for granting the approval or not except in regard to a clear statement whether there was water facility or not. Conspicuously, the notification has a fool note at every place to refer to details and to consult the norms and standard-, and detailed curriculum of the course. That is, such norms and standards, as this Court can make out is to be found in the Norms and Standards issued by the Council in the year 1995. Mr. Suresh Kumar, the learned Standing Counsel for the 1st respondent submits that those are the Norms and Standards which are made available and to his knowledge or

information, no other Norms and Standards are issued by the Council for engineering course, the learned Counsel also submits that similar Norms, and Standards are issued for different types of courses in technical education. It can be presumed that in the general manner in which such norms and standards are issued must be almost similar except varying with reference to particular course or courses as the case may be, regarding which the application is made for starting etc. Such norms and standards should naturally conform to the requirements contemplated for the purpose of fulfilling the conditions for approval under Reg. No. 6. It may be pertinent to note that the implications of Sec. 10 (1)(i) of the Act is carried into Reg. No. 6 (i) that the condition to grant approval includes financial position to be sound in providing related infrastructural and instructional facilities. The only difference is that in Sec. 10 (1) (i) the words "physical and instructional facilities" are used whereas in Reg. 6(i) the words "infrastructural and instructional facilities" are used. Possibly, the words "physical facilities" appear to have been understood in the words of "infrastructural facilities". It is difficult to explain as to what could be the physical or infrastructural facilities which may be required for a particular course in the technical institution, which are to be examined in the light of the norms and standards prescribed as a general guideline issued by the 1st respondent and that appears to have been done in the Norms and the Standards. Hereinafter whenever any details are noted, that shall refer to the Norms and Standards supra issued by the 1st respondent. The staff norms are to be found at Norm No. 8 and the infrastructural norms are to be found at Norm No. 12. Norms 8 and 11 deal with technical and other staff. Norm No. 8.11.1 deals with library staff and 8.11.2 deals with physical education staff and 8.12 deals with administrative staff and non teaching staff in the institution in addition to 8.12.1 dealing with laboratory staff. The final findings of the expert committee, as already pointed out, concentrated on the deficiencies above, one regarding the facilities in the building like toilets, the water facility and the other dealing with some furniture and non identification of non teaching and non teaching technical staff. Therefore, it must be presumed, as already pointed out, that the committee or the 1st respondent had no objection regarding any other prescribed norms having been complied with by the petitioner to consider the approval. The petitioner has not produced any material to show that as yet all the staff members, as was pointed out, have been already provided. However, that will still be to be examined as a question of fact at the appropriate stage. Now to concentrate on infrastructural norms, Norm No. 12.3.9 deals with Central library. The norm prescribes in addition to the required space within the library, that there should be a minimum of 4000 volumes in the library with each branching comprising 25,0 titles with 4 multiple copies and 1000 volumes in regard to subjects like mathematics, humanities, physics, chemistry etc., in addition to a minimum of 12 technical journals - 6 Indian and 6 international for each branch of Engineering, and for PG programme, the number of international journals may be relaxed, which will not be relevant for our purpose in this case. The finding of the expert committee as above is justified in regard to non compliance of Norm

No. 12.3.9 although with discrepancy when once 400 books were found and on the other occasion it was reduced to 150. At any rate, that, requires compliance. Norm No. 12.7 deals with furniture. The repetition of the same would be essential and useful:

"12.7 : Furniture : All laboratories, library, workshops, lectures and tutorial rooms, offices, hostels and Guest house etc.. should be adequately furnished. No norms for the furniture are being laid, however it is expected that the furniture should conform to the requirement of a dignified institution. The institution may, equip the buildings with the furniture as available indigenously."

Patently, there is no-prescribed norm for providing the furniture to any extent or nature except that it was to conform to the requirement of a dignified institution. Barring a finding by the expert committee adopted by the 1st respondent that certain furniture were not made available at the time of the inspection, there is no finding that either they were totally absent or that it did not conform to the requirement of a "dignified institution".

18. Norm No. 12.5.3 concerns the toilet blocks of which the committee was very much concerned, and rightly too. This also requires repetition -

"12.5.3 : Toilet blocks : The College building and the hostels will be provided with adequate number of toilet blocks with urinals, lavatories and wash basins. It will also be necessary to provide separately one toilet block for women in the college building."

Patently, no definite number of toilets etc., were to be provided except that they were to be adequate and to be provided in two separate blocks. As we see from one report to the other, there appears to be a ditution in the observations in regard to such a facility. At any rate, it is not as if there were no toilets at all. Even assuming that they were together, the possibility of earmarking them for boys and girls might not have been difficult. In the absence of specific norm that the toilets be in a particular number, the design or location etc., the Committee was not justified in taking serious note of the same except to make a note of it and issue directions for compliance regarding any modification. However, it may be noted that the norm above has made it absolutely clear that such toilet blocks were to have the norms of space as per National Building Code as detailed therein regarding which the expert committee has not made any reference at all to know as to what was the National Building Code and what was the implications of National Building Code to conform to the requirements.

19. Significantly, a detailed and meticulous examination of these materials do not indicate that a technical institution or college should not be located in a residential building. It is also significant to note that the Committee was sufficiently impressed by the land which was already provided for construction of the new building which was actually insufficient progress at the relevant time. Therefore, the finding that the proposed institution was being commenced in a residential building, could not have been made a serious ground for rejection of

the approval.

20. Regarding certain sanitary and civil works and some constructions going on, the finding of the committee and the decision of the 1st respondent appears to be too much concentrating on petty items which could have been complied or directed to be complied within a reasonable time or before the institution was commenced.

21. With all the above norms and conditions to be fulfilled, if we read Sec. 10 (1) (i) of the Act and Reg. No. 6 of the Regulations carefully, it is very clear that ultimately the committee or the Council was to be satisfied that the financial position of the petitioner was sound for investment in the developed land and in providing related infrastructural and instructional facilities as per, the norms and not the actual conforming to the absolute perfection or to the totality. That is how the particulars in the application were intended to know whether the applicant or applicants had the financial capacity and was financially sound for providing such facilities in addition to making all the preparations for such a purpose sincerely and with all purpose. As already pointed out, the committee or the 1st respondent did not suspect or question the financial capacity or the financial soundness of the petitioner to provide and comply such norms, if an opportunity had been provided or atleast by the time the institution was commenced to be ready with the compliance of completion of such deficiencies.

22. As regards the non teaching staff and the non leaching technical staff the same inference as above can be drawn as it could not have been suspected or doubted that the petitioner had the capacity or the will to fulfil such a condition within the reasonable time or within the expected time.

23. With all the above observations of law and facts, there is another material in regard to the compliance or non compliance of the conditions by the petitioner and that is the report of the Commissioner which is in favour of the petitioner.- This Court feels that there is no necessity to deal with the Commissioner's report in detail. The 1st respondent has strongly opposed the execution of the warrant by the Commissioner for want of notice or adequate opportunity for the 1st respondent to be present and to know the state of affairs in the premises of the petitioner at the relevant time. Without going into the merits of such an objection or the contents of the Commissioner's report, it can be straightway stated that the 1st respondent has got the power of inspection under Sec. 11 of the Act in regard to certain matters and also by virtue of the power to withdraw the approval under Reg. No. 12, where any technical institution etc. contravenes any of the provisions of the Regulations after giving reasonable opportunity etc., which by itself empowers the 1st respondent to check or inspect to know whether any regulation or the provision of the Act has been contravened or violated. A plain reading of the report of the Commissioner shows the state of affairs of the petitioner institution showing compliance of deficiencies as on the date of visit. Therefore, it must be stated that the 1st respondent was entitled to check the state of affairs of the petitioner at any time notwithstanding the finding of the

Commissioner, if it was doubted. With the aspects detailed above, this Court feels that it was not as if the 1st respondent was helpless in regulating the conformance of the conditions and norms required to be complied by the petitioner before approval was accorded or implemented.

24. However, that will not end the matter to know whether the 1st respondent has done all the things necessary before issuing the impugned order. The law requires to be examined in this regard viz., what are the implications of approval or otherwise under the Act and the Regulations and what are the parameters in regard to such approval to be considered, granted or rejected by 1st respondent. The Full Bench of this Court in M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others, has made amply clear about the powers and duties of the first respondent under the Act and the Regulations and a brief note of the same would not be a luxury in the context of the controversies in this case. The real object and the purpose of the Act and the Regulations has been explained and declared to boil down to the main functions of the Council as follows :--

"The main function of the Council propounded in Sec. 10(1) is 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 the Council regulates the items(a)to(u) of Sec/10(1) and with the residuary power to perform such other functions as may be prescribed..... The whole function of the Council emanates from the real object and the purposes of the Act in establishing the AICTE for proper planning and co-ordinated development of technical education system throughout the country for the promotion of qualitative improvement of such education in relation to planned qualitative growth and for the regulation and proper maintenance of the norms and standards in the technical education system and for matters connected therein."

Possibly, the expert committee and the 1st respondent were thinking that because of the deficiencies noted during inspection, the norms and standards in the proposed technical institution of the petitioner could not be maintained as required within the object and purpose of the Act stated above. But that may not be correct. The true implications were stated by this Court referring to State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, by extracting the whole observations of the Hon"ble Supreme Court which need not be repeated here except to note the relevant portion of the same for a proper guidance in the matter regarding the duties and responsibility of the Council in exercising the powers under the Act and the Regulations to be as follows (at p. 2188 of AIR SCW):--

"....This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as

would on the one hand ensure development of technical educational system in all parts of the country uniformly: that there will be a coordination in the technical education and the education imparted in various parts of the country and with be capable of being integrated in one system, that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of technical education all over the country will not be possible which will defeat one of the main objects of the statute. This country, as is well known, consists of regions and population which are at different levels of progress and development or to put it differently at different levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms and standards, say for admission to the educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a large number of otherwise deserving technical personnel....."

With such simple avowed objective of the Council in achieving such objectives, petty deficiencies would never matter as they can always be compelled or pursued to be complied with. With all anxieties of the expert committee and the 1st respondent thinking that such deficiencies would not conform to the norms and standards to achieve such an objective, this Court feels that the 1st respondent has taken the matter in a very hyper technical manner than in an expected manner to achieve such an objective and the purpose and if the 1st respondent had concentrated on such questions, possibly there would not have been the impugned order in the manner issued based upon such reports.

25. Now coming to the meaning and the parameters of "approval" within the law operating in the situation, this Court feels that the 1st respondent would do well to revise its own powers and duties in understanding the matter and adopting it as required in law which this Court feels as not having been done by issuing the impugned order. The whole gamut of the matter concerns the question of "approval or otherwise by the 1st respondent for the petitioner to start the technical institution.

26. The expression "approval" is not defined either in the Act or in the Regulations. "Although the expression appears to be so simple within the grammatical meaning, within the implications of the Act and the Regulations, it

has got only serious consequences but also lot of "ramifications as the "approval" accorded or rejected has the consequence of affecting the maintaining standard of technical education in the country. Therefore, this Court should take that such an expression approval in the Act and the Regulation should not be taken in the loose sense. A simple dictionary meaning of "approval" is a "feeling or showing or saying that one thinks that it is good or acceptable or satisfactory". (Page 49 of Oxford Advanced Learner's Dictionary. Indian Edition. Fourth Impression 1994). Thesaurus has been development in the process of Lexicography. Notwithstanding the meaning of an expression in all expressions, a legal Thesaurus has also developed consequently, within whose meaning as a noun, "approval" means "acceptance, accord, acknowledgment, acquiescence, adoption, affirmance, affirmation, agreement, allowance, approbatio, approbation, assent, assurance, authentication, authorisation, comprobatio, concordance, concurrence, confirmation, consent, countenance, encouragement, endorsement, expression of satisfaction, favour, licence, nod of approbation, permit, ratification, recognition. sanction, support, toleration, validation. verification (page 29 of Legal Thesaurus. Regular Edition, by William C. Burton). "Approval" is only "an act of agreeing and sanctioning" (as per Plain Language Law Dictionary by Robert E. Rothenberg Page No. 42. 2nd Edition. 1996). As a verb. "approve" (to mean approval for to approve of is "to think something is good or agree to something officially (page 13 of Dictionary of Law. 2nd Edition, by P. H. Collin. . reprint 1994). The meaning of "approval" cannot be more than "to be satisfied with, to conform, ratify, sanction, or consent to some act or thing done by another or to sanction officially" (Black's Law Dictionary. Sixth Edition, page 102). From these grammatical. Thesaurus and Law Lexicon meanings, one thing is certain that "approval" is nothing but sanction on being satisfied of a particular fact which is found to be good or satisfactory and such an indication is given by the Full Bench of this Court in Sambasiva Rao's case (2 supra). To inter alia that is only to see that while according or withholding approval in normal sense of the term, the 1st respondent is expected to be satisfied about certain matters within the facts and circumstances of each case having felt that it is good, that it is satisfactory or to be regulated in accordance with the intendment of the provisions of the Act and the Regulations. It does not mean that it is a technical audit or an investigation or picking the holes which may affect the ultimate achievement of the rule intended and the purpose of the Act and the Regulations. If the impugned order is decided on such an implication, it may not have taken such a meaning in withholding the approval to the petitioner, particularly in the light of the facts and circumstances of this case.

27. It cannot be forgotten that as per the settled law at the moment, the 1st respondent is a statutory body constituted under the provisions of the Act to perform the statutory functions imposed under the Act. In other words, it has to act within the expectations of the statute of which the regulations are also part and parcel of it. As already pointed out, the approval for starting a technical institution as per Reg. No. 4 is mandatory to, be accorded after an applicant

fulfils certain conditions enumerated in Reg. Nos. 5 to 7, which will be scrutinised by certain authorities as per Reg. No. 8(1) to (4), inspection will be conducted by the expert committee upon which the Regional Committee and the State level Committee will recommend to the Central Task Force which after considering the recommendation will send its own recommendation to the member-Secretary of the Council which is patent from sub-Regs. 5 to 7 of Reg. No. 8. As already pointed out, if there is disagreement in the recommendations made by the State Government, University or the Regional Committee, the Central Task Force shall invite representatives of the respective agencies for further consultation before making final recommendation as per Reg. 8(8). It is on such recommendation of the Central Task Force, the 1st respondent decides the question of grant of approval as sought for in the application as per Reg. No. 8(9). The proviso to sub-reg. (9) of Reg. No. 8 contemplates that where such an approval has been allowed with such restrictions or modifications as the Council may deem necessary, reasons are to be communicated. Similarly, if the Council rejects an application, reasons for such rejection shall be communicated to the applicant as per Reg. 8(11). That will also not disentitle an applicant to make fresh application for any subsequent academic year. The implications are drawn from these provisions only to record that for granting approval no reasons are to be given. But for imposing restrictions or modifications in allowing the approval or rejecting the approval, reasons are to be given. As already pointed out, such a matter should be communicated to the applicant within the schedule programme of dates mentioned in the schedule appended to the Regulations. Then what such implications mean and what a status the law confers on the 1st respondent is the real question. The expression "shall decide" in Reg. 8(9) means that the 1st respondent has no option except to decide in regard to approval or non approval. The expression "decide" is not a simple content of a statute to be taken lightly. Both grammatical, dictionary, Thesaurus and law lexicon (together called Deltus) meanings import an idea of adjudication in the expression of "decision" and the status conferred on the decision making authority is something more than administrative. Because, it will have lot of consequences not only on individuals or an institution, but on the future of the whole country as has been enshrined in the provisions of the Act and the Regulations, which are dealt with in detail and explained in the Full Bench ruling of this Court *supra*. Normally speaking, "decision" means "making up one's mind, may be even personal decisions leading to real and true conclusions. Actually it is a judgment based on conclusions" (Page 309 of Oxford Advanced Learner's-Dictionary *supra*). As a verb, "decide" means "to give a judgment in a case", and as a noun "decision" means "Judgment in a Civil Court, making up one's mind to do something, act of coming to a decision, it is a decision making process" (Page 67 of Dictionary of Law by P.H; ColI in *supra*). In the legal sense of the meaning; a "decision" is a "determination arrived at after consideration of facts and in the legal context of law, a popular rather than technical or legal word, a comprehensive: term having, no fixed, legal meaning. It may be employed as referring to-ministerial acts as well as to those that are judicial or of a judicial character." (Page 407 of

Black's Law Dictionary supra). The synonyms for "decision" are to be found with elaborate expressions in Legal Thesaurus as "adjudgment, adjudication, arbitrament, arbitrium. conclusion, declaration, decree, decretum. deliberate, choice, determination, dictation, dijudicatio, finding, judgment, opinion, order, pronouncement by a Court, resolution, ruling, settlement, that which is decided, verdict" (Page 137 of Legal Thesaurus by William C. Burton supra). Now with the latest amended Code of Civil Procedure, the expression "decision" has assumed the true dimension in Order 17. Rule 3 of C.P.C., whereby the Court under the circumstances, notwithstanding the presence or otherwise of the parties with proceed to decide the suit forthwith, to mean thereby, it will decide the matter on merits on the materials available on record, which determines whether an order in an application to set, aside the ex parte decree is an ex parte decree or a decree becoming appealable under Order 41..Rule 1, C.P.C. A -decision thus means not merely a view but an objective determination based upon facts and circumstances of each case after examining the materials on record and if possible after bearing the persons who are going to be aggrieved by that, Therefore, it cannot be a mere conclusion or a finding based on insufficient or immature factum or the legal implications. That-takes us to a true question, whether the 1st respondent is a simple ministerial authority, or a quasi judicial authority or a judicial authority and that determines the meaning of "decision" used in Reg. 8(9) of the Regulations. .

28. The fundamentals to decide whether an authority is a judicial or quasi judicial authority are well known. It is not the status of the authority which determines the same, but it is the functions of an authority and the result which determines it. It may not be ventured to call the 1st respondent in the situation, as a judicial authority. Strictly speaking, neither the Act nor the Regulations make it a judicial body or a Tribunal in the sense as normally and legally understood. But there is some indication that-such a decision by the 1st respondent has the basis of the judicial opinion. There are three committees with the 1st respondent as per Reg. no. 9 viz., Expert Committee. State Level Committee and the Central Task Force. The constitution of the Expert committee is as per Reg; 9(2), of the State Level Committee as per Reg. 9(4) and of the Central Task force as per Reg. 9(5)of the Regulations. It cannot-be forgotten that ultimately it is on the recommendation of the Central Task force a decision with be taken" by the 1st respondent as per Reg. 8(9) and that is very patent in the expression of the provision. The constitution of the Central Task force as per Reg. 9(5) as mandatorily imposed, should consist of two members of the Executive committee of the Council, an Educational Planner/Administrator, two expert members, one member from judiciary. The expression "judiciary" here should mean the whole institution as an organ of Constitution and not" merely a particular hirechy, of the institution. Therefore, the law makers have intended that the decision making process by the AICTE under Reg. 8(9) which should be based upon the recommendations of the Central Task Force consisting of a member from the judiciary also, has a lot of bearing and it is not merely a. decision as an administrative act. Therefore it

should be atleast quasi-judicial act in decision making process although it is not a judicial body. Administrative Law has no doubts regarding the status of an authority being a quasi-judicial authority although it may appear to be an administrative authority. Because quasi-judicial function is an administrative function which is required to be exercised in some aspects as if it were judicial. Where the procedure is subject to the principles of natural justice, it will be a quasi-judicial function. Therefore, a quasi-judicial decision is an administrative decision which is subject to some sort of judicial measure, such as principles of natural justice. (Page 47 of Administrative Law by H.W.R. Wade. 6th Edition). In *Radbeysbyam v. State of M.P.* AIR 1959 SC 7. three tests were applied to know when an authority or statutory body would be put into quasi-judicial status viz., (1) must have legal authority, (2) to determine questions affecting the rights of subjects, and (3) must have the duty to act judicially. In substance, it was held therein that, the test for ascertaining whether an act authorised by the statute is a quasi-judicial act or administrative act is whether the statute has expressly or impliedly imposed upon the statutory body a duty to act judicially. (Page 25 of Lectures on Administrative Law by Dr. U.P.D. Kesari). Under the circumstances stated above, while rendering the decision, the 1st respondent was to act objectively, judicially and judiciously and therefore that satisfies the tests supra to make it a quasi-judicial authority and conforming to the principles of natural justice particularly when an adverse decision is rendered as in the present case. Popularly, it is stated that an authority becomes a quasi-judicial authority when it is bound to act conforming to the three requirements viz. to receive, interrogate and adjudicate viz. to hear, to give an opportunity to reply and to decide giving reasons. The examination of the provisions of the Act and the Regulations as above clearly fits into the three requirements stated above to make the AICTE, a quasi judicial authority. Therefore, it was necessary for the 1st respondent either to give an opportunity to the petitioner to make up the deficiencies noted as above within a reasonable time or to show cause as to why approval should not be rejected. There is nothing to indicate on record that the copies of the reports of the expert committee after holding the two meetings, were furnished to the petitioner to make up the deficiencies. Therefore, merely based upon the recommendations of the Chairman strictly speaking, regarding which the other members did not give any view during the second inspection and in spite of the positive and recommendatory note of one of the members Prof. 11. Punmah. the order passed without further giving an opportunity to the petitioner either to explain or to comply with the deficiencies, has clearly violated the principles of natural justice and on that account it becomes vitiated and cannot be supported.

29. Mr. Suresh Kumar, the learned Standing Counsel for the 1st respondent has endeavoured his most to bring out from the provisions of the Act and the Regulations to demonstrate that the approval to be granted is for a particular academic year and when once that is rejected and there is an opportunity for the petitioner to make an application for the next academic year, no prejudice will be caused to the petitioner much less failure of duty on the part of the 1st

respondent in issuing the impugned order keeping open the right of the petitioner make the application for approval for the next academic year viz., 1997-98. With all appreciation of such a postulation of the learned Counsel, this Court is not able to accept it. It is true, as per the schedule requiring the applicant to make an application under Reg. No. 7 within the stipulated time for the purpose of gaining of approval for starting a technical institution in regard to a particular academic year, as it happened in this case viz., for 1996-97, the application was actually made by the petitioner on 31-12-1995. For the reasons best known to the 1st respondent, the other time schedules viz., for screening the application before 15-1-1996, by receiving the comments etc. before 15-3-1996, for consideration of the comments of State Government. University etc. before 31-3-1996 and for recommendation to be made by the Central Task Force on or before 15-4-1996 and for communicating the final decision to the State Government etc.. on or before 30-4-1996, have not been followed by the 1st respondent. That itself speaks that such a schedule and the compliance of certain things are not taken as that mandatory as to defeat the very purpose or the intendment of the Act and the Regulations. There is also a hidden reason in the proviso to sub-reg. (15) of Reg. No. 8 that the Council, may for good and sufficient reasons to be recorded in writing, modify the time schedule "" in respect of any class or category of applications. Conforming to the schedule is good. But violation of the schedule is not fatal and modification of the schedule is permissible depending upon the facts and circumstances of each case. Such contraventions may not per tanto amount to challenge in law as such as they are adaptable and manageable in a particular situation. Reg. No. 11 is also another provision showing that the Council has ample power to relay any Regulation depending upon the facts and circumstances of each case, to mean that, no regulation although mandatory is so rigid so as to reject the approval if it is for a minor violation or violations. Therefore? if an application is filed to consider on or before the 31st December for the ensuing academic year, for so many reasons, there may not be any bar even to consider such an application for the next academic year. The interpretation that an application made for affording approval for a particular academic year when once rejected could be reopened only by making a fresh application for the next academic year, cannot be accepted. The application to be filed for approval as per Reg. 7(1) is for the purpose mentioned in Reg. No. 4 to be commenced in the subsequent academic year. There is no expression therein "for the academic year". The reason appears to be the fluctuating situation of an adademe year. "Academic year" is a concept and not a reality. The word "academic" has nothing to do with the word "year". On the other hand, it pertains to a college. University or preparatory school. It has something to do with the Almamater of Education called "University" where knowledge is imparted. But the meaning of the year as a British Calendar year having 12 months (as per Sec. 3(66) of the General Clauses Act I should normally commence on the first of January and to end with the 31st of December of each year. In relation to a University or an educational organisation, that cannot be made applicable in view of the fact that it must be organised having due regard

to the facts and circumstances of each institution, University or a particular case. That is now, the word "academic, year" is not defined either in the Act or in the Regulations. On the other hand, it is defined in Sec. 2(3) of the Education Act. 1982 and in Sec. 2(3) of the U.P. Universities Act. 1991. It may be better to reproduce both of them. Sec. 2(3) of the A.P. Education Act. 1982 reads -

" "academic year" means a period of twelve months commencing on the first day of June of the year or such other period of twelve months beginning on such date as the Government may by notification specify with respect to any educational institution or class of educational institutions"

Section 2(3) of the A.P. Universities Act. 1991 reads-

" "academic year" means, a period of twelve months commencing on the first day of July of the year or such other period of twelve months beginning on such date as the Board of Management may specify in respect of all the colleges under the control of the University or any particular college thereof."

In essence, both the definitions are almost similar except that the date of commencement of the academic year in so far as the Government is concerned would be normally on the first day of June whereas in so far as the University, it is the first day of July. In both the cases, they are variable to be decided by the Government and the University with reference to the particular College/ Colleges under the control of the University in so far as the University is concerned and with reference to educational institution or class of educational institutions in so far as the Government is concerned. Apparently, it is the Government which decides about the academic year for the purposes of the provision in regard to educational institutions or class of educational institutions and it is the Board of Management of the University which decides the academic year so far as the colleges under the control of the University are concerned. There may, be many technical institutions imparting technical education which has nothing to do with the University. Possibly, the Government itself may run any such institution and in that situation, the Government itself may take a decision in the matter, in so far as the University is concerned, it will regulate the academic year in regard to its colleges are concerned and perhaps also the colleges which are affiliated to the University. Judged in that context and having due regard to the meaning of the course for a particular period like 2/3 years etc.. as per the norms and standards, the approval for commencing the course by an institution or college in an academic year should be understood to mean the commencement "in a particular academic year" and not "for an academic year", to continue the whole period of course and not confined for a particular year. Actually the Board of Management is one of the authorities of the University specified in Sec. 17 of the A.P. Universities Act. 1991 and it comprises of the members enumerated in Section 18(1) of the said Act. While dealing with the question "of autonomy" of the University in the Full Bench case supra this Court has clearly laid down that the 1st respondent being the only exclusive authority under the Act to regulate technical education in the country, the autonomy of the University extends only

beyond the functions and the scope of the Act and the Regulations in so far as the council is concerned. In that sense, to regulate academic year both by the Government and University under the respective enactment, is not inconsistent and repugnant to the provisions of the Act and Regulations and therefore the first respondent has nothing to do with "academic year," In other words, in view of the clear meaning of Reg. No. 7(1) and totality of the circumstances, when an application is made for approval, such an approval, particularly to start an institution, will be considered to be afforded or granted for the purpose of having it in a particular academic year and for the academic year. The illustration is very simple. Particularly in this case, the petitioner made the application for approval in regard to the academic year 1996-97, If within the meaning of the academic year of 12 months commenced on 1-6-96 to 1-7-96. it would expire on the respective dates of 1997. The period out of the academic year for the purpose of granting approval by the 1st respondent is still there. The question is not whether it should be communicated by, 30th of April of a particular year since there is an inevitable violation or deviation from such a requirement and scheduled. Therefore it is still open to the first respondent to accord approval to the petitioner within this academic year 1996-97 which ends either on 31-5-1997 or 30-6-1997. Having due regard to the implications of the provisions of Section 2(3) of both the enactments stated above concerning the Government and the University, it is for then to consider whether the academic year for the petitioner should commence from a particular date or not. It is also possible that if approval is accorded within the shortest possible time by the 1st respondent to the petitioner, there is still time for the petitioner to approach the Government for recognition or the University for affiliation. When once the approval is granted by the 1st respondent, the function ends so far as that is concerned subject to other control to be exercised over such an institution in accordance with the provisions of the Act and the Regulations. The application having been made for approval for a particular year cannot desist the 1st respondent in granting approval within the period of academic year which is still there and later on it is a matter to be decided either by the Government or the University as the case may be to regulate the academic year for the petitioner. Similarly, if the list of successful candidates in the EAMCET '96 is still available with the fifth respondent for allotment, they must be allotted to the petitioner without reference to such implications of "academic year".

30. To ruminate and chew the cud of the whole gamut of the facts and circumstances of this case, the petitioner complied with all the requirements expected of the institution except certain petty deficiencies noted by the committee at the time of inspection etc., not to get the approval on certain impressions of the 1st respondent having due regard to the understanding of the matter in a particular situation. Now that the whole matter is dealt with threadbare and thrashed out to the proper understanding of the same, it is open for the 1st respondent to consider and accord approval to the petitioner within the shortest time possible. It is apparent from the affidavits of the petitioner that

huge amounts are already invested which is said to be Rs. 2 to Rs. 3 crores in addition to depositing Rs. 35 lakhs for the purpose of commencing the educational institution and that has been delayed for certain reasons, perhaps may be even beyond the control of the 1st respondent for certain in explainable reasons. This Court hopes that at least now the 1st respondent will take appropriate action to expedite the matter.

31. In the result, both the writ petitions are allowed and disposed of with the following directions :-- The petitioner shall be entitled to get approval from the 1st respondent to start the educational institution as proposed in the application made. The 1st respondent shall consider the application of the petitioner for approval and take a decision in the light of the observations made above within a period of 15 days from the date of communication of a copy of this order. The 1st respondent shall be at liberty to accord approval subject to the conditions to be imposed and even to have one more inspection if it feels necessary in the matter. After the 1st respondent accords approval to the petitioner, it shall be entitled to approach the respondents 2 to 5 for recognition or affiliation and the 5th respondent for allotment of candidates, when they shall deal with the matter in accordance with law in the light of the observations made in this judgment and the Full Bench case of this Court in *M. Sambasiva Rao alias Sambaiah and Others Vs. Osmania University and Others*, . In the peculiar circumstances, there shall be no order as to costs.

32. Petitions allowed.