

(1997) 10 AP CK 0052

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13124 of 1997

Jeses and Mary Educational Society

APPELLANT

Vs

All India Council for Technical Education, New Delhi and
others

RESPONDENT

Date of Decision : 16-10-1997

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 12, 12(1), 13(3),
13(4)
Constitution of India, 1950 — Article 13, 14

Citation : (1998) 4 ALD 249

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

Bench : Single Bench

**Advocate : Mr. Ramesh Ranganathan, for the Appellant; Mr. M.V.S. Suresh
Kumar, SC for AICTE, for the Respondent**

Judgement

1. The petitioner is a society registered under the A.P. (Tclangana Area) Societies Registration Act, 1950. It is a minority institution recognised by the Commissioner of Collegiate Education by proceedings dated 30-5-1996. Respondent No.1 is All India Council for Technical Education (AICTE - in short "the Council") established u/s 3 of All India Council for Technical Education Act, 1987 (in short "the Act"). Respondent No.2 is the University Grants Commission (UGC). Respondents 3 to 8 are colleges offering courses in Post Graduate Diploma in Management, Computer Sciences and Engineering (in short PGDM course). The petitioner and respondents 3 to 8 are not affiliated to any University. The petitioner resolved to establish Christian Minority Post Graduate College in the name of Holy Bharati P.O. College, at Hyderabad. Efforts were made to seek affiliation of the petitioner's college with the Osmania University in futility. The petitioner proposed to offer MBA course in its college at Vanasthalipuram. Its proposal was accepted and recommended by the Government of A.P. to the 1st respondent in its proceedings dated 16-8-1995. The Council accorded approval to the petitioner to conduct both MBA (2 years)

full time course and MBA (3 years) part time course for the year 1996-97 in its proceedings AP-14-BOS (MCP) APR (M)/96, dated 26-12-1996. It also condoned the approval of the existing batch of programmes for the year 1995-96. The Government of A.P. ratified the action of the petitioner in admitting the students for the year 1995-96 and granted permission for intake of 30 students by virtue of orders of this Court in WP No.46/96, dated 12-13-1996 in G.O. Ms. No.115, dated 23-4-1996. Despite the approval accorded to the petitioner by the Council for the MBA course as above, the matter relating to the granting of affiliation by the Osmania University was pending for a long time and inspite of representations, "no result was yielded. Therefore, the petitioner approached the Council for conversion of MBA course to PGDM course for which approval was already accorded. The permission for conversion was rejected by the Council in its proceedings MCP/96/MISC., dated 16-8-1996. On the other hand, the petitioner was advised to make a fresh proposal for conducting PGDM course for consideration. Accordingly, the petitioner submitted a fresh proposal in the letter dated 27-8-1996 for conducting PGDM course for the academic year 1996-97 in the college Holy Bharati P.G. College at Amecrpct. The proposal was not disposed of by the Council and therefore WP No.28430 of 1996 was filed by the petitioner questioning the inaction of the Council. In WP MP No.35077 of 1996 in WP No.28430 of 1996, this Court passed order dated 31-12-1996 directing the Council to dispose of the application dated 27-8-1996 within a period of three weeks. Thereafter, the Council in its order dated 27-2-1997 rejected the proposal of the petitioner for conversion of MBA course to PGDM course on the ground that the All India Board of Management Studies of the Council (in short "the Board") had not recommended for conversion. It was assailed by the petitioner in this Court in WP No.6971 of 1997. This Court in its order dated 13-4-1997 set aside the proceedings dated 27-2-1997 on the ground that it was bereft of reasons and consequently directed the Council to reconsider the matter afresh and pass appropriate orders in accordance with law after affording reasons within four weeks from the date of receipt of copy of the order. But the Council in the impugned proceedings No.F-100-259/Legal/ 96, dated 19-6-1997 rejected the petitioner's proposal for conversion from MBA course to PGDM programme with the following grounds:

"" (i) that no such permission is now being granted for such conversion by AICTE according to the policy decision by the All India Board for Management Studies (A statutory body for Management Studies of the AICTE).

(ii) Osmania University, Hyderabad had already given their concurrence for MBA course to be conducted by the petitioner's society during the period 1995-96. The name of the society was also included by the Osmania University, Hyderabad for list of admissions during the period 1996-97.

(iii) AICTE as a policy has discontinued granting approval for fresh proposal of PGDM programme from the academic year 1997-98 onwards."

The impugned proceedings are challenged in this writ petition as arbitrary,

discriminatory, illegal and contrary to the norms and standards laid down by the Council and it is in violation of Articles 14 and 13 of the Constitution of India.

2. Mr. Ramesh Ranganadham, learned advocate for the petitioner, in addition to the grounds raised in the petition, has contended that the impugned proceedings are basically illegal and opposed to the provisions of the Act and the 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 (in short "the Regulations"), that it is arbitrary in the sense that although similar colleges namely respondents 3 to 8 are accorded approval for having PGDM course for the same period, the same benefit is deprived to the petitioner and therefore the impugned proceedings are discriminatory. He further submits that the Council has failed to act within its own powers to accord the approval in accordance with the provisions of the Act and the Regulations and the impugned proceedings are vague as to the policy, as to the reasons for not granting permission and approval to the petitioner to convert or to have the PGDM course for the relevant year and that the impugned proceedings are also opposed to the authoritative pronouncement of a Full Bench of this Court in *M. Sambasiva Rao v. Osmania University, Hyderabad* 1997 (2) ALD 1 (F.B.), and a latest pronouncement of this Court in *Devarakonda Educational Society v. All India Council for Technical Education, New Delhi* 1997 (3) ALD 165, confirmed by a Division of this Court by judgment dated 2-5-97 (1997 (2) APLJ 11). He has also contended that the Council has delegated its power of granting or rejecting the approvals to the Committee which is not permissible in law and amount to sub delegation of the powers by virtue of the duties and functions of the Council under the Regulations and therefore it is void. Mr. Ramesh Ranganadham has contended that the impugned proceedings are in utter violation of the law and repugnant to Article 14 of the Constitution of India. Therefore, he makes a fervent appeal and sincere statement to this Court that this is not a mere case to issue directions to the 1st respondent-Council to reconsider the matter but a fit case to issue Mandamus to grant approval having due regard to the facts and circumstances of this case and the petitioner having been already found fit for running such a broader course than PGDM course. The Council has filed counter affidavit in addition to an additional counter affidavit. The petitioner has filed reply also. The reply has been in answer to the contentions raised in the counter affidavit. The allegations of the discriminatory treatment to the petitioner in regard to the granting of the approval as against the respondents 3 to 8 are denied and the Council explained the circumstances under which such approval was accorded in different circumstances as it was only rectification or reconsideration due to the changed circumstances. The approval in regard to each of such respondents is explained by the Council in para 3 of the counter affidavit. It is pointed out that the rejection of the approval to the petitioner for having PGDM course was by virtue of policy decision of the Council not to grant any such approval and not because of any reason of discrimination or on a matter sought to be presented by the

petitioner in this writ petition. It is also pointed out that the petitioner proposed to convert the M.B.A. course to PGDM course on 20-6-1997 and by that time the processing of applications for the year 1996-97 was already over and the case of the petitioner was rejected pursuant to the recommendation of the Board dated 12-8-1996 and therefore there was no discrimination. In addition to the grounds raised in the counter affidavit, Mr. Suresh Kumar, learned Standing Counsel for Respondent No. 1 - Council, assisted by Mr. K. Srinivas has pointed out that this is not a case of mere delegation or sub-delegation of the powers of the Council regarding the granting or rejecting of the approval under the Act and the Regulations. According to them, the functions of the Council indicated in Sections 10, 17, 18 and 19 of the Act were assigned to the Executive Committee by virtue of Section 12 of the Act and particularly the delegation of the powers of approval under Clause (k) of Section 12 have been delegated to the Committee in its meeting dated 6-7-1988 with a condition to place the matter before the Council. It is pointed out by them that the minutes of the Board was placed before the Executive Committee on 7-11-1996 and it was adopted and based upon that the Council has rejected the approval to the petitioner to have PGDM course which has been communicated in the impugned proceedings by the Director of the Council and therefore they contend that there is no illegality, ultra vires, arbitrariness or discrimination in the process of issuing the impugned proceedings by the Council, hi feet, according to them, the Council had accorded the approval to the petitioner to have MBA course as above after inspection and having been satisfied about the grounds on which approval shall be granted and since the policy decision was not to grant PGDM course approval, it could not be granted to the petitioner and not for any other reasons. Mr. Srinivas, learned advocate for the Council has pointedly sought to demonstrate from the provisions of the Act and Regulations that Section 12 of the Act empowered the Council to delegate its functions to be performed by the Committee, there was no restriction or limitation to authorise the Committee to consider the approval of a course by an institution or college as the case may be and according to him, it is difficult to dissimulate or alienate several functions of the Council not to be delegated to the Committee and it has been done rightly by the Council and there is nothing illegal or improper in adopting such a procedure. At any rate, the learned advocates for the 1st respondent submitted that if this Court comes to any conclusion based upon the decision to be taken on the issues in the matter, the Council is prepared to reconsider the application of the petitioner either for converting or for granting approval for PGDM course. However, they rebutted the contention of Mr. Ramesh Ranganadham, learned advocate for the petitioner that since the matter of approval has to be considered by the Council after applying its mind, it may not be proper for issuing a writ of Mandamus to simply grant approval instead of consideration. Most of the implications of the Act and the Regulations have been elaborately dealt with and settled in the two pronouncements of this Court supra, one of the Full Bench and another by the single Judge confirmed by the Division Bench. As it is there is no scope to go beyond that. The learned advocates for both sides have also not ventured to

draw any distinction or further elaboration on such questions which are already settled therein. Therefore, we must proceed with a premise that the petitioner and Respondent No. 1, Council and its functionaries are bound by such precedents and the law laid down therein in categorical terms. The Regulations which are framed by the Council u/s 23 of the Act being the outcome of the subordinate legislation have the force of law as laid down in Sambasiva Rao case (supra) and to further improve the expressions, it should be read as part of the provisions of the Act. Not only the vires of the Regulations with reference to the provisions of the Act but also the contents have been tested and accepted and have been affirmed to be not inconsistent with the provisions of the Act in Sambasiva Rao's case (supra). Unventurably, no attempt is made to demonstrate inconsistency of any particular regulation with the provisions of the Act for the purpose of this case. Mr. Ramesh Ranganadham, learned advocate for the petitioner is totally right in postulating that as per the settled law it is the Council and the Council alone which is empowered to grant the approval. Both Sambasivarao's case and Devarakonda Educational Society's case have declared, reiterated and affirmed the same. There is no need to deal with the relevant provisions in the Act and Regulations in this regard under the circumstances. Admittedly, except that the impugned proceedings, having been communicated by the Director of the Council to the petitioner, there is nothing on record to show that it is the Council which has rejected the approval to the petitioner. The learned Standing Counsel for the 1st respondent-Council is not able to depend upon any material to show that the Council has taken any decision in regard to the approval or rejection insofar as the petitioner is concerned. However, Mr. Srinivas who is appearing for Mr. Suresh Kumar, learned Standing Counsel for respondent-Council has depended upon the materials on behalf of Respondent No. 1 -Council that by virtue of the delegation of powers by the Council to the Executive Committee, which has taken a decision and placed the matter before the Council, it must be taken as it is the Council which has taken the decision not to grant the approval and to reject the same in the present case. That requires examination both on facts and in law. The first and moot question to be decided is whether the Council can delegate its power or duty or function to the Executive Committee of any organ of the Council in regard to the approval or rejection for having such a course. The Council is established by the Central Government u/s 3 of the Act which is a body corporate by the name called AICTE having perpetual succession and a common seal, with power to contract and shall by the said name sue and be sued. It has so many members described in Section 3(4)(a) to (t) including the All India Board of Management Studies (in short "the Board") as one of the members of the Council. The bodies of the Council are contemplated under Sections 12 - 14 namely, Executive Committee of the Council, the Boards of Studies and the Regional Committees. The Council will constitute such committees or Boards as the case may be. In the counter affidavit filed on behalf of the Council, the Board is styled as statutory body which is a myth and anti-thesis of the fundamentals of law. The assumption of the status of a statutory body by the Board appears to

be ultra vires, if not abuse of law under the Act. There are as many as five Boards called : (i) All India Board of Vocational Education (ii) All India Board on Technical Education; (iii) All India Board of Undergraduate Studies in Engineering and Technology; (iv) All India Board of Postgraduate Education and Research in Engineering and Technology and (v) All India Board of Management Studies. If all these bodies of the Council are to be called as statutory bodies just because their existence is spelt out in the provisions, the true concept of statutory body constitutionally and legally recognised would be jeopardised for "the purpose of regulation and control. It is very difficult to agree with such an understanding that any of the Boards, much less the All India Board of Management Studies is a statutory body. The status of such bodies is only that of members in the Council as already pointed by virtue of Section 3(4) of the Act. A member of a statutory body by itself will not be a statutory body both grammatically and compositionally and the expression of a member of a Council means nothing more than member of a Council or member of a statutory body and not a statutory body itself. Confusional legal comprehension should not lead to legal thinking abortions. It is difficult to understand as to how the Board was conceived as a statutory body by the Council ignoring its own status. At one time it was contended or even sought to be projected that because of the Board recommended that as a policy, permission should not be granted to commence or continue PGDM course, the Council agreed with it and the Council said "Omen" and "Thadhastu". This appears to be totally inconsistent with the provisions of the Act. Even while constituting such Boards, Section 13(3) of the Act dealt with functions of such Boards namely every Board of Studies shall advise the Executive Committee on academic matters falling in its area of concern including norms, standards, model curricula, model facilities and structure of courses and also according to sub-clause (4) the area of concern, powers, the constitution and functions of the Boards of Studies shall be such as the Council may provide by regulations. Therefore, the genus of the functions of the Boards should be decided by the Council and to be regulated in the regulations themselves and patently the regulations are silent in regard to the Board of Studies to play any role in granting approval except to recommend on certain matters. Regulation-4 concerns the requirement of grant of approval, Regulation-5 concerns the forms of applications, Regulation 6 about the conditions for grant of approval, Regulation-7 regarding submission of applications and Regulation-8 concerns the scrutiny of applications. Regulation-8(4)(iv) contains a Bureau called as "BOS". From among several such agencies from sub clauses (1) to (6), the Bureau of Regional Committees of the Council will invite comments/recommendations on the applications referred to in sub-regulation (3). The Bureau R.C. makes a preliminary scrutiny of every application, points out the deficiencies and seeks compliance and thereafter the Regional Office will arrange for visit of an Expert Committee, constituted by the Council under sub-regulation (2) of Regulation 9 and forward the recommendations of the Regional Committee, the State Level Committee constituted under sub-regulation (4) of Regulation-9 will consider the recommendation of the State Government and others mentioned in sub-

regulation (4) which include the Bureau BOS also and shall make its recommendations to the Central Task Force and the Central Task Force constituted under sub-regulation (5) of Regulation-9 shall consider the recommendations of the State Level Committee and send its recommendations to the Member-Secretary of the Council and after complying with Regulation-8(8) in case,of disagreement etc., and on the recommendation of the Central Task Force, the Council shall decide the question of granting approval as sought for in the application under Regulation 8(9). Beyond the recommendatory power and to correctly call it as "duty", the Board of Studies has no role to play in the matter. If we read Regulation-8(9), it is mandatory that it is the Council which decides the question of grant of approval and possibly rejection also by virtue of sub-clause (11) as explained in Devarakonda Educational Society case (supra). Now if the Board of Studies has a role to play in the rejection, on the basis of its misconceived statutory status and to influence the Council to reject, then that will be the end of real purpose and the object of the Act and the Regulations. That has been done in this case.

3. It is true that on the recommendation of the Board, the Executive Committee of the Council took a decision not to grant approval of PDGM course as a policy and if it is correct that the matter was placed before the Council, the matter has ended there. Barring the communication to the petitioner by the Director of the Council that the permission is rejected, no reasons are assigned as to why such policy decision was taken and why the application of the petitioner to have PGDM course either by conversion or initiation was rejected. The proceedings of the Executive Committee is also blunt and blind. Even the impugned proceedings addressed to the petitioner is balded as to who took the decision in the matter. To repeat again, even on the basis of the decision taken by the Executive Committee, the Council has not taken any decision in the matter nor acted in terms of the granting or rejecting approval by virtue of Section 10(k) and also Regulation-8(9) and (11) in accordance with the guidelines given in Devarakonda Educational Society case (supra). It must be a luxury to repeat the concept of approval and the decision making process by a quasi-judicial authority like the Council as declared in the case (1997 (3) ALD 165 supra). It was pointed out therein that 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. It is not the case of the Council that the petitioner had not fulfilled the conditions enumerated in such regulations. 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 character (para-27 of Devarakonda Society case). It was also emphasized in that case that while rendering the decisions, the Council was to act objectively, judicially and

judiciously and therefore that satisfied the tests 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. Therefore, merely basing on what the Executive Committee had stated on the recommendation of the Board, the Council could not have simply communicated the impugned proceedings rejecting the approval to the petitioner. Something more than that was needed. In the background of such legal postulations supra, there is no decision or approval or rejection by the Council in this case and the whole thing is still in vacuum. Barring physical or fiscal communication of the impugned proceedings by the Director of the Council, who has no jurisdiction to take any decision in the matter, there is no decision at all in the true sense of the expression. The impugned proceedings are dated 19-6-1997 by which time both the pronouncements of this Court had already been rendered and the AICTE being a very active party to both the proceedings, having acted in such a manner should think twice before repeating the same conduct again in future.

4. Even presuming that the Council had delegated its power or functions to the Executive Committee in regard to the grant or rejection of the approval, the question is whether the law permits it. Mr. Ramesh Ranganadham is right in contending that the Council could not have delegated such a power or function to the Executive Committee. However, the learned Standing Counsel for the Council has seriously depended upon Section 12(1) of the Act which reads as follows:

"The Council shall constitute a Committee, called the Executive Committee for discharging such functions as may be assigned to it by the Council"

Possibly, the learned Standing Counsel is stretching the meaning that the Council in this case has assigned the functions of granting or rejecting the approval as a function delegated to the Executive Committee. The import of the legal tint is far fetching. Section 12 of the Act has nothing to do with the delegation of the powers or the functions. That is why advisedly the Legislature has used the word "assigned" to mean that entrusted but not delegated. It has never used the expression that the Council can delegate or assign any of its powers or functions to the Executive Committee. Section 10 of the Act enumerates various functions of the Council from (a) to (v) and the repetition of the same has become inevitable so that at least now the Council can note its own powers and functions to discharge, perform or to assign to the Executive Committee or any other authority as the case maybe:

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

(b) coordinate the development of technical education in the country at all levels;

(c) allocate and disburse out of the Fund of the Council such grant on such terms and conditions as it may think fit to -

- (i) technical institutions; and
- (ii) Universities imparting technical education in coordination with the "Commission;
- (d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational process;
- (e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the Society;
- (f) promote an effective link between technical education system and other relevant systems including research and development organisation industry and the community;
- (g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;
- (h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;
- (i) lay down norms and standards for courses, curricula, physical and instructional faculties, staff pattern, staff qualifications, quality instructions, assessment and examinations;
- (j) fix norms and guidelines for charging tuition and other fees;
- (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;
- (l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;
- (m) lay down norms for granting autonomy to technical institutions;
- (n) take all necessary steps to prevent commercialisation of technical education;
- (o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;
- (p) inspect or cause to inspect any technical institution;
- (g) withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time and to take such other steps as may be necessary for ensuring compliance of the directions of the Council;

(r) take steps to strengthen the existing organisations and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;

(s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;

(t) advice the Commission for declaring any institution imparting technical education as a deemed University;

(u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme.

(v) perform such other functions as may be prescribed.

Among them the functions at (e), (f), (g), (i) to (o), (r), (t) and (u) cannot be assigned to any other organ of the Council whereas the other functions at (a) to (d), (h), (p), (q) and (s) can be delegated, where decision making process is not to be found in the very nature of the functions, however, which can be guided, regulated or ultimately checked by other functionary powers of the Council u/s 10(v) - "perform such other functions as may be prescribed". In this case particularly, we are dealing with the functions of granting approval which includes the rejection also by virtue of Reg.8(9), we are concerned about the implication of Section 12 of the Act for the purpose of assignment of such a task to the Executive Committee. Mr. Ramesh Ranganadham is right in postulating that the Council being the quasi judicial authority to take a decision in granting or rejecting the approval, cannot delegate such a power or function. As already pointed out, the Council is a quasi-judicial authority as settled in the pronouncements supra. Although the word "power" is not used in Section 10 or 12 of the Act, the expression "function" is used therein. It correlates to both power and the function including the expression "duty". Further, "power" means - the right, ability, authority or faculty of doing something. Authority to do any act which the grantor might himself lawfully perform. A power is an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given act. In a restricted sense a "power" is a liberty or authority reserved by, or limited to, a person to dispose of real or personal property for his own benefit or benefit of others or enabling one person to dispose of interest which is vested in another and there may be appurtenant powers also including collateral, powers, constitutional powers, commerce powers, enforcement powers, implied powers, inherent powers including preemptive powers - (page 1169 of Black's Law Dictionary -6th Edition). The expression "function" is derived from Latin "functus" the past participle of the verb "fungor" which means to perform, execute, administer. The nature and proper action of

anything, activity appropriate to any business or profession; duty, fulfillment of a definite end or set of ends by the correct adjustment of means etc.; the occupation of an office. By the performance of its duties, the officer is said to fill his function. The proper activities or duties of municipality, (page 673 of Black's Law Dictionary, 6th Edition). Therefore, the function which is synonymous to duty is exercise of power. Any such power legally invested to function is essential to the lawful exercise of power. "Whether a power, expressed in merely permissive language, is accompanied by a duty to exercise it in certain circumstances requires consideration of the whole statutory context in which the power is given" (page 259 of H.W.R. Wade's Administrative Law - 6th Edition). That is why, some times, the expression of the word "may" becomes must to mean mandatory duty to exercise the power, when it becomes a duty and not the power. These expressions are made only to emphasize that the power or function or duty to grant or reject approval by the Council cannot be delegated or assigned to any authority in the absence of any specific authorisation in the Act or the Regulation. Now going back to Section 13(4) of the Act, it reads as follows :

"The area of concern, powers, the constitution and functions of the Boards of Studies shall be such as the Council may provide by regulations"

Even assuming any such power can be delegated, it must be done only through the regulation making power u/s 23 of the Act or rule making power u/s 22 of the Act and no such regulation is found in the Regulations in regard to the delegation or assignment of such power by the Council either to the Executive Committee or to the Board or any other body.

5. Mr. Ramesh Ranganadham, learned advocate for the petitioner with all purpose and sincerity has also rightly relied upon the dictum of the Supreme Court rendered more than once in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, and *Marathwada University Vs. Seshrao Balwant Rao Chavan*, to the effect that quasi-judicial powers conferred by a statute or statutory regulations cannot be delegated unless they expressly or by clear implication permits it and there is no such express or implied provision for the Council to delegate any such power or function to the Executive Committee or the Board. The concept as to delegation of powers and the exercise of discretion by an authority, particularly statutory authority is founded in the Administrative Law (H. W.R, Wade) which contemplates thus:

"An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally, the Courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, subcommittees, or delegates, however

expressly authorised by the authority endowed with the power".

What should not have happened according to the settled law has happened in this case. With a misconceived notional delegation of powers to the Executive Committee, the Council has derogated itself into a non-entity as to such a matter as to approval or disapproval which has got serious legal consequences and an instance is that, if it had allowed the Executive Committee or the Board to take its own role to approve any undeserving case, the consequences are more than serious and disastrous than in rejection as it could not have been conformed to the true intendment and objections of the Act as rightly dealt with in by the Full Bench of this Court in Sambasiva Rao case (supra).

6. Both the Council and the Board should be reminded that they have acted repugnant to the true intent of the Act and the Regulations and they shall rectify it felling which, the law will take its own course. Any amount of ignorance is not equivalent to one percent of sincere and wise approach to a piece of legislation under which the Council is constituted. This Court hopes that atleast now the realities will be noted by the Council before doing anything.

7. Therefore, the rejection of the permission to the petitioner to have PGDM course instead of MBA course" in the background of the ultra vires of the exercise of power or the functions by the Council and its things, cannot be supported. It is very clear that in the conduct of the Council and in such a situation as can be judicially noticed, the institutions and the colleges are driven to approach the Court time and again to get the legitimate dues like the approval etc. Possibly, the Council must be stilt thinking that it is in the region of autocracy which has been practically condemned in Samba Sivarao case (supra) while dealing with the conduct of the Osmania University and observing that it should be repeated by the Council atleast in future.

8. To conclude on Certain important questions having due regard to the valuable assistance given by the learned advocates on both sides, this Court is constrained to postulate legally about the concept of policy and policy making by an authority like the Council. Because, the policy upon which the permission was rejected to the petitioner is vague, balled and not supported by reasons. "Policy" means the principles upon which the Government or the authority governs itself and others. It may be a general guideline to be uniformly adopted for one and all. It is a course of action, the course of conduct, the fundamental principles, general guidelines and general principles governing the course of action, governing plan, governing principle, management, manner of proceeding, the mode of management, rule of action, scheme, strategy etc. (P. 388 of Legal Thesaurus by William Burton).

-It is the general principles by which the Government is guided in its management of public affairs or the Legislature in its measures. (P.1157 of Black's Law Dictionary, 6th Edition) -

-It is a course or principle of action adopted or proposed by the Government,

party, business or individual (P.921 of Concise Oxford Dictionary) -

-It is a definite course of action selected from among the alternatives to guide and determine the present and future decision, an over all plan embracing general goals and procedures, esp. of Governmental body. (P.707 of Penguin English Dictionary).

-It is a plan of action or a statement of ideals etc., proposed or adopted by a Government, political party, business etc. (p.957 of Oxford Advanced Learners' Dictionary)

9. Therefore, a policy is a rule of governance generally contemplated as a measure to implement the intentions and purpose of governance, possibly evolved with some discretions permissible within the four corners of law, rules or practices in a particular situation, but at any rate cannot be an arbitrary exercise of power unbridled and untrammelled de horse the rule of law. Any policy repugnant to the content and context of a purpose and situation would be an unbridled horse and unfettered exercise of power by a statutory authority. A policy evolved and adopted within the statutory intent and the public purpose would stand the test of rule of law. The AICTE was thus to contemplate whether the Act and the Regulations left any discretion for evolving such a policy of its own or beyond the very implications therein. Such implications are already settled by a Full Bench of this Court in Sambasiva Rao's case and a latest pronouncement of this Court in Devarakonda Educational Society's case by a single Judge, which was confirmed in appeal by the Division Bench. The law settled so far is that the AICTE wilt act within the provisions of the Act and the regulations and not beyond that. Any act or enactment on its part would be repugnant to such provisions and cannot gain the Court's support. While Sambasiva Rao's case laid down the general guidelines as to how the AICTE should accord permission within its powers and provisions, the Devarakonda Educational Society's case made it emphatic that granting of approval is a rule and rejection is an exception and that is why reasons arc not necessary for granting the approval but reasons are to be given for rejection. Such an approval or rejection cannot sprout from a policy decision. Such a decision as has been declared in Devakonda's case supra, is a decision of a quasi judicial authority after application of mind with the materials available on record to be communicated to the aggrieved party. The AICTE should be reminded that it has no discretion or option to evolve a policy not to grant at all for a particular year, particular course or particular institution or individual. Presuming that any policy so evolved is permissible within the limits of the Act and the Regulations, it shall not be inconsistent with the decision making process. However, while evolving such a policy, it should be to achieve the real purpose of the Act and the Regulations and not beyond that. Any such policy beyond the scope of the Act and the Rules is likely to be misused, abused or even exploited in a particular situation defeating the very object and the purpose very well detailed and regulated in both the pronouncements (1997 (2) ALD 1 (FB) and 1997 (3) ALD

165 supra).

10. Conversion of MBA degree course into PGDM course is a process of decision. Conversion may sometimes amount to fresh approval."The fresh approval is again based on the same principles laid down as above. If an institution like the petitioner is fit for carrying on MBA course having a larger period and greater curricula etc., the PGDM with a lesser period and curricula should be necessarily inferior to MBA. When the petitioner was fit for MBA, it could never be unfit for PGDM, either converted or approved afresh. In either case, the so-called policy of the respondent/AICTE in not granting the approval is repugnant to the Act, Regulations and the precedents supra. The worst illustration is that AICTE may at some time in future decide not to grant the approval at all to anybody for various reasons including the increase in the number of institutions, number of qualified students, even leading to unemployment problem, and overcrowding in the field. It must be emphasised that it is none of their business to think of such imponderables and improbables. It is none of their region to regulate the aspirations of the future generation of the country to learn and achieve in the technical field which may open upto any heights nationally and globally. That can never be scuttled by the Council in its policy decision making which may some times sprout out from whims and fancies of the individuals or the team. This Court is of the considered opinion that because of such immature thinking of the individuals or the body without contemplating the consequences, the results would be unfair competition, corruption, if not scams.

11. The question of discrimination pleaded by the petitioner in granting or rejecting the approval to various institutions -respondents 3 to 8 and also the petitioner which has been sought to be explained by the Council in its own way, in the nature of the controversies already decided above, may not pay any role in this case. However, the explanation given by the Council is not very much satisfactory. If the permission is not at all to permit anybody to have PGDM course, the method of permission negates its own policy making process. The policy which cannot grant permission to anybody cannot permit to anybody, not alone the petitioner. Even there, the Council cannot acquit itself of the consequences. If it could do for others for certain reasons, it was possible to do for petitioner also. Now the last question but not least question is whether the relief can be granted in the form particularly prayed by Mr. Ramesh Ranganadham, learned Counsel for the petitioner that a writ of Mandamus may be issued to the Council to grant approval to the petitioner. This question is considered with all seriousness. Normally speaking, the Courts will not enter into such an area to directly call upon the authority to grant approval and normally direct the authority to consider such a plea. But in the considered opinion of this Court, this is an exceptional case where in unrestrainingly, the relief claimed by the petitioner should be granted. The petitioner has approached this Court several times being a minority institution to impart education in the technical field to the benefit of such persons concerned in the institution or community at large who can get benefit by it only to be scuttled due to improper understanding

of the legal implications of the Act and Regulation and due to mismanagement if not abuse of management. There may not be any guarantee that the Council is incapable of repeating the same conduct or misconduct to drive the petitioner again and again to this Court to seek the relief. The petitioner was accorded approval already for MBA course without dispute, the course has been commenced, the students have joined and the matter has allowed sufficient water to flow for almost more than 2 years and any vagary in the decision making process of the Council would jeopardise the interests of the College-the petitioner in particular, the students in general and the community at large. Possibly till this Court dealt with the serious questions and the implication of the Act and the Regulations in the two decisions (1997 (2) ALD 1 (FB) and 1997 (3) ALD 165 supra), the Council might have had a reason not to settle down to a decision making process and in the absence of any mala fides, this Court cannot think of passing any strictures. But at the same time, this Court reminds the Council that it has no option except to grant approval to the petitioner to convert MBA course into PGDM course, however, keeping open its right to review or inspect and if necessary may cancel the approval in accordance with Section 10 and as per the procedure laid down therein and also in Sambasiva Rao case and in Devarakonda Educational Society case (1997 (2) ALD 1 (FB) and 1997 (3) ALD 165 supra). It is also made clear that this Court dealt with the matter and also held in Sambasiva Rao case (supra) that such approval should be made retrospectively to avoid unnecessary hardship and agony to the student community in particular and society in large.

12. Mr. Srinivas, appearing learned standing for the Council was ready with all the materials of the Council to demonstrate as to how the matters were dealt with and expressed his open mind that the Council will consider the case of the petitioner with all merits and concern as per the directions of the Court.

13. The petition is allowed. The Respondent No.1 - Council shall accord approval to the petitioner to have PGDM course retrospectively from 1995-96 onwards or from the date of commencement of the course whichever is later within ten days from the date of communication of copy of this order and report compliance to this Court within one week thereafter positively. No costs.