

(2012) 11 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1072, 1075, 1076, 1077, 1146, 1154 and 1172 of 2012 and Writ Petition No's. 13622 of 2009, 4538 of 2010 and 29 of 2012

St. Mary s Engineering College and Others

APPELLANT

Vs

The All India Council for Technical Education (AICTE) and Others

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 10(1), 10(1)(a), 10(1)(e), 10(i)
Andhra Pradesh Education Act, 1982 — Section 20, 20(1), 20(1)(a), 20(3)(a)(i)
Constitution of India, 1950 — Article 14, 16, 19, 19(1)(g), 226
Criminal Procedure Code, 1973 (CrPC) — Section 319, 319(1)

Citation : (2013) 2 ALD 120 : (2013) 1 ALT 506

Hon'ble Judges : Pinaki Chandra Ghose, Acting C.J.; Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : S. Sriram, for the Appellant; K. Ramakanth Reddy, Counsel for Respondent No. 1, Additional Advocate General (Assisted by Government Pleader for Higher Education) Counsel for Respondent No. 2 and Sri M. Ravindranath Reddy, Counsel for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sri Pinaki Chandra Ghose, Acting Chief Justice

1. The issue involved in the Writ Petitions filed by Private Polytechnics Managements Association, Andhra Pradesh, Hyderabad and M/s Sri Varalakshmi Polytechnic, Chilakalapudi, Machilipatnam represented by its Secretary and the Writ Appeals arising out of interim orders passed by a learned single Judge in W.P. M.P.No. 29 of 2012 and W.V.M.P. Nos. 2166 of 2012 and batch in W.P. No. 29 of 2012 emanates from the action of the 1st respondent - All India Council for Technical Education (for short "AICTE") in issuing Notification No. AICTE/Legal/11(03)/2008 dated 8.11.2008 introducing a scheme for running second

shift of Polytechnic in existing Polytechnic Colleges and second shift of polytechnic in existing Engineering Colleges and inviting applications from the Polytechnic/Engineering Colleges and the consequential notifications issued by the 2nd respondent - Government of Andhra Pradesh, represented by its Secretary, Department of Higher Education, Hyderabad for academic years 2010-11 and 2012-2013. The petitioner seeks a declaration that the action of the respondents 1 and 2 in introducing the scheme and inviting applications for running second shift of Polytechnic in Engineering Colleges as void ab initio, arbitrary and illegal. In W.P. No. 13622 of 2009 petitioner has not challenged the notifications issued by the respondents 1 and 2 but only sought for a declaration that the action of the respondents in seeking to approve the second shift of polytechnics in engineering colleges from the Academic year 2009-2010 as arbitrary and illegal. The All India Council for Technical Education was established under the All India Council for Technical Education Act, 1987 (for short "the Act") to ensure proper planning and co-ordinate development of the technical education system throughout the country, promotion of qualitative improvement of technical education in relation to planned quantitative growth and regulation of the system and proper maintenance of norms and standards. In order to address the issue of the regional imbalance, stream wise the imbalance between degree versus diploma level institutions, in the year 2008, the Council has introduced schemes viz., (i) running second shift of polytechnic in an existing polytechnic, (ii) running second shift of polytechnic in an engineering college and (iii) running second shift of engineering college in an existing engineering college, in those States where the number of seats available in engineering colleges per lakh of population are less than all India average. Here, we are concerned with the schemes (i) and (ii) only. Accordingly, a notification was issued on 8.11.2008 by the AICTE inviting applications from the Polytechnic/Engineering Colleges and consequential notifications were issued by the State Government in the Technical Education Department.

2. In W.P. No. 13622 of 2009, petitioner states that new institutions are required to be established on a survey to be conducted by the AICTE and upon collection of data on all the related matters. The All India Council for Technical Education (Grant of Approvals for starting new Technical Institutions, Introduction of Courses or Programmes and Approval of intake capacity for the courses or programmes) Regulations, 1994 provide elaborate procedure, inspections and recommendations before an approval is given to establish a polytechnic or to increase the intake. According to the petitioner, the number of seats in polytechnic has increased from 20,000 in 2003 to 59,287 in the year 2009. In the year 2009, in the Common Entrance Examination for admission into Polytechnics (CEEP), out of 1,54,328 qualified candidates only 59,000 have registered their names for admission and out of them only 31,000 reported as against the approved intake of 39,658 seats, resultantly, 8,000 seats remained vacant. 16 new Government Polytechnics and second shift in 16 existing Government Polytechnics have been approved for the academic year 2009-2010

of an take of 4,380 seats. At that stage, on 26.6.2009, the 2nd respondent issued proceedings notifying that 95 engineering colleges are viable to start the second shift of polytechnics and directed that such colleges should apply for the Letter of Approval by 3.7.2009 and thereafter the inspection teams would commence the inspection of the respective colleges. According to the petitioner, starting of second shift of polytechnics in Engineering Colleges would increase the number of seats by 19,380 and the total number of seats for the academic year 2009-10 would increase to 63,760.

Petitioner contends that the action of the respondents 1 and 2 in permitting the engineering colleges to start second shift for polytechnics would seriously affect the private polytechnic colleges run by the members of the petitioner's association. There was neither a survey conducted by the technical experts nor there was proper collection of data before the impugned action was initiated. Though the petitioner-association submitted representation to the Government, without considering the same, notification was issued notifying the engineering colleges for starting second shift in polytechnics.

3. On 9.7.2009, while admitting the writ petition, a learned single Judge granted interim stay of admissions in the second shift of polytechnics in the engineering colleges for the academic year 2009-10 until further orders.

However, by a detailed order dated 21.7.2009, the learned single Judge vacated the interim order for the following reasons:

In the totality of the facts and circumstances of the case and particularly keeping in view that the petitioners are assailing only the admissions into the additional seats on account of introduction of second shift of polytechnics in the Engineering Colleges ignoring the fact that the same benefit has been extended to the existing Polytechnic Colleges who are members of the 1st petitioner association, it appears to this Court that the whole grievance of the petitioners is that the students may opt for joining the Engineering Colleges thereby causing loss to the institutions of the petitioner association. Such a grievance can never be a valid ground to challenge the steps being taken by the respondents 1 to 5 for implementation of the policy decision taken by a statutory body. Even otherwise the apprehension expressed by the petitioners that the impugned action would have the effect of closing down most of the polytechnics run by the members of the 1st petitioner association, on a careful consideration of the statistics furnished by the respondents, appears to be unfounded and baseless.

For the aforesaid reasons, neither a prima facie case is made out in favour of the petitioners nor the balance of convenience lies in their favour to continue the interim order any longer.

4. By order dated 18.8.2009, a Division Bench of this Court in W.A.No. 1081 of 2009 granted stay of all further proceedings insofar as the approval or admission in the second shift of polytechnics in Engineering Colleges. The matter was carried to the Supreme Court in SLP (Civil) No. 24518 of 2009 wherein the

Hon"ble Supreme granted interim stay of the orders of the Division Bench. Subsequently, the petitioner withdrew W.A.No. 1081 of 2009.

5. By order dated 7.7.2011 as many as 74 Engineering Colleges who have applied for running polytechnics in second shift in their colleges were impleaded as respondents 6 to 79 in the Writ Petition.

6. Challenging the action of the 1st respondent in inviting applications for setting up new polytechnics including starting of polytechnics in engineering colleges for the academic year 2010-11 and the consequential notification dated 23.2.2010 issued by the Commissioner of Technical Education, the Association of Private Polytechnic Managements along with Varalakshmi Polytechnic College, again filed W.P. No. 4538 of 2010. By order dated 11.3.2010 a learned single Judge directed that the respondents may process the applications but directed not to take any final decision thereon. The learned single Judge by order dated 20.4.2010 made the interim order dated 11.3.2010 absolute, however, clarifying that the interim order would not prevent the existing polytechnic institutions who were granted limited permission for one academic year from applying for fresh permission from the years 2010-11 and the respondents are not precluded from considering such cases for grant of permission. In Writ Appeal No. 332 of 2010 filed against the said order, the Division Bench declined to interfere with the order.

7. The Association of Private Polytechnic Managements along with Varalakshmi Polytechnic College filed another writ petition being W.P. No. 29 of 2012 challenging the notification issued by the AICTE vide Advt. No. Approval/10(01)/2011 dated 4.10.2011 inviting applications for setting up new Polytechnics in engineering colleges for the academic year 2012-13. By order dated 3.01.2012, a learned single Judge granted interim order similar to the one granted in W.P. No. 4538 of 2010 directing that the respondents may process the applications but not to take any final decision thereon. Subsequently, the Engineering Colleges who have applied for permission to run polytechnics in their colleges in second shift got themselves impleaded as respondents 3 to 57. The impleaded engineering colleges filed petitions seeking vacation of the interim order dated 3.1.2012. By a detailed order dated 8.8.2012 a learned single Judge while confirming the interim order passed the following order:

On a careful consideration of the over all facts and circumstances of the case, I am of the prima facie opinion that the reasons which weighed with me for making the interim order dated 11.3.2010 absolute in W.P. No. 4538 of 2010 exist with even more force for the academic year 2012-13. Therefore, I find the elements of prima facie case, balance of convenience and irreparable injury in favour of the petitioners for granting the interim order. Accordingly, there shall be interim order as prayed for in WPMP. No. 29 of 2012. However, this order does not prevent the existing Polytechnic Institutions who would have been granted limited permission for the academic year 2011-12 from applying for fresh permission for the academic year 2012-13 and the respondents are not precluded from considering such cases for grant of permission.

8. Aggrieved by the above order, while the Engineering Colleges filed Writ Appeal Nos. 1072, 1075, 1076, 1077, 1146 and 1154 of 2012, AICTE filed W.A.No. 1172 of 2012.

9. The Regional Officer, South Central Regional Office, AICTE filed counter in W.P. No. 4538 of 2010 stating that the Regulations, 1994 provide for running second shift in engineering colleges. The system of providing second shift in existing polytechnic and engineering colleges was introduced for maximum utilization of the infrastructure, lower down the cost of education and to provide an opportunity to the students of weaker sections of the society to join in diploma courses in polytechnics. It is stated that introduction of second shift creates excess creativity accessibility to all sections of people and reduces the cost of infrastructure giving a boost to the object of providing technical education to all sections and strata of society irrespective of their financial capabilities. The members of the petitioner association reaping benefits of the policy/notification cannot challenge the notification and deprive the students the right to technical education which in public interest contributes to nation building.

Introduction of second shift of polytechnics in existing polytechnic and engineering Colleges do not require additional investment as existing resources in the engineering and polytechnics can be utilized which minimizes the cost of providing quality education and provides an opportunity to the working class who cannot afford to go to regular engineering colleges and others who work during the day to support their families. Sections 10(i) and 10(k) of the Act enables the AICTE to introduce or design new courses and petitioners have no say in such policy matters. The statistics furnished by the petitioner was disputed by the AICTE in their counter and contends that the petitioner cannot substitute its wisdom to the wisdom of academicians who have drawn the national policy in national interest, which was based on statistics, survey and study. There is heavy requirement of providing personal skill level and supervisory level positions in industry in India and the requirement would be achieved by permitting polytechnics in engineering colleges. Running of second shift in polytechnic colleges and engineering colleges gives an opportunity to the students and working men and women to improve their qualifications. Therefore, the petitioners have no locus standi to file the writ petitions. The counter disputes that there was neither survey nor collection of data before introducing the schemes. The AICTE deliberated over every aspect of the issue and as a national policy provided for polytechnics in second shift. There are 260 polytechnic colleges and 720 engineering colleges in Andhra Pradesh and this shows that the polytechnic colleges are less than half of engineering colleges. There is scarcity at skill level and supervisory level positions in the industry in India and this gap can be filled up by having more polytechnic colleges in the second shift in existing engineering colleges and existing polytechnic colleges.

10. In the counter filed on behalf the Principal Secretary, Department of Higher Education in W.P. No. 4538 of 2010 it is stated that the polytechnic education has

lagged behind the degree level education in engineering and as per the survey of AICTE there are 2,65,000 seats in 1244 diploma level institutions as against 5,82,000 seats in 1522 degree level engineering colleges in the country. As against the required ratio of 1 : 4 between an engineer and a diploma holder, the present ratio in Andhra Pradesh is 4.82 : 1 i.e. instead of 3 to 4 diploma holders for every engineer there are only 0.2 diploma holders for every engineer. There is a growing demand in Andhra Pradesh for admission into polytechnics particularly from rural youth and economically and socially weaker sections. It has been detailed in the counter that the net increase of seats in private unaided polytechnics is 74.40% out of the total sanctioned intake of 7730 both in Government and private unaided polytechnics institutions in second shift for the year 2008-09 and for the year 2009-10 it was 64.80%. Therefore, the private unaided polytechnics have been sanctioned optimal intake to the permissible extent as per the norms and based on the infrastructure facilities created by the managements. It is further averred that even after according approval to the maximum extent in private polytechnics still there is demand for admission into the diploma courses in engineering and technology. Pursuant to the notification of AICTE, 105 existing engineering colleges submitted applications for running second shift polytechnics for the year 2009-10 and AICTE forwarded a list of 96 engineering colleges found to be viable for starting second shift of polytechnics and requested the State Government to ensure that the additional norms and conditions prescribed by the AICTE for starting second shift in the said institutions are fully complied with. Subsequently, inspection was undertaken strictly adhering to the guidelines issued by AICTE and accordingly recommendation was made for starting second shift of polytechnics in the existing engineering colleges. Though admissions into the engineering colleges could not be taken due to the interim orders passed by the High Court, but, ultimately, in view of the orders of the Apex Court dated 9.10.2009, admissions into the engineering colleges for running of second shift of polytechnics was undertaken.

11. The AICTE has taken the decision as a national policy to allow second shift of polytechnic in existing engineering colleges which would facilitate the diploma students to access better infrastructure facilities and faculty. Most of the engineering institutions who have applied for second shift of polytechnics are located throughout the state including in rural areas which would be beneficial to the students in the rural areas as the cost of education would be considerably reduced. Refuting the contention of the petitioners that no efforts are made to improve standards and pass percentage by the authorities, it is stated in the counter that the Government and State Board of Technical Education and Training are making every effort to update the curriculum and make the courses more in tune with the requirement of industry. The revision of curriculum in the latest phase also includes introduction of six months industrial training as a part of curriculum so that the students get experience while pursuing their diploma programme and can readily be absorbed by the industries after completion of the

course. In the counter details were furnished to show that the pass percentage of students in Government polytechnics is more than the pass percentage in private unaided polytechnics. Counter refuted the allegation of the petitioners that Government is not attaching much importance in raising the academic standards in the institutions by referring to various measures taken by the State to improve the standards.

12. In the counter filed in W.P. No. 29 of 2012 apart from reiterating what is stated above, it is averred that the member institutions of the petitioner's association during the years 2008-09 to 2011-12 are benefited inasmuch the net increase of seats in private un-aided polytechnics is 82.50% out of total sanctioned intake of 22,730 seats and even after according approval to the maximum extent in private polytechnics still there is demand for admission into diploma courses. It is further stated that in Polytechnic Common Entrance Examination for the year 2012, 1,84,778 candidates qualified which shows that there is enormous demand for polytechnic courses.

13. In the counter-affidavit filed on behalf of the Commissioner of Technical Education, it is stated that the petitioner's association does not represent all the polytechnic colleges and there is no vested right with the petitioner's association to stop new polytechnic colleges or to stop the Government from making available to the intending students new seats in engineering colleges which have proper infrastructure. There is no fundamental or legal right to insist upon the respondents to consider the representation of the petitioner's association or to conduct negotiations.

14. Sri Ravindranath Reddy, learned counsel appearing for the petitioner-association in all the writ petitions submitted that without there being a survey and ascertainment of need u/s 10(1)(a) of the AICTE Act, 1987, no application for starting new institution or courses shall be called for or approved. The ascertainment of need, based on scientific survey, as per Section 10(1)(a), is mandatory not directory. In support of his contention, he placed reliance on the decisions of the Supreme Court in *Shashikant Singh Vs. Tarkeshwar Singh and Another*, *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, and *Chandrika Prasad Yadav Vs. State of Bihar and Others*, . The counters filed by the AICTE and the Government nowhere indicate that such survey as required under the provisions of the Act was conducted. The AICTE or the All India Board of Technical Education (authorities under the Act) has to conduct survey and ascertain the need and if required have to take assistance of such persons having expert knowledge as provided u/s 7 read with AICTE (Association of Persons with the Council) Regulations, 1993 and such an exercise shall be established by documentary proof or a decision borne by the records. Sri Ravindranath Reddy further submitted that it is also incumbent on the part of the State Government to ascertain such need by conducting survey u/s 20(1) of the Andhra Pradesh Education Act, 1982 as was done in the case of introduction of second shift in engineering courses in engineering colleges, but the State has not conducted

such survey and placed reliance on the decision of this Court in W.P. No. 20021 of 2010 dated 4.6.2010 and batch as confirmed in W.A.No. 901 of 2012 and batch dated 1.8.2012. He further submitted that Section 10(1) of the AICTE Act and Section 20(1) of the Education Act prescribe a mandatory procedure for a statutory authority to follow for sanction of new institutions or courses and any deviation thereof is illegal and arbitrary. Learned counsel further submitted even assuming that Section 10(1) is not mandatory and it is only directory, the impugned action of the ACITE is arbitrary and violative of Article 14 of the Constitution of India more so when there is proliferation of institutions.

15. Sri Ramakanth Reddy, learned Standing Counsel for AICTE reiterating the contentions urged in the counter-affidavit submitted that the survey contemplated under AICTE Act is not mandatory, but, based on the statistics and study, it was found that there is acute shortage of skill level and supervisory level persons in industry in the country. The gap can be filled by starting second shift in existing polytechnic colleges and engineering colleges. He further submitted that national policy of AICTE to have second shift will ensure maximum utilization of infrastructure and to provide maximum opportunity for the weaker sections of the society who cannot afford to prosecute in day colleges which is in accordance with the provisions mandated by the Constitution to promote educational advancement of the society and educationally backward classes of citizens i.e. Scheduled Castes, Scheduled Tribes, Other backward Classes, minorities. The members of the petitioner's association having been benefited by the policy of the AICTE cannot be permitted to prevent from introducing the same in engineering colleges. The rules and regulations framed by eminent experts in the field of technical education under the provisions of AICTE Act as approved by the Parliament were upheld by the Supreme Court in All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others,

16. Sri Ram, learned counsel appearing for some of the respondents submitted that the petitioner association has no authorization to sue on behalf of the association inasmuch the list of members of the petitioner had not been filed; therefore, the writ petitions are not maintainable. He further submitted that though the members of the petitioner association were benefited by the national policy of the AICTE, they have filed series of writ petitions challenging the very policy which amounts to abuse of process of law and the association has no locus standi to file the writ petitions. The petitioner being a competitor within the meaning of Article 19(1)(g) of the Constitution has no locus to challenge approval of the respondents. The subject matter as regards policy choices and the preference of the authorities in permitting second shift in polytechnic courses in engineering colleges is in accordance with the policy of AICTE and such policy taken on the basis of expert advice cannot be challenged on the ground that seats in existing polytechnic colleges will be unfilled and placed reliance on the decision of this Court in Self-Financing Rural Engineering College Managements Association and Others Vs. All India Council for Technical Education and Others, . As regards the contention of the petitioner that there was departure from the

stand of the Government in regard to the second shift in engineering programmes in engineering courses, it was contended that the stand of the Government in the present case cannot be tested with reference to another policy concerning another class of institutions. The Court under Article 226 of the Constitution would not consider the relative merits of different policies and decide whether a wise or better one can be evolved. Reliance has been placed on the decision of this Court in *Statewide Recognized [RTA] Agents Welfare Association and Others Vs. The Government of A.P. and Others*, decisions of the Supreme Court in *Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others*, and *Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others*, . In W.P. No. 20021 of 2010 it was held that there is no need for second shift in engineering courses in the engineering colleges, whereas in the instant case both the AICTE and Government have given cogent reasons and figures for the need to permit second shift in polytechnics and there is compliance of section 10 of the Act and Section 20 of the Education Act, 1981. The policy of AICTE cannot be challenged on the ground of hardship to the petitioner association, in the event of new colleges being granted approval, there would be better opportunities for the students. No statutory right inheres in the petitioner under the provisions of AICTE Act or the A.P. Education Act to insist that there shall be no further colleges to impart polytechnic education nor does any right vested in them to be put on notice before new colleges are permitted in the second shift. A policy cannot be contended to be unreasonable because it causes hardship to a class of persons.

He further submitted that the impugned policy does not fall under any of the permissible grounds of judicial review as the same was made to cater to the needs of increasing students opting for polytechnic course and also to help the economically backward students. The policy of allowing second shifts of polytechnic courses in engineering colleges having not been demonstrated to be beyond the jurisdiction of the AICTE or irrational, the petitioner is not entitled to any relief. In the absence that the policy introduced is irrational or perverse, on the apprehension of the petitioner association that the interests of its members would be affected, the same cannot be interfered with. Reliance has been placed on the decision of the Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, . He, therefore, prayed for dismissal of the writ petition.

17. Sri Niranjan Reddy, learned counsel appearing for some of the respondents submitted that a rival competitor cannot maintain writ petition under Article 226 of the Constitution. The purpose of approaching this Court is to safeguard their monopolistic interests and to prevent the other institutions from offering polytechnics. Reliance was placed on the decisions of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, *AND Mangal Sinhji Dolatsinhji, etc. Vs. State of Gujarat*, . He further submitted that Supreme Court has repeatedly held that in matters of academic standards, courts should not normally interfere or interpret the rules and such

matters should be left to the experts in the field and placed reliance on the decisions of the Supreme Court in *Medical Council of India Vs. Sarang and Others*, *Dr. Basavaiah Vs. Dr. H.L. Ramesh and Others*, and *P.M. Bhargava and Others Vs. University Grants Commission and Another*, . The AICTE being a statutory body established by an Act of Parliament to ensure proper planning and coordinated development of the technical education throughout the country, based on statistics obtained by it, found that there is acute shortage of skill level and supervisory levels in the industry, therefore, has taken a decision to introduce the second shift in polytechnics and such policy cannot be interfered with.

18. Sri G.L.V. Ramanamurty, Ashwani Kumar, K. Venkatesh Gupta and other counsel appearing for the respondents - engineering Colleges supported the contentions urged by Sri Sai Ram and Sri Niranjan Reddy.

19. The learned Additional Advocate General appearing for the State reiterating the contentions urged in the counters submitted that the AICTE based on the statistics and study of the polytechnic education in the country has drawn the policy of introducing second shift in existing polytechnic colleges and engineering colleges to increase the skilled and supervisory man power at low cost utilizing the existing infrastructure available in polytechnic colleges and engineering colleges and such a policy which will benefit larger sections of the society particularly the backward classes in rural areas cannot be interfered with by this Court. The petitioner association having been benefited by such a policy cannot be permitted to contend that such a policy cannot be extended to other institutions, which have more infrastructural facilities. Some of the colleges of the petitioner association will suffer loss cannot be a ground to interdict with the policy introduced in public interest upon expert advice.

20. All India Council for Technical Education was established u/s 3 of the All India Council for Technical Education Act, 1987 (Act No. 52 of 1987) with a view to the proper planning and co-ordinate development of the technical education system throughout the country, for promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system in India and for matters connected therewith. Section 10 under Chapter III of the Act deals with functions of the council. Sub-section (1) of Section 10 provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring co-coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under the Act may,-

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

(b) Co-ordinate the development of technical education in the country at all

levels;

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(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 education processes;

(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 organizations, industry and the community;

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(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations: (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

Therefore, Section 10 of the Act empowers the AICTE to undertake survey in various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education. It is also its duty to coordinate the development of technical education in the country at all levels, promote innovations research and development in established and new technologies etc., to meet development; requirements and for overall improvement of technical education. The AICTE is empowered to formulate schemes for promoting technical education for women, handicapped and weaker sections of the society. Another duty cast on AICTE is to promote an effective link between technical education system and other relevant systems including research and development organizations, industry and the community. It is also empowered to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned.

21. One of the basic duties required to be performed by AICTE is to coordinate the development of technical education in the country at all levels to forecast the needed growth and development in technical education and to formulate schemes for promoting technical education for women, handicapped and weaker sections of the society.

22. Now, we may notice the background leading to formulation of the scheme for running second shift of polytechnic institutions in existing engineering institutions. The material placed on record discloses that there are 2,65,000 seats available in 1244 Diploma level institutions as against 5,82,000 seats in 1552 Degree level engineering colleges in the country. The ratio of degree to

diploma admission capacity is more than 2 whereas according to AICTE it should be between 0.25 and 0.33 i.e. for every engineer there should be four diploma holders. According to the AICTE, the ratio of degree to diploma admission capacity is far below the minimum requirement of 14 between the engineer and diploma holder. Taking into account the high cost of degree level education and the poor financial capacity of the students to opt for the courses and due to imbalance between engineering education and polytechnic education and for optimal utilization of resources, reducing cost of education per student, the AICTE introduced the scheme of starting second shift in existing polytechnic institutions and engineering institutions without additional investment. The scheme is applicable to all existing AICTE approved engineering institutions of three years of standing. To process the applications for running second shift and to assess its viability, the following Committee was constituted.

An academicians of repute as Chairman. Two Professors of AICTE approved technical institutions or HOD of Polytechnic as Members.

One Member from the Regional Committee as Member. A representative of concerned State Govt./UT or the Director of Technical Education as Member. Director/Advisor of AICTE HQs, New Delhi as Member. Regional Officer of the Council as Convener.

Based on the recommendations of the Committee, the Council will take a decision as to the grant of permission to the applicant for running second shift of Polytechnic institution in an existing engineering institution.

23. The norms and conditions for running second shift of polytechnics in an existing engineering institution are prescribed as under:

1. The second shift should be allowed normally in those branches which are already in existence in the Institution for at least two years. In case of new courses/disciplines to be started, additional facilities for such courses should be provided.
2. The intake in the second shift should be allowed within the range of 120-240.
3. The second shift timing should be from 2.00 PM to 8.30 PM while the first shift from 7.00 AM to 1.30 PM.
4. Land: No additional land is required to be added for the second shift.
5. Built-up area: No additional built-up area is required to be added for the second shift. However, laboratories should be adequately equipped to accommodate the second shift students.
6. Library: Library should be provided with 20% more books and journals and library timing should be extended to facilitate second shift students.
7. Computer Centre: No additional facility is required to be added.
8. Director/Principal: One Vice Principal/Deputy Director at the level of HOD or a

Senior Lecturer with five years experience should be appointed for the second shift in addition to the full time Director/Principal of first shift.

9. Faculty: At least 50% additional faculty should be appointed for second shift and 25% visiting faculty should be engaged and remaining 25% faculty should be utilized from the existing first year faculty. The existing faculty maybe paid 50% of Basic Pay + DA for the additional work.

10. Non-Teaching Staff: At least 50% additional staff should be appointed for second shift and 50% existing staff of the first shift may be utilized. The existing staff may be paid 50% of Basic Pay+ DA for the additional work.

11. Other Campus facilities: No additional facility is required to be added.

Therefore, the AICTE has taken sufficient care before an existing engineering college is granted approval for running second shift of polytechnic.

24. The main contention of the learned counsel for the petitioner is that no survey and ascertainment of need u/s 10(1)(a) of the Act was undertaken before formulating the scheme for running second shift of polytechnic in an existing engineering College. We are not inclined to accede to this contention. It may be noted here that the scheme of running second shift of polytechnic was not taken in respect of State of Andhra Pradesh alone. It was a national policy formulated by the AICTE which has application to the entire country. The AICTE on a consideration of various reports and data collected from all over the country has come to the conclusion that the ratio between the diploma holders and graduate engineers was below the minimum level i.e. 4 : 1 and, therefore, there is need for increase of the level of diploma holders. It was noticed that there is heavy requirement of providing personnel skill level and supervisory level positions in industry in India and the requirement would be achieved by permitting polytechnics in existing engineering colleges. The data collected by the AICTE was based on a survey conducted by agencies and experts working in the field of technical education under the control of AICTE.

Therefore, it is not that no survey was conducted by the AICTE nor there was no material before the AICTE before the decision to introduce second shift in polytechnics in existing engineering colleges was taken. Sri Ravindranath Reddy learned counsel for the petitioners referred to Section 7(1) of the AICTE Act and AICTE (Association of persons with the Council) Regulations, 1993 to contend that there should be documentary proof to establish that a survey was conducted. We find no merit in the said submission. Sub-section (1) of Section 3 of the above Regulations provide that where the Council is of the opinion that for performing any of its duties if it is necessary to have the assistance or advice of any person having an expert knowledge of the subject-matter, the Council may invite such persons to assist the Council as and when necessary. Therefore, it is open for the AICTE to take the advice of the experts. If, according to the AICTE, the data collected by it through the agencies or the advice rendered by the experts is sufficient for the AICTE to come to a conclusion that there is need to

evolve a national policy to introduce running of a second shift of polytechnics in existing engineering colleges utilizing the infrastructure available in the engineering colleges, conducting of a survey may not be necessary. It was a scheme drawn by the academicians appointed by the AICTE based on statistics, survey and study. Further, the decision to introduce second shift of polytechnics was not confined only to the existing engineering colleges, such scheme was extended to the existing polytechnic institutions as well.

25. Contention of the learned counsel for the petitioners that the ascertainment of need, based on scientific survey as per Section 10(1)(a) is mandatory not directory has also no merit. Sub-section (1) of Section 10 provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring co-coordinated and integrated development of technical education and maintenance of standards in the country. In the performance of its functions ordained by the AICTE Act, it has to perform the functions underlined in clauses (a) to (k) of sub-section (1) of Section 10 of the Act which includes undertaking of survey in various fields of technical education, collection of data, formulation of schemes for promoting technical education, laying down norms and standards for courses, grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Some of the functions, by their very nature, in our view, cannot be said to be mandatory, but only directory in nature.

In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, the Supreme Court held that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequences for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative. In the instant case, the question of any time limit to perform the functions u/s 10(1)(a) does not arise, therefore, the decision has no application. In *Shashikant Singh Vs. Tarkeshwar Singh and Another*, the Supreme Court was dealing with Section 319 of the Code of Criminal Procedure. Section 319 of the Code of Criminal Procedure deals with the power of the Court to proceed against other persons appearing to be guilty of offence. Sub-section (1) of Section 319 provides that where, in the course, of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. Sub-section (4) provides that where the Court proceeds against any person under sub-section (1), then - (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

26. When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory

enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (Craies on Statute Law, 7th Edn. Pages 260-262).

Keeping in view the above, the Supreme Court in Shashikanth's case held:

The words "could be tried together with the accused" in Section 319(1) appear to be only directory. "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the Court has concluded with the result that the newly added person cannot be tried together with the accused who was before the Court when order u/s 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the Court on the basis of evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the Court.

Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not. (Craies on Statute Law, 7th Edn. Pages 266-267).

The Supreme Court held that the mandate of the law of fresh trial under sub-section (4) of Section 319 of the Code Criminal Procedure is mandatory whereas the mandate that newly added accused could be tried together with the accused is directory.

27. In P.T. Rajan Vs. T.P.M. Sahir and Others, the Supreme Court held that the question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principles as regard the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve.

28. From the above, it is clear that no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory.

It is for the courts to go into the real intention of the legislature with reference to the scope of the statute. An absolute enactment must be fulfilled or obeyed exactly, but a directory enactment may be fulfilled or obeyed substantially. Further, where a statute consist number of provisions regulating the manner in which some thing is to be done, some of them may be treated as directory and others are to be considered as absolute and essential.

29. Sri Ravindranath Reddy placed reliance on the decisions of the Supreme Court in *Ramji Missir and Another Vs. The State of Bihar*, *State of Uttar Pradesh Vs. Jogendra Singh*, and *The Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another*, to contend that the word "may" employed in sub-section (1) of Section 10 shall be read as "shall". The Supreme Court held that the word "may" generally does not mean "must" or "shall". But it is well-settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. Where discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command.

Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed.

As already noticed, in the instant case, the AICTE in the discharge of its duties has to discharge various functions as ordained under Clauses (a) to (k) of the AICTE Act. All of them cannot be said to be mandatory. Some of them may be mandatory and others are not. Clause (a) of sub-section (1) of Section 10 authorizes the AICTE, with which we are now concerned, to undertake survey in the various fields of technical education, collect data on all related matters in order to make forecast of the needed growth and development in technical education. In our opinion, the discretion conferred on AICTE under Clause (a) cannot be construed as an absolute command or mandatory in nature. In the discharge of its functions, some times, it may be necessary for the AICTE to undertake a survey, some times, it may not be necessary to undertake any survey, and on the basis of the reports drawn from the agencies in the field and the material available before it or the advice rendered by the experts, it may take steps necessary for achieving the object ordained by the AICTE Act. Having regard to the object underlined under the provisions of the AICTE Act and the duties cast on the AICTE u/s 10(1), we do not think that the word "may" employed in Section 10(1) can be construed as "shall". Therefore, the discretion conferred on the AICTE under sub-section (1) of Section 10 with reference to Clause (a) thereof cannot be construed as mandatory thereby obligating it to conduct a survey before a policy decision is drawn by it. Depending upon the fact situation and context, where it is essential to conduct a survey, the AICTE, in its discretion, may conduct the survey before a decision is taken on a given subject. It is not necessary that on each issue and aspect, where a policy decision is required to be taken by it, the AICTE is required to conduct survey. As already stated, in the instant case, the AICTE has formulated the policy of introducing second shift of polytechnics in existing engineering colleges in public interest based on the data collected by it from the experts and other agencies. In the opinion of the AICTE the data available before it is enough to draw a policy and the AICTE is free to formulate such a policy on the data available before it. Such a policy formulated by a statutory body in accordance with the provisions of the Act cannot be found fault with or interdicted or termed as arbitrary and illegal.

We, therefore, hold that clause (a) of sub-section (1) of Section 10 is not mandatory but only discretionary.

30. An important aspect to be noticed in motivating the AICTE to introduce the scheme of running second shift in polytechnic is that there will be no need to provide infrastructure facilities for running second shift of polytechnic as the infrastructural facilities available in the existing engineering colleges can be utilized for the second shift and the same would lessen the cost of education and no additional requirements are needed. At the same time, the scheme gives an opportunity to the weaker sections of the society and the women, who have no opportunity to prosecute in the day College, to join the polytechnic course in the second shift, which is in consonance with the duty cast on the AICTE u/s 10(1) (e) of the Act. In such circumstances, it would not be possible for the Court to substitute its opinion to that of the AICTE. The Act casts an obligation on the AICTE to take decision and formulate schemes to meet the developmental requirements and for over all improvement of technical education in the country in the field of technical education, keeping in view the interests of the Indian Industry and for the development of industries of the country. The scheme introduced gives an opportunity to those who may not be able to apply and join in the course in day College to join the same in second shift and to improve their qualifications and to prosper in their career. The material discloses that running of second shift in polytechnic in engineering colleges was introduced even in engineering colleges established in rural areas where there are no polytechnic colleges either private unaided Colleges or Colleges established by the Government. Therefore, it will certainly afford an opportunity to the students of the rural community to join the course in second shift provided in the existing engineering colleges. That is a benefit certainly in the interest of the rural community and the weaker sections of the society.

In the counter filed by the State it is categorically averred stated that as against the required ratio of 1: 4 between an engineer and a diploma holder, the present ratio is 4.82 : 1 i.e. instead of 3 to 4 diploma holders for one engineer, there are 0.2 diploma holders for every engineer and there is growing demand in the state of Andhra Pradesh for admission into polytechnic courses from rural youth and economically and socially weaker sections. It is also stated that the net increase of seats in private unaided polytechnics is 74.40% out of the total sanctioned intake of 7730 both in Government and private unaided polytechnics for the year 2008-09 and for the year 2009-10 it was 74.80%. These figures would reveal that the private unaided polytechnics have been largely benefited by the scheme. Therefore, the scheme of running second shift in existing engineering colleges is a scheme formulated in public interest. Further, it is not the case of the petitioners that the ratio of 1: 4 between the engineer and diploma holder is not required to be adhered to or that the State of Andhra Pradesh has already achieved the said ratio. They failed to establish how the policy drawn by the AICTE is arbitrary, illegal or irrational.

The High Court, in exercise of its power of judicial review under Article 226 of the Constitution, cannot enter into such policy matters taken in public interest and adjudicate whether such policy introduced by the State or an instrumentality of the State is justified or not.

31. In academic matters, so long as the decision taken by the state or a academic bodies is in accordance with the provisions of the statute, Courts would not interfere, however, except in cases where it is established that the decision is contrary to the provisions of the statute or the intendment of the enactment. The AICTE was established with the object of regulating and coordinating the development of technical education throughout the country and also for establishment of proper and uniform norms and standard of technical education in India. In achieving the object it has the power to formulate policies for implementation across the country. The power to formulate policies by the Council is within the domain of the AICTE. So long as the policies are in accordance with the provisions of the AICTE Act, Courts have no power to interfere in such policy decisions of the Council. It is not the case of the petitioner-association that the decision taken by the AICTE is contrary to the provisions of the AICTE Act. The Supreme Court in a catena of decisions uniformly held that Courts shall not interfere in policy matters taken by academic bodies particularly where such policy decisions have been taken on expert advice. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , the Supreme Court held:

22. The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system... 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 will 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 the technical education all over the country will not be possible which will defeat one of the main objects of the statute.

32. In *All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others*, YMCA Institute of Engineering, Faridabad was conducting post diploma course of four years duration in various engineering disciplines with entry level qualification of 10+ 1 which was converted into advance diploma programme of four years duration which was approved by the AICTE subject to the condition that the entry level to the course should be raised from 10+ 1 to 10 +2 standard. Thereafter, the advance diploma course was upgraded to a five year engineering degree programme (B. Tech. degree). In order to enable its students who had successfully completed the four year post/advance diploma courses, to acquire degrees institute wanted to commence one year bridge course, which was approved by the Government of Haryana. The Director of Technical Education, State of Haryana addressed to AICTE recommending for grant of approval for the bridge course, which was rejected by the AICTE. When challenge was made before the Delhi High Court, a learned single Judge of the High Court quashed rejection letters of AICTE and directed AICTE to accord approval to the institute to have a bridge course for its students who had studied and who were studying in the advance diploma course. Thereafter, other post diploma-holders who entered the course only with 10 + 1 qualification were also extended the benefit of bridge course. When the matter was carried in appeal, the Supreme Court held:

15. The decision whether a bridge course should be permitted as a programme for enabling diploma-holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing the performance by examinations, are all decisions in academic matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. The Courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the Courts start entertaining individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue

involving academic matter, the courts keep their hands off. If any provision of law or principle of laws has to be interpreted, applied or enforced, with reference to or connected with education the courts will step in. (See J.P. Kulshresatha (Dr) v. Allahabad University (1980) 3 SCC 419 and Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others,

(Emphasis supplied).

In para 22, the Supreme Court held:

22. The decision of AICTE not to permit bridge courses for diploma-holders and its decision not to permit those who have passed 10 + 1 examinations (instead of 10 + 2 examination) to take the bridge course relate to technical education policy which falls within their exclusive jurisdiction. Courts will not interfere in matters of policy.

(Emphasis supplied).

33. In this connection, it is also apt to refer to the observations of the Supreme Court in Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others,

16....Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review....

(Emphasis supplied).

The Supreme Court observed that the above observations will apply with added vigour to the field of education.

In Medical Council of India Vs. Sarang and Others, the Supreme Court held that in academic matters courts should not normally interfere with or interpret the rules and should instead leave the matter to the experts in the field.

In view of the above, it is not necessary to refer to various decisions relied upon by Sri Ramakanthreddy and Sri Ram in regard to reluctance of the Courts to interfere in policy decisions of the academic or expert bodies.

It is settled law that where a policy has been formulated by the State or its instrumentality upon expert advice, it is not for the Courts to substitute its opinion to that of an expert body.

34. Further, the jurisdiction of the AICTE to take decision in academic matters relating to technical education is set at rest by numerous decisions of the Apex Court where the relative scopes of Union List (Entry 66 of List I) and Entry 25 of List III (Concurrent List) of Schedule VII of the Constitution of India were considered. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, the Supreme Court explaining the expression "coordination" used in Entry 66 of the Union List held thus:

The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation, it means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development, it therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

35. In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, Supreme Court held that a State Government could not have any policy outside the AICTE Act. It was held:

..... the State Could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE and Regulations had been followed under Regulation 8(4) and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State.

36. The provisions of Section 10(1) of the AICTE Act empowers the AICTE to create a uniform pattern for a concerted action plan in the field of technical education in accordance with the provisions of Section 10(1) of the AICTE Act to have application for the entire country. Thus, the power of the AICTE to evolve a national policy in the field of technical education and to introduce it across the country cannot be challenged by the States. The AICTE Act is an enactment made as per Entry 66 of List I and the States have no say in the matter. Even if any law made by any State is inconsistent with the same, the Central Act would prevail. Therefore, the national policy drawn by the AICTE to have second shift in polytechnic in the existing engineering colleges cannot be challenged particularly when such policy was introduced based on a data collected by the AICTE in relation to the entire country. In this view of the matter, it is not necessary to refer to the other decisions relied on by the counsel for the respondents in regard to the decisions of the statutory bodies on academic matters.

37. Another contention advanced by the learned counsel for the petitioner is that

Section 20(1) of the A.P. Education Act, 1982 prescribed a mandatory procedure for a statutory authority to follow for sanction of new institutions or courses and any deviation thereof is illegal and arbitrary. No doubt, in *Govt. of A.P. and Another Vs. J.B. Educational Society and Another etc.*, the Supreme Court held that Section 20(3)(a)(i) of A.P. Education Act is not in any way repugnant to Section 10 of the AICTE Act and it is constitutionally valid. It was held that the power to accord sanction for establishing a technical education lies with AICTE and that educational needs of a locality are to be ascertained or determined by the State having regard to the regulations framed under the Central Act.

There is no dispute that the educational needs of a locality are to be ascertained or determined by the State in accordance with Section 20(1) of the A.P. Education Act having regard to the regulations framed under the Central Act, though the ultimate power to accord sanction for establishing the technical institution lies with the AICTE. As already stated, the policy of introduction of running second shift of polytechnic in existing engineering colleges is a national policy based on certain data collected by the AICTE. The scheme was not confined to Andhra Pradesh alone; it was introduced throughout the country keeping in view the larger interest of the country. Further, the introduction of second shift was confined only to the engineering colleges already existing.

We can, therefore, assume that when there is already a need for establishment of an engineering college in a particular area, there would certainly be a need for establishment of a polytechnic college in the same area. This is also in consonance with the policy of the AICTE that for every engineer four diploma holders are required. Therefore, a survey as required u/s 20(1)(a) may not be necessary. It would have been a different matter if polytechnics in second shift are sought to be established in places other than the places where no engineering colleges exist, in which event, a survey may be required. The State Government has not stated that a survey is in fact required for introduction of the second shift in the existing engineering colleges. On the other hand, the State has welcomed the policy of introducing the second shift in existing engineering colleges and supported the policy of the AICTE. The counter filed by the Special Secretary, Department of Higher Education clearly indicates that there is need for running of second shift of polytechnic in the State. It cannot, therefore, be said that a survey as required u/s 20(1) of the Education Act is necessary.

38. The power of the State to accord permission for establishment of educational institutions, to conduct survey as to identifying the educational institutions under its jurisdiction is undisputed. Here the question is whether AICTE which was established under a central enactment has the authority to frame a national policy for running second shift of polytechnics in existing engineering colleges. In our view, the power of the AICTE to formulate such a scheme cannot be disputed. We have already indicated earlier the decision of the AICTE to introduce the scheme is not confined to a particular college or in a particular

area. The policy was evolved for the entire country with the object of industrial development of the country as a whole. It is not the case of the petitioners that state of Andhra Pradesh has objected for such a policy being introduced in the State. Therefore, the question of encroaching the powers of the State by the AICTE does not arise. There is no conflict between the Section 20(1) of the A.P. Education Act and Section 10(1) of the AICTE Act. The survey contemplated u/s 20(1) of the A.P. Education Act, 1982 by the State is the survey to identify the educational needs of the locality under its jurisdiction and notify in the prescribed manner through the local news papers calling for applications from the educational agencies desirous of establishing educational institutions. The duty cast on AICTE u/s 10(1)(a) of the AICTE Act is to undertake survey in the various fields of technical educational, collect data on all related matters and make forecast of the needed growth and development in technical education relating to the entire country. This survey is required to be undertaken by the AICTE for ensuring coordinated and integrated development of technical education and maintenance of standards in the country. The AICTE on the data collected came to the conclusion that a scheme is required to be evolved for running of second shift in polytechnics in existing engineering colleges to meet the needs of the Indian industry to improve the skilled level manpower. Therefore, the survey to be undertaken by the AICTE u/s 10(1)(a) of the AICTE Act is quite different from the survey to be undertaken by the State u/s 20(1) of the A.P. Education Act. The survey to be undertaken by the AICTE u/s 10(1)(a) is relatable to the entire country to forecast the needed growth and development in the field of technical education of the country and to evolve a national policy for the betterment of technical education and to fulfill the objects required to be undertaken as per clauses (b) to (j) of Section 10(1) of the AICTE Act for the benefit of the entire country and not related to a particular state. On the other hand, the survey to be undertaken by the State is to identify the need for establishment of an educational institution including technical education in a particular locality under its jurisdiction. Therefore, for evolving a national policy as to whether running of second shift of polytechnics in the country, the AICTE is required to collect data. In the instant case, it is the case of the AICTE that it had collected data from different sources in regard to diploma level education in the country and found that diploma level education is lagging behind the degree level education in engineering and there is vast variation in the ratio of degree to diploma admissions capacity and there is heavy requirement of providing personal skill level and supervisory level positions in industry in India and such requirement would be achieved by permitting polytechnics in existing engineering colleges in second shift so that no additional infrastructural facilities are required to be provided for running the second shift and lower down the cost of technical education. Therefore, the national policy drawn by the AICTE keeping in view with such broader perspective cannot be said to be arbitrary or violative of Articles 14 and 16 of the Constitution of India.

39. Much reliance has been placed by the learned counsel for the petitioners on

the order passed by a learned single Judge of this Court in W.P. No. 8159 of 2012 and batch dated 4.6.2012. In the said batch of cases, approval accorded by AICTE to certain engineering colleges to have second shift classes in existing engineering colleges during the year 2010-11 was held to be arbitrary and not in accordance with law and the State Council as well as the State Government are justified in not notifying the seats for counselling for Category-A seats during the said year and in the State Council not approving admissions into category-B seats for second shift classes in the petitioner colleges therein. On appeal, the said decision was affirmed by us in W.A.No. 870 of 2012 and batch dated 1.8.2012. The said order of the learned single Judge is distinguishable on facts. In the said cases, granting of second shift to the engineering colleges was not to the liking of State of Andhra Pradesh, therefore, the State did not approve for running of second shift in engineering in the existing engineering colleges. The State Council of Higher education did not approve the admissions of students made by the engineering colleges. Though the colleges are affiliated to JNTU, it appears that in the meeting of South Central Regional Committee of AICTE held on 8.7.2010 in the conference hall of the State Council, the subject relating to granting of approval of second shift courses in the existing engineering colleges was discussed. And finally the South Central Regional Committee made recommendation to AICTE not to grant second shift in engineering courses in the existing engineering colleges in relation to the State of Andhra Pradesh. The meeting was attended by the Principal Secretary, Higher Education and the Commissioner of Technical Education and Vice Chancellor, JNTU and others. But, before the said recommendation was made, the AICTE seem to have taken decision on 26.6.2010 unilaterally granting permission MANU-AP-0880-2012 to start second shift classes in the engineering colleges. The learned Judge found that none of the affiliating universities in the State was consulted before taking decision as to grant of approval for second shift classes in the engineering colleges. It was further found that except scrutiny of on-line applications, the expert committee of AICTE did not make any other exercise by way of making field inspections of the colleges for verification of additional infrastructure as well as additional faculty required for second shift classes in the engineering colleges. In fact the universities declined to accord affiliations to the colleges which were granted permission to run second shift. Under those circumstances, the learned single Judge held that the approval made by the AICTE in the State is arbitrary and illegal. The said decision was upheld by us in W.A.No. 874 of 2012 and batch dated 1.8.2012 directing all the institutions concerned to take necessary steps in the matter to accommodate the second shift students in those colleges to the first shift, so that the students cannot suffer their academic year in any manner whatsoever.

40. We are of the view that the above decision has no application to the facts of the present case; here the facts are entirely different. In the above case, the AICTE has approved permission to the colleges for running of second shift in engineering colleges before a decision was taken by the South Central Regional

Committee of AICTE in the matter rejecting the proposal to start second shift in the engineering colleges. No doubt, there the matter relates to similar scheme of running of second shift in existing engineering colleges in the State of Andhra Pradesh pursuant to a scheme drawn by AICTE. But, South Central Regional Committee of AICTE did not recommend for starting of second shift in engineering colleges in the existing engineering colleges of the State. In the instant case, the matter relates to running of second shift of polytechnics in existing engineering colleges based on a national policy drawn by the AICTE after collection of certain data collected by it in regard to diploma level technical education. Further, here the Government has no objection for such a policy being adopted in the State of Andhra Pradesh and welcomed it and in the counter filed by the State by its Principal Secretary, Higher Education it is averred that there is growing demand in Andhra Pradesh for admission into polytechnics particularly from rural youth and economically and socially weaker sections. The private unaided polytechnic have also been sanctioned optimal intake to the permissible extent as per the norms and based on the infrastructure facilities created by the institutions. It is the case of the Government that even after according approval to the maximum unaided private polytechnics still there is demand for admission in to the polytechnic courses in engineering and technology.

Further, it may be noticed that the policy decision of the AICTE to introduce second shift in existing engineering colleges was not under challenge before the learned single Judge. The challenge was only to the approval of second shift admission of students in Category-B seats by the AICTE for the year 2010-2011 on the ground that the approval made by the AICTE was not in accordance with law inasmuch as there was no process of consultation before the approval was accorded by the AICTE. On a consideration of the material placed on record, the learned single Judge found that the process of consultation as required by law before it approved the second shift classes in engineering colleges was not undertaken by the AICTE, therefore, the entire process of granting approval by the AICTE for second shift classes in engineering for the year 2010-11 and consequential admission of students by the Colleges into Category-B seats is arbitrary and illegal. The learned single Judge has not dealt with or held that the AICTE has no power to introduce such a policy.

Therefore, the decision has no application to the case on hand.

41. One of the important aspects to be noticed is that the members of the petitioner association have been benefited by the introduction of second shift in existing polytechnic colleges. Therefore, the petitioner association which has been benefited by the national policy drawn by the AICTE cannot challenge that such a policy is arbitrary because the degree level engineering colleges were also permitted to have such benefit. When the scheme is contemplated for introduction of second shift both for existing polytechnics and engineering colleges, the petitioner association representing the polytechnic colleges, cannot successfully challenge the introduction of the scheme only in engineering

colleges inasmuch they are benefited by such a policy. The members of the petitioner's association having been benefited by such scheme and being competitors within the meaning of Article 19 of the Constitution, cannot be permitted to contend that the scheme is arbitrary and illegal if it is introduced in existing engineering colleges

42. When the AICTE and the State have come forward with data that even after according approval to the maximum extent in private polytechnics still there is demand for admission into the diploma courses in engineering and technology, the contention of the petitioners that there is proliferation of institutions in the State has no merit. Acute shortage of skill level and supervisory level in the Indian industry has necessitated the AICTE to introduce the scheme of running second shift in existing engineering colleges as the same would reduce the cost of technical education. On mere apprehension of the petitioners association that the polytechnics run by the members of the petitioners association would be seriously affected, this Court, in exercise of the power of judicial review, cannot strike down a policy drawn by a statutory body with the object of providing technical education to all sections of strata of society irrespective of their financial capabilities. This is certainly a policy drawn in public interest which would contribute for nation building.

In view of the conclusions reached by us, we are not inclined to go into the question whether the petitioners association has authorization from the members of the association or whether it has locus to file the petitions or whether the writ petitions are maintainable at all.

43. It is the case of the State that inspection was undertaken strictly adhering to the guidelines issued by AICTE and accordingly recommendation was made for starting second shift of polytechnics in the existing engineering colleges in respect of 95 engineering colleges found to be viable for starting second shift of polytechnic by the AICTE. Though admissions to the second shift of polytechnic in existing engineering colleges where sanction was given could not be taken due to the interim orders passed by the High Court, but in view of the orders passed by the Supreme Court, admissions into the second shift of polytechnic in existing engineering colleges was undertaken. For the reasons aforesaid, we find no merit in the writ petitions and they are accordingly dismissed. Consequently, the appeals are allowed. The stay granted by the learned Single Judge in regard to process of applications of the respondents engineering colleges is vacated. It is now open for the authorities to process the applications in accordance with law. There shall be no order as to costs.