
(2014) 07 MAD CK 0240

In the Madras High Court

Case No : Writ Petition No. 14541 of 2014 and M.P. No. 1 of 2014

The Principal, R.V.S. College of Engineering and Technology	APPELLANT
Vs	
All India Council for Technical Education	RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 10(k), 11, 23
Tamil Nadu Town and Country Planning Act, 1971 — Section 19, 19(2), 26, 49

Citation : (2014) 5 MLJ 648

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is a technical institution known as R.V.S. College of Engineering and Technology at Trichy Road, Kannampalayam, Coimbatore District in Tamil Nadu (hereinafter referred to as "the college"). The said college was established by a Trust known as RVS Educational Trust. The All India Council for Technical Education (hereinafter referred to as "AICTE") under letter No. F. No. 06/05/TN/ENGG./2007/08 dated 12.07.2007 granted approval under Section 10(k) of the All India Council For Technical Education Act, 1987 (hereinafter referred to as "the AICTE Act"). The 5th respondent Anna University has also granted affiliation periodically.

2. The said college has been conducting both B.E. as well as M.E. Courses from the academic year 2007-08 onwards. For the academic year 2014-15 the 5th respondent Anna University has granted provisional affiliation by its proceedings in Lr. No. 02/AFFLN/CA1/AU/CBE/2014-15/7128 dated 05.05.2014. The approval granted by AICTE was initially for two years and the same was time and again extended. For the academic year 2014-15 the petitioner has made an application to Southern Regional Officer of AICTE seeking approval.

3. While so, a Public Interest Litigation (PIL) was filed before the Delhi High Court by a Society known as Shabad Welfare Society alleging that many engineering colleges approved by the AICTE were offering unapproved courses

and thus they were cheating the students. In the said writ petition there were certain allegations made against the petitioner's college as well.

4. Thereafter, a team of officials of the AICTE conducted surprise inspection on the petitioner's college on 03.12.2012. During such inspection, according to the inspecting officials there were several deficiencies noticed. Based on the report of the visiting officials, a show cause notice was issued to the petitioner by the AICTE under File No. Southern/1-733781176/SWS/UC/AB/(Part File) dated 07.01.2013, calling upon the petitioner to show cause as to why:

(i) It should not be considered that AICTE was misled by the Institute/Trust by giving manipulated/false information.

(ii) It should not be considered as violation of the terms and conditions contained in the letter of approval.

(iii) Appropriate actions, including withdrawal of the approval be not initiated against the institution for non-observance of the terms and conditions of approval as also for misleading the AICTE by its self disclosure/declaration of false information.

5. In the said show-cause notice the following deficiencies noted by the experts were mentioned:

S. No. Deficiencies Remarks of Experts

1. The Building plan of GF, FF is approved by Village Panchayat but SF, TF, FF are not approved by the Village Panchayat

All the building floor plan should be approved by appropriate authority (District Town Planning Department)

2. The building consists of 05 Floors but the barrier free environment is not available

Lift/ramp should be provided, as well, barriers free toilets to be provided.

3. Strength of materials (SOM) manufacturing process I & II labs are located in the premises of Polytechnic college run by the same management.

Separate labs (aforementioned) shall be established in the premises of the institute.

4. Equipment to conduct 75% eqpts. in M.Tech (Thermal) Programme are not available.

Necessary equipments to be procured urgently.

5. Software for running M.Tech (Commn. Systems) programme Glce, MALAB is not available

Necessary software to be procured

6. Internet facility is not provided to UG students

Internet to UG should be made available

7. In Instructional area figures of laboratory area are not matching with existing lab area, hence "X" mark put in appropriate columns. Overall instructional area (laboratory area) is sufficient as per AICTE norms.

8. No Profs. is available in Dept. of CSE, IT, ECE, MBA further M.Tech programme are conducted in ECE & CSE dept. and MBA dept. Necessary numbers of Profs. to be recruited.

9. In all the depts. cadre ratio for teaching staff is not maintained. Appropriate cadre ratio to be followed.

6. In response to the said show cause notice, the petitioner submitted an explanation on 19.01.2013 denying those allegations. The gist of the reply is as follows:

a. The building plan of GF, FF is approved by Village Panchayat. But SF, TF, FF are not approved by Village Panchayat.

Initially in 2007 AICTE approval was obtained with village panchayat approval. Only in the year 2011-12 AICTE came out with change in guidelines saying that DTP approval is mandatory. At the time of this revised guidelines, our college was in its 5th year of functioning, first batch of students had already graduated.

In concurrence with AICTE revised guidelines 2011-12, we have already made an application to LPA (Local Planning Authority). The process of getting DTP approval for the entire 5 floors of our building is going on and the evidence for the same is enclosed herewith (ANNEXURE-I).

b. The building consists of 05 floors but the barrier free environment is not available.

At the time of approval initially in 2007, it was not mandatory to have a barrier free environment. Right at that time of commencement of the college, our ground and the first floor building were fully completed when AICTE brought in revised guidelines making barrier free environment mandatory. Our existing ground floor and toilets were converted into barrier free environment, ramp facility has already been made in the ground floor and lift facility is being installed currently for which evidence is enclosed herewith (Annexure-II).

c. Strength of materials (SOM) manufacturing process I & II Labs are located in the premises of polytechnic college run by the same management.

Strength of Material lab, Manufacturing Process lab I & II are separately established for our polytechnic in their building. Now none of the above polytechnic labs are operating in our building. Photo evidence enclosed (Annexure-III).

d. Equipment to conduct 75% Eqpts. In M.Tech (Thermal) programme are not available.

Built up space for ME Thermal lab has been already completed and purchase order for Thermal lab equipments have been issued. Copy of the purchase order is enclosed (Annexure-IV).

e. Software for running M.Tech (Communication systems) programme MATLAB and Glce software for English Communication Lab are not available.

We presently having High class software and also as per AICTE guidelines we have already issued Purchase orders for Glce lab for English Communication Lab & MATLAB for M.E. Communication Systems Lab (Annexure-V).

f. Internet facility is not provided to UG students.

We have Internet facility with sufficient band with (i.e.) 10 MBPS fiber optical cable BSNL connectivity and 6 MBPS wireless Airtel connectivity exclusively for UG & PG students. We have only 186 PG students pursuing MBA and ME courses. Hence 90% of the Internet facility is used only by UG students. We have a separate browsing lab with 72 systems exclusively for our UG students. Photos and document evidence enclosed. (Annexure-VI).

g. In instructional area figures of laboratory area are not matching with existing lab area, hence "X" mark put in appropriate columns.

The total available lab instructional area is observed to be as per norms of AICTE by the committee.

h. No professors is available in department of CSE, IT, ECE, MBA further M.Tech programme are conducted in ECE & CSE department and MBA department.

Professors are available in the department in CSE, ECE, IT and MBA as details below:

1) Dr. L.S. Jayashree with 17 years of experience has been working as Professor and Dean in our department of CSE since 2011.

2) Prof. N. Chitradevi with 16 years of experience has been working as Professor and Dean in the Department of IT since 2012. She will be appearing for her Ph.D. viva voce exam on 28.01.2013 documentary evidence enclosed.

3) Prof. R. Sundaramoorthy with 20 years of research experience from ISRO and 10 years of Teaching and Administration experience in engineering college is already working with us as professor cum Head of ECE department since 2008.

4) Dr. P. Radha with 10 years of Experience has appointed as Professor in the department of MBA.

The documentary evidence (i.e.) appointment order, joining report and certificates of all the above Professors are enclosed herewith (Annexure-VII)

i. In all the departments cadre ratio for teaching faculty is not maintained.

Cadre ratio for teaching faculty is maintained as follows in the whole college:

Professor

- 10

Associate Professor

- 10

Assistant Professor

- 112

Total

- 132

1 : 2 : 4

Any deviation in the existing cadre ratio will be rectified by due promotion of the existing experienced faculty members, in the coming academic year.

7. Not having been satisfied with the reply, the AICTE directed the petitioner to appear before the Standing Complaints Committee of AICTE on 10.05.2013. Accordingly the petitioner did and submitted further explanation. Thereafter, AICTE sent another letter dated 24.09.2013 directing the petitioner to appear before a duly constituted Standing Appellate Committee to present its case on 07.10.2013 at the office of the AICTE at New Delhi.

8. In the said show-cause notice, it had been mentioned that a report of the expert committee and the explanations of the petitioner were placed before the Standing Complaint Committee and the Standing Complaint Committee after having perused all the records on 10.05.2013 observed the following deficiencies:

S. No.

Deficiencies pointed out by the SCC held on 10.05.2013

a) The Building plan of GF, FF is approved by Village Panchayat but SF, TF, FF are not approved by the Village Panchayat--All the building floor plan should be approved by appropriate authority (District Town Planning Department)

b) The building consists of 05 Floors but the barrier free environment is not available--Lift/ramp should be provided, as well, barriers free toilets to be provided.

c) Strength of materials (SOM) manufacturing process I & II labs are located in the premises of Polytechnic college run by the same management.--Separate labs (aforementioned) shall be established in the premises of the institute.

d) Software for running M.Tech (Commn. Systems) programme Glce, MALAB is

not available--Necessary software to be procured

e) In Instructional area figures of laboratory area are not matching with existing lab area, hence "X" mark put in appropriate columns--Overall instructional area (laboratory area) is sufficient as per AICTE norms.

f) No Profs. is available in Dept. of CSE, IT, ECE, MBA further M.Tech programme are conducted in ECE & CSE dept. and MBA dept.--Necessary numbers of Profs. to be recruited.

9. Accordingly, the Principal of the College appeared before the Standing Appellate Committee on 07.10.2013 and submitted all the relevant records. The petitioner was under the impression that the Standing Appellate Committee was satisfied with the explanation coupled with the records, it is stated. In the meanwhile, the petitioner made an application seeking extension of the approval for the academic year 2014-15 by its letter dated 16.05.2014 and the same is pending.

10. Thereafter, the AICTE by its proceedings in Ref. No. Southern/1-733781176/SWS/UC/AB (Part File) dated 23.05.2014 on the basis of the report of the Standing Complaint Committee and the Standing Appellate Committee, issued an order withdrawing AICTE approval accorded to the petitioner's college. The petitioner is aggrieved by the same and thus he is before this Court with this writ petition challenging the said order of withdrawal.

11. This writ petition has been listed before me as a specially ordered case on the orders of the Hon"ble The Acting Chief Justice dated 23.06.2014.

12. In this writ petition among other grounds the following are the grounds upon which main focus has been made by the petitioner.

(i) The impugned order has been passed without affording any opportunity whatsoever as required under Regulation 12 of the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010. Thus, the impugned order has been passed in gross violation of the Principles of Natural Justice.

(ii) The first floor and the second floor was constructed with the approval of the Kannampalayam Town Panchayat and thus there is no violation in the construction of the buildings.

(iii) The area where the building has been constructed was not in any development plan at that point of time requiring the approval from the Director of Town and Country Planning.

(iv) The land in question in Survey No. 140/1B3 at Kannampalayam Village was subsequently notified under the Development Plan (Master Plan for Coimbatore Local Planning Area) under the Tamil Nadu Town and Country Planning Act and thereafter, the petitioner submitted an application to the Local Planning Authority under DTCP for necessary approval on 09.05.2011 for the construction of the 5th

floor with a proposal to start a new course. Thus, the 5th floor was not functioning as a part of the existing college as it was intended only for the new courses proposed to be stated in future.

13. The second respondent has filed a detailed counter wherein, inter alia, it is contended as follows:

(i) The petitioner was afforded sufficient opportunity by the Standing Complaint Committee which noticed the deficiencies as enumerated in the show cause notice. It was only after affording sufficient opportunity to the petitioner the Standing Complaint Committee submitted its report thereby confirming that deficiencies did exist.

(ii) On the basis of the said report, the Standing Appellate Committee again issued show-cause notice to the petitioner thereby providing sufficient opportunity to submit written explanation and also afforded personal hearing. It was only after such opportunity and after having considered the materials placed by the petitioner as well as the other materials and the report submitted by the Standing Complaint Committee the Standing Appellate Committee confirmed the deficiencies warranting further action by the AICTE.

(iii) Of course it is true that AICTE before passing the order did not afford any opportunity to the petitioner to make representation either in person or through any representative. But, the fact remains that it is not virtually possible to afford such personal opportunity to the petitioner because AICTE has got several colleges under its control and affording such opportunity to all erring colleges is not at all possible. In essence the contention is that the opportunity afforded by the Standing Complaint Committee as well as the Standing Appellate Committee would be suffice and further no prejudice has been caused to the petitioner because of further opportunity not afforded by the AICTE before passing of the order.

(iv) The lands upon which the buildings were constructed were all agricultural lands and that without any order from the competent authority to convert the classification of the lands, building has been constructed which is a very serious violation.

(v) Next, there was no approval obtained from the Director of Town and Country Planning as required under the Town and Country Planning Act. Thus, the buildings have been constructed in gross violation of the provisions of the Tamil Nadu Town and Country Planning Act. For these reasons, the withdrawal order has been passed by AICTE which does not require any interference at the hands of this Court, it is contended.

14. I have heard Mr. Issac Mohanlal, the learned counsel for the petitioner and Mr. AR.L. Sundaresan, the learned Senior Counsel for the respondents 1 and 2; Mr. R. Rajeswaran, the learned Special Government Pleader for the respondents 3 and 4 and Mr. P. Chinna Durai, the learned counsel for the 6th respondent and

also perused the records carefully.

15. For the sake of convenience, let me take up the issue relating to the non-affording of sufficient opportunity to the petitioner as required under Regulation 12 of the AICTE Regulation, 2010. It is seen from the impugned order that report of the Experts Visit Committee [EVC], reply submitted by the petitioner on 19.01.2013 and all other related records were placed before the Standing Complaints Committee and the said committee provided an opportunity to the petitioner to present its case before the said committee. The Standing Complaints Committee made observations concurring with the report of the EVC. The recommendations of the Standing Complaints Committee are as follows:-

Recommendations of the Committee:-

Very major deficiency as Agricultural land use, and one complete floor built without any approval from any authorities. Illegal construction and non conversion of land use are very major faults.

Hence, as per Chapter 4, 8.1.4, "Withdrawal of approval of Institution" is recommended.

The above deficiency is in addition to various additional deficiencies as mentioned in previous sheets.

16. Thereafter, the file was placed before the Executing Committee of the AICTE which considered the above recommendation of the Standing Complaints Committee and decided to proceed further by giving an opportunity to appear before the Standing Appellate Committee. Accordingly, the file was transferred to the Standing Appellate Committee which afforded an opportunity to the petitioner to appear before the said committee and to submit his case. The Standing Appellate Committee which also confirmed the recommendations of the Standing Complaints Committee. Admittedly, there was no further opportunity afforded to the petitioner by the AICTE and the AICTE passed the impugned order based only on the above recommendations of the Standing Complaints Committee.

17. Now, the primary question to be decided is whether such opportunity as provided under Regulation 12 is mandatory or should the same be considered only as a simple procedure.

18. In this regard, let us have a quick look into the provisions of the AICTE Regulation, 2010. The said regulation has been issued by the AICTE in exercise of the powers conferred under Sections 23 r/w 10 and 11 of the AICTE Act, 1987. Thus, the power of the AICTE to issue such regulation is not in dispute. The said Regulation, therefore, has statutory force which has to be scrupulously followed. Regulation 12 reads as follows:-

12. Withdrawal of approval:- If any technical institution contravenes any of the provisions of these regulations, the Council may, after making such inquiry, as it

may consider appropriate and after giving the technical institution concerned an opportunity of being heard, withdraw the approval granted under these regulations.

19. In order to examine the question as to whether providing "opportunity of being heard" under Regulation 12 is mandatory in character or not, we have to look into Chapter IV of All India Council For Technical Education Approval Process Handbook 2013-2014. This Handbook also has got statutory force in view of Regulation 4.3 of the Regulation, 2010 which states that the council shall publish, from time to time, the approval process handbook detailing the procedure to process the applications of Institutions and/or promoters.

20. In para 1.1 and 1.2 of Chapter IV of the Handbook it is stated as follows:-

1.1 An Institution running any Program/Course in Technical Education in violation of Regulations, shall be liable to appropriate initiation of Penal Civil action including withdrawal of approval, if any, and/or criminal action by the Council against defaulting Societies/Trusts/Companies/Associated Individuals and/or the Institution, as the case may be.

1.2 Provided that, if any Technical Institution contravenes any of the provisions of concerned regulations, the council after making such inquiry as it may consider appropriate and after giving Technical Institution concerned, an opportunity of being heard, under appropriate regulations, withdraw approval to the concerned Technical Institution/Program/Course.

Provided further that in case of such a withdrawal, the operations of the said Technical Institution/Program/Course shall not be started again before completion of two academic years from the date of such a withdrawal.

[Emphasis supplied]

Provided further that, the students admitted to the Institute whose approval has been withdrawal, shall be redistributed to other Institutions in the jurisdiction of the affiliating University by the competent authority of the respective State Governments.

Such Institution where the approval has been withdrawn, the restoration is as per the procedure for setting up a new Institute as defined in Chapter I.

21. Heavily relying upon the said clauses in the Handbook, the learned counsel Mr. Issac Mohanlal would point out that since the withdrawal results in penal consequences such as barring the Institution from making fresh application for approval for two years and that the students who are already studying shall be redistributed to other institutions it would go to indicate that the clause 12 of the Regulation, 2010 is mandatory in character. Thus, according to him, failure to afford such an opportunity as required under Regulation 12 will vitiate the impugned order.

22. But, the learned senior counsel Mr. AR.L. Sundaresan appearing for the

AICTE would submit that Regulation 12 is not mandatory and that in the case on hand since there has been no prejudice caused to the petitioner on account of the failure to afford opportunity by the AICTE, the impugned order cannot be found fault with on such a too technical ground.

23. In this regard, we may notice that the principles of natural justice is a common law principle which has been now well recognised by the Hon''ble Supreme Court in a number of judgments like *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, as a part of fundamental rights guaranteed under Part III of the Constitution of India. *Maneka Gandhi's* case is still considered as the bible on the principles of natural justice wherein the Hon''ble Supreme Court has held that the action of the Governmental authorities should be fair, just and reasonable. Any decision taken without affording opportunity which results in civil or penal consequences shall vitiate the decision taken by the authority. Earlier in *Nawabkhan Abbaskhan Vs. The State of Gujarat*, , the Hon''ble Supreme Court had held that not all violations of natural justice knock down the order with nullity and that in Indian Constitutional law, natural justice does not exist as an absolute jural value but is humanistically read by courts into those great rights enshrined in Part III as the quintessence of reasonableness. In *Maneka Gandhi's* case, the Hon''ble Supreme Court further went on to say that what opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation; it may be sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal; it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing.

24. In *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, , the Hon''ble Supreme Court has held that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a strait-jacket-they must yield to and change with exigencies of situations they must be confined within their limits and cannot be allowed to run wild while interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life; the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential.

25. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Hon''ble Supreme Court has held that whether statute does not, in terms, exclude the rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. In *Smt. Rasila S. Mehta Vs. Custodian, Nariman Bhavan, Mumbai*, also the Supreme Court held that the fact that a statute does not provide for a pre-decisional hearing is not contrary to the rules of natural justice because the decision does not ipso facto takes away any right and the post-decisional hearing satisfies the principles of natural justice.

26. From these judgments, it is crystal clear that the principles of natural justice forms part of Part III of the Constitution of India and that the same should be

meticulously followed by the authorities before taking any decision which results in civil or penal consequences. At the same time, it cannot be said that in every case of failure, the principles of natural justice would vitiate the decision. It is only in a case where the decision has adverse effect on the person against whom such decision or order is passed resulting in penal or civil consequences, the failure to follow the principles of natural justice will undoubtedly vitiate the decision of the authority. It is also seen from these judgments that the principles of natural justice is applicable in respect of a decision making process unless the same has been either expressly or impliedly excluded by statute. On the contrary if the particular statute dealing with the subject in recognition of the principles of natural justice makes explicit provision of providing such opportunity, undoubtedly, the same should be scrupulously followed by the authority concerned before the decision is taken. Yet another interesting question also came up before the Delhi High Court in *Bridge and Roof Company India Ltd. Executives' Association Vs. Union of India and Others*, wherein while dealing with the challenge to a decision on the ground of non observance of the principles of natural justice, the Delhi High Court has held thus "a distinction must be drawn between a judicial, quasi-judicial and an administrative action which adversely affect the legal rights of a person and whereas it may be necessary to adhere to the rules of natural justice by a decision maker where the nature of the function itself necessitates that the decision maker acts judicially, no such requirement exists in cases where the decision is purely administrative and the administrative authority has only to act fairly." Therefore, it is again crystal clear, if the legal rights of the person are likely to be affected by the order and where the regulation explicitly provides for such an opportunity, then, even in administrative action such opportunity should be given and failure to do so will vitiate the decision. In the case on hand, admittedly, there is such explicit provision which mandates that AICTE should afford reasonable opportunity of being heard to the institution before withdrawing the approval.

27. Similar provision is found in Dental Council of India Act, 1948. Section 10A(4) of the Dental Council of India Act which deals with permission for establishment of a new dental college, new courses of study, etc., reads as follows:-

10A Permission for establishment of new dental college, new courses of study, etc.

(1).....

(2)(a) Every person, authority or institution granting recognized dental qualification shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provision of clause (b) and the Central Government shall refer the said scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such

particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person, authority or institution concerned, granting recognized dental qualification and thereafter, it may,

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person, authority or institution concerned for making a written representation and it shall be open to such person, authority or institution to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government,

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognized dental qualification a reasonable opportunity of being heard.

[Emphasis supplied]

28. A question arose before the Hon''ble Supreme Court in *Swamy Devi Dayal Hospital and Dental College Vs. The Union of India (UOI) and Others*, as to whether failure to provide such an opportunity by the Central Government as provided under Section 10A(4) of the Act before disapproving scheme for establishment of a Dental College would vitiate the decision of the Government. The argument before the Hon''ble Supreme Court was that such failure to afford opportunity in tune with the proviso to sub-section (4) of Section 10A of the Dental Council of India Act would not vitiate the proceedings. While considering such contention, the Hon''ble Supreme Court had the benefit of referring to the earlier judgment of the Hon''ble Supreme Court in *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*, wherein the Hon''ble Supreme Court has held as follows:-

16. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, his Lordship observed thus (p. 666):

Rules of natural justice are not embodied rules. Being means to an end and not

an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz., (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

17. xxxxxxxxxxxxxxxx

18. xxxxxxxxxxxxxxxx

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

29. Having considered the above legal position, the Hon"ble Supreme Court in Swamy Devi Dayal Hospital & Dental College's case went on to analyse the facts. Factually in that case, according to the Dental Council of India, after second inspection some deficiencies were found. On that basis and without confronting the petitioner further, it sent its report to the Central Government recommending denial of permission. Based on such recommendation, the Central Government without affording any further opportunity as required under proviso to sub-section (4) of Section 10A of the Dental Council of India Act disapproved the

scheme.

30. In the back drop of the above facts, the Hon''ble Supreme Court further held as follows:-

At this juncture, we are not commenting as to whether the aforesaid stand of the petitioner-college is correct or not. We are highlighting the importance, necessity and justification of granting an opportunity of being heard by the Central Government as well, before taking final decision after the report of the DCI is sent to the Central Government which is against the applicant seeking permission for renewal. In that event, if the opportunity of being heard is given, the applicant would get a chance to point out mistakes if any, factual or otherwise, in the report of the DCI and the Central Government would have version of the applicant also before it at the time of taking final decision on the report. In the given case itself on such an opportunity of being heard given by the Central Government to the petitioner, the petitioner could have explained its stand before the Central Government to enable the Central Government to take a view as to whether it should accept the report of DCI or discard the same finding the explanation of the petitioner thereto, as satisfactory.

[Emphasis supplied]

31. From the above judgment of the Hon''ble Supreme Court, it is crystal clear that in the case on hand, in order to enable the petitioner to point out deficiencies, if any, in the recommendation made by the Standing Appellate Committee, opportunity as required under Regulation 12 should have been given and since the same has not been given as held by the Hon''ble Supreme Court in the above said case, in the instant case also, the impugned order is liable to be set aside.

32. Nextly, in Swamy Devi Dayal Hospital & Dental College's case, yet another question arose as to whether the petitioner therein was entitled for a copy of the report/recommendations submitted by the Dental Council of India to the Government which was the foundation for the Government to take action. The Hon''ble Supreme Court, in this regard, referred to Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and Priya Darshni Dental College and Hospital Vs. Union of India (UOI) and Others, and held as follows:-

However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusion, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

33. As held by the Hon''ble Supreme Court in the above cases, in the case on hand also, though there is no specific provision in the Regulation that a copy of the report of the Standing Appellate Committee must be furnished to the institution, it is in fitness of things in order to satisfy the principles of natural justice, a copy of the report should be given and thus the same is a mandatory requirement.

34. In Priyadarshini Dental College & Hospital's case, while considering as to whether proviso to sub-section (4) of Section 10A of the DCI Act which provides for opportunities are mandatory or not the Hon''ble Supreme Court has held as follows:-

..... It, therefore, held that the mandatory requirement of reasonable opportunity of being heard, required under the proviso to Section 10-A(4) of the Act was not complied with. As a consequence, the High Court remitted the petitioner's application for renewal of permission for 2010-2011, for reconsideration by the Central Government, by giving a due hearing to the petitioner. The High Court also directed the three-member Committee constituted by the Central Government to hear the petitioner on 6.8.2010, consider the documents furnished by it and pass final orders. It also reserved liberty to DCI, if necessary, to make further inspection to verify the correctness of the compliance report submitted by the petitioner College and send a further report so as to reach the three-member Committee of the Central Government before 6.8.2010.

35. Referring to the said judgment in Swamy Devi Dayal Hospital and Dental College case in para 25, the Hon''ble Supreme Court has held as follows:-

25. We are, therefore, of the considered opinion that the High Court has not correctly interpreted the provisions of Section 10A of the Act by holding that the cases of renewal of permission would not be covered by this Section and therefore it was not necessary for the Central Government to give opportunity of being heard to the petitioner before rejecting the renewal permission.

36. Again in para 26(b), the Hon''ble Supreme Court has held as follows:-

26. We, accordingly, sum up the legal position, touching upon the issue, on the interpretation of Section 10A(4) of the Act, as below:

(a).....

(b) It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub-section (2) of Section 10A of the Act. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case Scheme it is found to be deficient, sub-section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by the DCI. Second stage of adherence to the principles of natural justice is provided at the

level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by the DCI. This requirement of hearing is stipulated in proviso to sub-section (4) of Section 10A, in the event the Central Government is proposing to disapprove the scheme.

37. The law laid down, as extracted above, in *Swamy Devi Dayal Hospital and Dental College* squarely applies to the facts of the present case. Regulation 12 of the AICTE Regulation, 2010 as extracted above is in pari materia to the proviso to Section (4) of Section 10A of the DCI Act. Therefore, applying the law laid down by the Hon"ble Supreme Court in the above judgment, I have no option but to hold that failure of the AICTE to furnish a copy of the report of the Appellate Standing Committee and to afford opportunity of being heard vitiates the entire proceedings since providing such opportunity is mandatory as it results in civil and penal consequences as enumerated in Chapter IV of the Handbook. Thus, on this ground, by itself, I am inclined to set aside the order.

38. Mr. AR.L. Sundaresan, the learned senior counsel for the AICTE submitted that it is practically impossible to afford such opportunity to all the institutions which are facing similar problems going by the paucity of the staff and time. In my considered opinion, the difficulties which are likely to be faced by the AICTE to afford opportunity is no answer to the mandatory provision contained in Regulation 12 of the AICTE Regulation, 2010. Therefore, this argument is rejected.

39. Mr. AR.L. Sundaresan, the learned senior counsel further submitted that assuming that opportunity should be given by the AICTE as required under Regulation 12, in the case on hand, failure to afford opportunity to the petitioner has not vitiated the proceedings inasmuch as opportunity given by the Standing Complaints Committee and Standing Appellate Committee would tantamount to sufficient opportunity. This argument does not persuade me at all. These two authorities namely, Standing Complaints Committee and Standing Appellate Committee are all only fact finding authorities to make appropriate recommendations to the AICTE and ultimately on considering such recommendations and on considering the representations of the petitioner, order is passed only by the AICTE wherein alone an element of objective appreciation is involved. Therefore, this argument is rejected.

40. In respect of the other grounds, the learned counsel Mr. Isaac Mohanlal would submit that as on the date when the buildings were constructed in the year 2006, the land had been classified as dry land and not as agricultural land. Thus according to the learned counsel, the recommendations of the Standing Complaints Committee that the land is an agricultural land by classification is factually incorrect. He would further submit that under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice

in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

41. The learned counsel would, therefore, submit that in the case on hand when the ground floor, first floor, second floor, third floor and fourth floor were constructed, there was no such publication either under Section 19(2) or under Section 26 of the said Act and, thus, according to him as provided in Section 47-A, the local authority is the competent authority to grant permission to carry out the development on the land. Thus, according to the learned counsel as per these provisions and as per the provisions of The Tamil Nadu Town and Country Planning Act, necessary permission was obtained from the local body for construction of four floors on two different occasions and accordingly, buildings were constructed. Thus, according to the learned counsel, there is no violation of any of these provisions as it is stated in the impugned order.

42. The learned senior counsel for the AICTE would refute the above arguments. According to him, though the land has been classified as "dry land" in revenue records, it was only agricultural land. But, without changing the classification of the land, constructions had been made. He would further submit that approval for the construction of the buildings as required under the laws of the State have not been obtained. The learned senior counsel took much pains to take me through the Tamil Nadu Panchayats Building Rules as well as the Tamil Nadu Town and Country Planning Act with a view to persuade me that the decision taken by the AICTE is fully supported by acceptable materials.

43. In my considered opinion, these are all disputed facts which are to be adjudicated upon by the AICTE. Since I am inclined to remit the matter back to the AICTE for fresh decision after affording sufficient opportunity to the petitioner, it would not be appropriate for me to express any opinion regarding these contentious issues raised by the counsel on either side as any such opinion may influence the mind of the AICTE. Therefore, I refrain from making any comment about these arguments and I leave the same open for the petitioner to raise before the AICTE and further leaving it open to AICTE to objectively consider the same and pass fresh orders in the matter in accordance with law.

44. In view of the foregoing discussions I hold that the impugned order is liable to be set aside as the same has been passed in violation of the principles of natural justice more particularly, Regulation 12 of the AICTE Regulation, 2010.

45. In the result, the writ petition is allowed in the following terms:-

(i) The impugned order is set aside and the matter is remitted back to the AICTE who shall afford sufficient opportunity of being heard to the petitioner as provided in Regulation 12 of the Regulations, 2010, and pass appropriate orders in accordance with law.

(ii) It is further directed that before holding any such enquiry under Regulation 12, the AICTE shall furnish copies of the reports of the Standing Complaints Committee and Standing Appellate Committee and afford sufficient opportunity to submit written objections, if any, for the same and for production of documents by the petitioner.

(iii) It is made clear that during such enquiry being held under Regulation 12 the petitioner shall be entitled to be represented by a legal practitioner.

No costs. Consequently, connected MP is closed.