(2010) 06 MAD CK 0108

Madras High Court

Case No: Writ Petition No''s. 3656, 3657, 3848, 4585, 4624, 4823, 4989, 6093, 6350, 7569, 10516, 11364, 11886, 11899, 12125, 12126, 12127, 12128, 12129, 12558, 12559 and 12567 of 2010

Srinivasa Institute of Engineering and Technology		APPELLANT
	Vs	
All India Council for Technical Education (AICTE)		RESPONDENT

Date of Decision: June 30, 2010

Acts Referred:

- All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 - Regulation 11, 11(1), 11(5), 4(1), 4(12)
- All India Council for Technical Education Act, 1987 - Section 10, 10, 10(1), 11, 23
- Constitution of India, 1950 - Article 12, 136, 14, 16, 19(1)
- Customs Act, 1962 - Section 25
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 27(1)

Citation: (2010) 4 CTC 225

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: N.R. Chandran in W.P. No. 3656/2010 and R. Natarajan, R. Muthukumarasamy in W.P. No. 3657/2010, A.K. Ganguli W.P. Nos. 3848/2010, 6093 and 6350/2010 Muthumani Doraisamy, R. Krishnamurthy in W.P. No. 4585/2010, K. Selvaraj in W.P. No. 4624/2010, G. Masilamani in W.P. No. 4823/2010 T. Meikandan, V.T. Gopalan in W.P. No. 4989/2010 V. Sanjeevi, K. Doraisamy in W.P. No. 7569/2010 Muthumani Doraisamy, Muralikumaran, Mcgan Law, Firm W.P. Nos. 11886/2010, 11364/2010, 12125/2010, 12126/2010, 12127/2010, 12128/2010, 12129/2010, 12558/2010, 12559/2010 and 12567/2010, R. Suresh Kumar, in W.P. No. 10516/2010 and V.S. Kesavan, in W.P. No. 11899/2010, for the Appellant; R. Thiagarajan and A.R.L. Sundaresan for Respondents 1 and 2 in all W.Ps. (AICTE) K. Ravindranath, Ravichandrababu, SCCG. (For Central Government), for Respondents 3 and 4, P. Wilson, A.A.G. assisted by Dakshayani Reddy, Government Advocate (Education) for Respondent 5 in W.P. Nos. 11886/2010, 11364/2010, 12125/2010 to 12129/2010, 12558/2010, 12559/2010 and 12567/2010, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.
W.P. No. 3656 of 2010 has been filed for issuance of a writ of certiorarified mandamus, calling for the records of the

first respondent in respect of the revised Approval Process contained in All India Council for Technical Education Approval Process Handbook,

published on 09.01.2010, by the first respondent and the consequential order issued by the second respondent in F. No. 99-

2K/05/27/ET/023/01/10703, dated 01.02.2010, and quash the same in so far as it relates to the existing technical institutions and consequently

direct the respondents to consider extension of approval for the existing technical institutions in terms of the Regulations now in force and consider

the applications of the petitioner already submitted to the respondents without insisting upon the new procedure for the All India Council for

Technical Education Approval Process Hand Book published on 09.01.2010 by the first respondent.

2. W.P. No. 3657 of 2010 has been filed for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in respect

of the revised Approval Process contained in All India Council for Technical Education Approval Process Handbook, published on 09.01.2010,

by the first respondent and the consequential order issued by the second respondent in F. No. 94-95/05/27/ET/010/01/10710, dated

01.02.2010, and quash the same in so far as it relates to the existing technical institutions and consequently direct the respondents to consider

extension of approval for the existing technical institutions in terms of the Regulations now in force and consider the applications of the petitioner

already submitted to the respondents without insisting upon the new procedure for the All India Council for Technical Education Approval Process

Hand Book published on 09.01.2010 by the first respondent.

3. W.P. No. 3848 of 2010 is filed for issuance of a writ of declaration, declaring that the provisions of Approval Process Handbook issued by All

India Council of Technical Education for 2010-11 as per the advertisement in The Hindu dated 31.12.2009 and the letter of the second

respondent F. No. 06-07/05/27/ET/010/01/10653, dated 01.02.2010 are illegal, ultra vires, unconstitutional and unenforceable in so far as they

relate to the members of the petitioner.

4. W.P. No. 4585 of 2010 has been filed for issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in respect

of the revised Approval Process contained in All India Council for Technical Education Approval Process Handbook, published on 09.01.2010,

by the first respondent and the consequential order issued by the second respondent in F. No. 99-2K/05/27/ET/003/01/10346, dated

01.02.2010, and quash the same in so far as it relates to the existing technical institutions and consequently direct the respondents to consider

extension of approval for the existing technical institutions in terms of the Regulations now in force and consider the applications of the petitioner

already submitted to the respondents without insisting upon the new procedure for the All India Council for Technical Education Approval Process

Hand Book published on 09.01.2010 by the first respondent.

5. W.P. No. 4624 of 2010 is filed for issuance of a writ of declaration, declaring that the provisions of Approval Process Handbook issued by All

India Council of Technical Education for 2010-11 as per the advertisement in The Hindu dated 31.12.2009 are illegal, ultra vires, unconstitutional

and unenforceable in so far as they relate to the petitioner.

6. W.P. No. 4823 of 2010 is filed for issuance of a writ of certiorari to call for the records relating to the Chapter II and III including the affidavit

mentioned in Clause 14.4 of Chapter II of AICTE Hand Book dated 09.01.2010 and the Public Notice dated 08.01.2020 on the file of the

respondents herein and quash the same.

7. W.P. No. 4989 of 2010 has been filed for issuance of a declaration, declaring the revised Approval Process contained in All India Council for

Technical Education Approval Process Handbook, published on 09.01.2010 by the first respondent and the consequential order issued by the

second respondent in F. No. 10-11/05/27/Genl/Appln/02/11384, dated 10.02.2010 as inapplicable to the petitioner and consequently direct the

respondents to consider the application of the petitioner dated 18.12.2008 and issue Letter of Approval to the petitioner for starting the

Engineering College in the name of C.R. College of Engineering and Technology at Valayapatti Village, Melur Taluk, Madurai District, Tamil Nadu

for the academic year 2010-2011 pursuant to the Letter of Intent given by the first respondent in File No. 07/08/TB/E&T/2009/86, dated

24.04.2009.

8. W.P. No. 6093 of 2010 has been filed for a declaration, declaring that the provisions of the All India Council for Technical Education (Grant of

Approvals for Technical Institutions) Regulations 2010 framed u/s 23(1) read with Sections 10 and 11 of the All India Council for Technical

Education Act, 1987, are illegal, ultra vires, unconstitutional and unenforceable in so far as they relate to the members of the petitioner association

and in the event of this Hon''ble Court construes that these Regulations fall within the purview of Section 23 of the AICTE Act, to further declare

that Section 23 of the AICTE Act 1987 as unconstitutional, suffering from the vice of Excessive Delegation.

9. W.P. No. 6350 of 2010 is for a certiorari, calling for the records relating to the Public Notice issued by the first respondent and published on

the home page of its website under the heading important announcement- 26th March 2010 and quash the same in so far as they relate to the

members of the petitioner association.

10. W.P. No. 7569 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records relating to the revised approval

procedure contained in All India Council for Technical Education Approval Process Hand Book published on 09.01.2010, by the first respondent,

the Notification issued by the Government of India, in its Proceeding F. No. 37-3/Legal/2010 dated 15.01.2010 and the proceedings of the

second respondent in F. No. 10-11/05/27/Genl/Appln/02/11385, dated 10.02.2010 and quash the same in so far as they apply to the petitioner

and direct the respondents 1 and 2 to consider the application of the petitioner dated 05.12.2008 for establishment of Shreenivasa Engineering

College at B.Pallipatti, Pappireddipatti Taluk, Dharmapuri District, for the academic year 2010-11 in consonance with the Letter of Intent (LOI)

issued to the petitioner on 11.05.2009 as per the norms prevailing on the date of issue of Letter of Intent.

11. W.P. No. 11886 of 2010 has been filed praying for issuance of a writ of mandamus to direct the first respondent to process the application of

the petitioner for approval of increase intake in Master of Pharmacy Pharmaceutical 18 seats and Master of Pharmacy Pharmaceutical Analysis 18

seats submitted on 31.03.2010 in the web portal of the first respondent for the academic year 2010-2011.

12. W.P. No. 11364 of 2010 has been filed for issuance of a writ of mandamus, directing the first respondent to process the application of the

petitioner for the new course of Aeronautical Engineering with an intake of 60 seats uploaded in the web portal of the first respondent on

31.03.2010 for the academic year 2010-2011 and grant approval for the same before commencement of counselling process by the respondents

2 and 3 if the norms and standards prescribed by the first respondent are fond to have been fulfilled by the first respondent, after following all the

process for such grant of approval.

13. W.P. No. 12125 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records of the second respondent

dated 28.05.2010 in F. No. 90-018/2010/1863, quash the same and consequently direct the first respondent to grant approval for additional

intake of 60 seats each in Electronics and Communication Engineering and Mechanical Engineering and for new course in Civil Engineering with an

intake of 60 seats sought for by the petitioner for the academic year 2010-2011 before the commencement of counselling process by the third and

fourth respondents if the norms and standards prescribed by the first respondent are found by the first respondent to have been fulfilled by the

petitioner after following all process for grant of approval, contemplated by the first respondent.

14. W.P. No. 12126 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records of the second respondent

dated 28.05.2010 in F. No. 90-018/2010/1862, quash the same and consequently direct the respondents to grant approval for the increased

intake from 60 to 120 seats and new courses of Civil and Aeronautical Engineering, 60 seats in each, sought for by the petitioner for the academic

year 2010-2011 before the commencement of counselling process by the third and fourth respondents if the norms and standards prescribed by

the first respondent are found by the first respondent to have been fulfilled by the petitioner after following all process for grant of approval,

contemplated by the first respondent.

15. W.P. No. 12127 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records of the second respondent

dated 28.05.2010 in F. No. 90-018/2010/1864, quash the same and consequently direct the first respondent to grant approval for new courses in

M.E. in Computer Science and Engineering with an intake of 18 seats; M.E. in Embedded System Technologies with an intake of 18 sats; M.E. in

Communication System with an intake of 18 seats; M.E. in Power Electronics with an intake of 18 seats and PG Diploma and all courses for

second shift, sought for by the petitioner for the academic year 2010-2011 before the commencement of counselling process by the third and

fourth respondents if the norms and standards prescribed by the first respondent are found by the first respondent to have been fulfilled by the

petitioner after following all process for grant of approval, contemplated by the first respondent.

16. W.P. No. 12128 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records of the second respondent

dated 07.06.2010 in F. No. 90-018/2010/1977, quash the same and consequently direct the respondents to grant approval for the increased

intake in M.B.A. Programme from 60 to 120 seats and new course of P.G. Diploma in Management with an intake of 60 seats, sought for by the

petitioner for the academic year 2010-2011 before the commencement of counselling process by the third and fourth respondents if the norms and

standards prescribed by the first respondent are found by the first respondent to have been fulfilled by the petitioner after following all process for

grant of approval, contemplated by the first respondent.

17. W.P. No. 12129 of 2010 has been filed for issuance of a writ of certiorarified mandamus to call for the records of the second respondent

dated 28.05.2010 in F. No. 90-018/2010/1861, quash the same and consequently direct the first respondent to grant approval for additional

intake of 60 seats in Electronics Communication and Electrical Engineering and for new course in Civil Engineering with an intake of 60 seats and

Mechanical Engineering with an intake of 60 seats sought for by the petitioner for the academic year 2010-2011 before the commencement of

counselling process by the third and fourth respondents if the norms and standards prescribed by the first respondent are found by the first

respondent to have been fulfilled by the petitioner after following all process for grant of approval, contemplated by the first respondent.

18. W.P. No. 12558 of 2010 has been filed for issuance of a writ of mandamus, directing the first respondent to process the application of the

petitioner for extension of approval and increased intake from 60 students to 120 students in Master of Computer Applications (MCA) submitted

in the web portal of the first respondent on 05.04.2010 for the academic year 2010-2011 and grant approval for the same before commencement

of counselling process by the respondents 2 and 3 if the norms and standards prescribed by the first respondent are found by the first respondent

to have been fulfilled by the petitioner, after following all the process for such grant of approval.

19. W.P. No. 12559 of 2010 has been filed for issuance of a writ of mandamus, directing the first respondent to process the application of the

petitioner for extension of approval and increased intake from 60 students to 180 students in Master of Business Administration (MBA) submitted

to the first respondent on 05.04.2010 for the academic year 2010-2011 and grant approval for the same before commencement of counselling

process by the respondents 2 and 3 if the norms and standards prescribed by the first respondent are found by the first respondent to have been

fulfilled by the petitioner, after following all the process for such grant of approval.

20. W.P. No. 12567 of 2010 has been filed for issuance of a writ of mandamus, directing the first respondent to process the application of the

petitioner for extension of approval and increased intake from 60 students to 120 students in Master of Business Administration (MBA) submitted

in the web portal of the first respondent on 05.04.2010 for the academic year 2010-2011 and grant approval for the same before commencement

of counselling process by the respondents 2 and 3 if the norms and standards prescribed by the first respondent are found by the first respondent

to have been fulfilled by the petitioner, after following all the process for such grant of approval.

21. W.P. No. 11899 of 2010 has been filed for issuance of a writ of mandamus, directing the respondents to process and take appropriate action

on the application of the petitioner college dated 08.03.2010 for additional courses and approve the same.

22. W.P. No. 10516 of 2010 has been filed for issuance of a writ of declaration, declaring the revised approval process contained in the All India

Council for Technical Education Approval Process Handbook published in January 2010 by the first respondent as inapplicable to the petitioner

and consequently direct the respondents to process the application of the petitioner dated 05.04.2010 and grant extension of approval of existing

courses and approval for the new course namely B.E.(Mechanical Engineering) at the petitioner college from the academic year 2010-2011.

23. Since all these Writ Petitions contain identical issues, they are being disposed of in common.

24. For convenience, let us deal with the facts in W.P. No. 6093 of 2010. The said facts are as follows:

24.1. Members of the petitioner association, numbering about 127, have established and are maintaining technical institutions since long back. On

31.12.2009, ""The Hindu"" carried an advertisement of All India Council for Technical Education (in short, AICTE) in Advt. No.

AICTE/12/05/2009 styled as Public Notice for Academic Year 2010-11. It was mentioned in that advertisement that AICTE, in order to promote

transparency and accountability in its operations, was in the final phase of introducing e-governance process and revising its procedures for

granting approval to the institutions of technical education. It was also mentioned in the advertisement that the institutions seeking approval can

upload their proposals on the website of AICTE in the prescribed format latest by 10.02.2010 and that it was mandatory for all the existing

AICTE approved Degree and Diploma institutions to upload the information in the prescribed format on the web portal of AICTE to enable the

Council to process the applications for academic year 2010-2011. The member institutions of the petitioner submitted compliance report for

extension of approval for the academic session 2010-2011 as early as in August 2009.

24.2. Downloading of the earlier Approval Process Hand Book containing 114 pages was possible only for few institutions. However, the online

application format could not be downloaded from the website for many institutions, since the server was continuously busy and not available.

Earlier, Approval Process Hand Book contained 114 pages and the subsequent version which was made available from 10.02.2010 contained

only 99 pages. There was yet another Hand Book, containing 110 pages. The contents of these Hand Books were not similar and there were

several changes in the requirement at every stage.

24.3. When such was the position, the Southern Regional Office of the AICTE directed all the institutions including the existing institutions to

submit compliance report once again for the academic year 2010-2011 online even for extension of approval, in spite of the fact that all the

institutions had already submitted compliance report as per the existing norms, as early as in August, 2009. Since many of the requirements

contained in the Hand Book were impracticable of compliance, the petitioner association filed W.P. No. 3848 of 2010 before this Court, seeking

to issue a writ of declaration declaring that the provisions of Approval Process Hand Book for the year 2010-11 issued by the AICTE and the

letter of the second respondent dated 01.02.2010 are illegal, ultra vires, unconstitutional and unenforceable. On 24.02.2010, this Court granted

interim order.

24.4. On 09.03.2010, a counter affidavit was filed on behalf of AICTE, in which the specific stand was that the All India Council for Technical

Education (Grant of Approvals for Technical Institutions) Regulations,2010, (the impugned Regulations) were published in the Gazette of India in

the month of February,2010. A perusal of the impugned Regulations and the Approval Process Hand Book shows that they have been framed

beyond the scope and ambit of the AICTE Act, 1987. Therefore, the impugned Regulations are ultra vires as the same are inconsistent with the

provisions of the AICTE Act, in particular Section 23 read with Sections 10 and 11 of the Act, and framed contrary to the ground realities.

24.5. Insistence on implementing new AICTE scales for teaching and non-teaching staff of the institutions is not immediately feasible of compliance,

since pursuant to the judgment of the Apex Court in Inamdar case, the managements of the self-financing institutions, both minority and non-

minority, can collect only the fees as approved by the Fee Committee headed by the retired Judge of the High Court. In the state of Tamil Nadu,

Fee Fixation Committee is headed by Hon''ble Mr. Justice N.V. Balasubramaniam. The current fees approved by the above mentioned Committee

is only Rs. 32,500/- for government quota seats and Rs. 62,500/- for management quota seats. Further, in the State of Tamil Nadu, the

consortium of managements of self-financing engineering colleges have surrendered 65% of seats (non-minority) to the Government quota and they

have retained only 35% of seats for management quota. In the case of minority institutions, 50% has been surrendered to Government quota and

50% retained by management quota. With the above mentioned fees structure, it is impossible to implement the new AICTE scale of pay for

teaching and non-teaching staff. The above position can be illustrated as follows :

As per the old salary structure, the engineering colleges were paying the lecturer in the range between Rs. 8,000 - Rs. 13,500; Assistant

Professors in the range of Rs. 12,000 - Rs. 18,300 and the Professors in the range of Rs. 16,400 - Rs. 21,000, whereas, as per the new AICTE

Scale of Pay, the salary for Assistant Professor is in the range of Rs. 15,600 - Rs. 39,100 and the salary range for Associate Professor and

Professor is Rs. 37,400 - 67,000.

24.6. When such is the situation prevailing in the State of Tamil Nadu, the institutions cannot implement the new AICTE scales of pay until and

unless the fees is enhanced by the Fee Fixation Committee. Therefore, Regulation 11.5 of the impugned Regulations imposing penalty for non-

fulfilment of adherence to revised pay scales is liable to be struck down.

24.7. The situation in Tamil Nadu is further complicated by the fact that there are totally 51,000 seats vacant in all engineering courses conducted

by various colleges in the State of Tamil Nadu. Having surrendered 65% by non-minority and 50% by minority institutions to Government quota,

the very existence and survival of the institutions are at peril.

24.8. Regulation 11 of the impugned Regulations, apart from civil penalties, also contemplates criminal action by the Council for non-fulfilment of

norms and standards, which is hazardous to the institutions.

24.9. As per Section 10(1)(a) of the Act, it is mandatory on the part of the AICTE to undertake survey in various fields of technical education,

collect data on related matters and make forecast of the needed growth and development in Technical Education as a condition precedent, but the

said mandatory provision has not been complied with.

24.10. In the previous Regulations, Professors of Applied Sciences Department working in Engineering Colleges were considered eligible for the

post of Principal/Director in the AICTE approved institutions, whereas in the new Regulations and the Approval Process Hand Book, the

Professors in the Engineering field alone are considered eligible for the post of Principal/Director, which is contrary to ground reality. Prescription

of qualifications and service conditions are inter-dependent and inter-related. Conditions of service have to be commensurate with qualifications.

Any qualification fixed without reference to the ground reality is irrational.

24.11. In the State of Tamil Nadu, for the academic year 2009-2010, more than 51,000 seats were vacant. When such is the ground reality,

introduction of ""shift system"" will create discrimination among urban and rural colleges and further, ""shift system"" is not contemplated in the Act.

24.12. Impugned Regulations 4.3 and 4.6 empower the Council to prescribe Approval Process Hand Book from time to time, which is not in

conformity with Sections 23 and 24 of the Act, and, therefore, the same are ultra vires and unconstitutional. The Approval Process Hand Book

was published much before the impugned Regulations and in the impugned Regulations, the AICTE has been conferred with wide powers to

change the Approval Process Hand Book from time to time, which is arbitrary and unreasonable.

24.13. Due to downloading problems and connectivity to the Server, the web portal is not reliable. Confidentiality of the information of the

institution is at stake; there is no protection mechanism in the new norms and, therefore, Regulations 4.12 and 4.21 are arbitrary. Impugned

Regulation 4.14 provides for State Government/Union Territory administration and the affiliating University to forward their views on the

applications under the impugned Regulations 4.1 and 4.2 within a prescribed date. Since the application is uploaded through web portal, it is

impracticable for the State and the University to forward their views and hence the impugned Regulation 4.14 is arbitrary.

24.14. The requirement in the impugned Regulation 4.19 that the Council shall grant approval only after the applicant institution fulfils the norms

and stands as prescribed in the impugned Regulations is arbitrary, contrary to ground reality and impossible of performance.

24.15. Impugned Regulation 4.21 that the institutions shall comply with the 2010 norms within time schedule prescribed in the Approval Process

Hand Book is arbitrary since several of the new requirements are contrary to ground reality. In view of the above mentioned arbitrary

requirements, Regulation 4.33 stating that the Council shall not grant any conditional approval to any institution is liable to be struck down. Hence,

the Writ Petition.

25. AICTE has filed a counter affidavit, stating that the new Regulations were framed taking into consideration of various issues; the letter dated

01.02.2010 was only a communication which was issued with an intention to bring to the notice of the institutions the new regulations, as a matter

of precaution in order to ensure that the institutions may by oversight or otherwise fail to take note of the new regulations, which came into effect

from 09.01.2010; the regulations framed by the competent authority cannot be challenged as onerous as long as the authority has the powers to

frame the regulations and as long as they are not violative of any fundamental rights enshrined in the Constitution of India and they are within the

legislative competence. A law can be struck down, if it is a fiscal law on the ground of non-compliance of the mandatory procedures contemplated

for its enactment. The new Regulations are issued in supersession of the existing earlier regulations. The new Regulations have been framed with

authority of law u/s 23(1) of the AICTE Act read with Sections 10 and 11 and notified in the Gazette of India, dated 06.02.2010, and there is no

violation of Article 14 of the Constitution of India. AICTE is fully competent to prescribe the qualifications of faculty and as such the institutions

which are falling under the purview of the AICTE Act could not complain of the same. Further, prescription of qualification of faculty cannot be

challenged on the ground of a vague statement of non-availability of such qualified faculty and that again cannot be a ground for challenging the

entire regulations. The Regulations are applicable to both government colleges and self-finance colleges. The Regulations are applicable even to

Universities, both Government and private. The time limit for uploading the requirements sought for in the new regulations impugned in the writ

petitions has already been extended up to 10.03.2010 for new institutions and for existing institutions up to 15.03.2010. It is denied that the

circulars/letters could not be opened up to 15.02.2010 and in any case that cannot be a ground urged to strike down the Regulations, as a

Regulation needs to be challenged on its merits and demerits, legality and competence and not on the basis of the opening or non-opening of some

pages of the letter intimating to the institutions about the requirement of compliance of the Regulations, which is only an additional measure.

25.1. AICTE being the statutory authority empowered to regulate technical education and also prescribe the norms for admission, which is not

disputed by the writ petitioners, it is entirely within the power of the AICTE to prescribe the percentage of admission for NRI students, which was

down taking into consideration of many factors, including that of the requirement of the Indian students to be accommodated in higher technical

education. The time limit that has been fixed for receipt of the information is directly related to time table fixed for the consequential discharge of

statutory duties such as inspection, issuance of approval and thereafter affiliation followed by admission, which should be completed before the

commencement of the next academic year.

26. The contentions of Mr. A.K.Ganguli, learned Senior Counsel, appearing for the petitioner are as follows :

26.1. The impugned Regulations of 2010 are ultra vires of the provisions of the Act. Though the impugned Regulations are purported to have been

framed in exercise of the powers of the Council u/s 23(1) read with Sections 10 and 11 of the Act, they are not in conformity with the scheme and

the object of the Act and therefore they are beyond the powers of the Council u/s 23 and are liable to be declared as invalid. He would also

contend that Regulations 4.3 and 4.6, read together, entitle the Council not only to prescribe procedure for processing the applications for various

purposes listed under Regulation 4.1, but also they have gone to the extent of enabling the Council to lay down the norms and standards and

requirements for grant of approval as prescribed in ""Approval Process Hand Book"" from time to time, which is clearly ultra vires of Section 10 of

the Act.

26.2. Regulation 4.3 read with 4.6 virtually dispenses with the requirement of norms and standards being prescribed by the Regulations even

though the Act contemplates that the norms and standards could be prescribed by Regulations, that too by notification published in the official

gazette. By virtue of these regulations, the Council has conferred upon itself unchanalised powers to prescribe norms and standards by mere

administrative orders without checks and balances by the Legislature or any other authority.

26.3. Upon the power conferred under these Regulations for prescribing norms and standards under the Approval Process Hand Book, the

Council has also sought to empower the same to introduce new norms and standards at any point of time by use of the expression from time to

time in Regulation 4.3 as well as 4.6. The Act does not confer such unguided and unbridled powers on the Council to deal with such important

subjects like prescribing norms and standards for technical education by mere executive orders from time to time.

26.4. Regulation 11 prescribes penalty that could be imposed by the Council. The only power that is conferred on the Council in the event of an

institution failing to comply with its directions is as provided in Section 10(q) of the Act which is to withhold or discontinue grants in respect of

courses, programmes to such technical institutions which fail to comply with the directions given by the Council within the stipulated period of time

and take such other steps as may be necessary for ensuring compliance of the directions of the Council. In the absence of conferment of power

upon the Council by the Act, the Council cannot assume to itself a jurisdiction to take any legal criminal action against the institution. However,

Regulation 11.1 confers such power to the effect that an institution running any technical education in violation of these Regulations shall be liable

for initiation of legal civil action including withdrawal of approval, if any, and/or legal criminal action by the Council against the institution and/or its

promoter Society/Trust and individuals associated as the case may be.

26.5. The Council being a sub-delegatee of certain powers of the Act, it could not arrogate to itself the position of the legislature to have plenary

powers and there is no legislation backing for the Council to clothe itself with powers of taking legal criminal action against the erring institutions.

Thus, it could be seen that the penal provisions of the impugned Regulations are ultra vires of the provisions of the Act.

26.6. Before the introduction of the impugned Regulations, the Council was discharging its functions in terms of the Regulations dated 14.09.2006,

hereinafter referred to as the ""Existing Regulations"". The Existing Regulations withstood the test of time and in working out the same, no difficulty or

deficiency had been encountered all these years. Even though Section 10(a) of the Act makes it clear that it is the bounden duty of the Council to

undertake survey in various fields of technical education and collect data and forecast all the needed growth and development of the technical

education, no such exercise was undertaken before the introduction of the impugned regulations, replacing the Existing Regulations.

26.7. The norms and standards prescribed under the impugned Regulations are in various aspects different from the norms and standards of the

existing Regulations. Before changing the norms and standards to such extent, no survey or collection of data was undertaken. Thus, the impugned

Regulations are in violation of the mandatory provisions contained in Section 10(a) of the Act.

27. Mr. V.T.Gopalan, learned Senior Counsel appearing for the petitioner in W.P. No. 4989 of 2010 would contend as follows :

27.1. For the academic year 2009-2010, the petitioner submitted a proposal in the prescribed format on 18.12.2008 for establishment of a new

engineering college in the name of C.R.College of Engineering and Technology at Alagarkoil Main Road, Valayapatti Village, Melur Taluk,

Madurai District. The said application was processed and on 24.04.2009 AICTE issued Letter of Intent and the petitioner was required to inform

its readiness for the expert Committee Inspection by 31.05.2009. It is also stated in the correspondence by AICTE to the petitioner that the Letter

of Intent will be valid for three years. The petitioner by letter dated 10.05.2009 informed that they had not completed the building construction and

therefore requested the AICTE to send the Expert Committee for inspection for the year 2010-11. Such a request was valid as per the regulations

and also in view of the Letter of Intent which will be valid for a period of three years and as such the same is valid up to 31.05.2012. On

10.02.2010, the AICTE informed the petitioner that their application for 2009-2010 was found to be deficient for 2010-2011 and as such the

same could not be considered to be within time. The AICTE notification dated 30.12.2009 was referred to and the petitioner was asked to apply

afresh for the year. The petitioner thereupon was constrained to file the above writ petition for issuance of a declaration, declaring the revised

Approval Process contained in All India Council for Technical Education Approval Process Hand Book, published on 09.01.2010 by the first

respondent and the consequential order issued by the second respondent in F. No. 10-11/05/27/Genl/Appln/02/11384, dated 10.02.2010 as

inapplicable to the petitioner and consequently direct the respondents to consider the application of the petitioner dated 18.12.2008 and issue

Letter of Approval to the petitioner for starting the Engineering College. The Writ Petition was admitted and interim order of stay of the 2010

Regulations was granted. Subsequently, this Court, by an order dated 23.04.2010 directed AICTE to conduct inspection of the petitioner

institution regarding the processing of the application without prejudice to their contentions in respect of the impugned Regulations, dated

06.02.2010. But, the AICTE did not implement the said directions and no inspection has taken place so far. Instead, they filed Writ Appeal No.

1039 of 2010 against the aforesaid order of this Court and this Court ordered status quo to be maintained and directed to post the Writ Appeals

for admission. When the Writ Appeals came up for admission on 13.05.2010, the First Bench of this Court posted the writ petitions for final

disposal on 23.06.2010 and disposed of the Writ Appeals.

27.2. New Regulations and norms of 2010 cannot be made applicable to the petitioner since the petitioner applied on 18.12.2008, which was

processed and a Letter of Intent was also granted, which is valid for the block period of three years i.e., 2009-2012. The question of making fresh

application would arise only after the said block period of three years. The application submitted by the petitioner on 18.12.2008 had been

processed and fructified into a letter of intent. After inspection by the Expert Committee, the letter of approval needs to be given. Based on the

letter of intent, the petitioner construed the buildings and created all the infrastructures by investing more than 10 crores of rupees. Therefore, the

Letter of Intent created substantive rights and as such the same cannot be taken away by the subsequent impugned regulations of the AICTE,

dated 06.02.2010.

27.3. Section 23 of the Act does not authorise AICTE to make regulations so as to have retrospective effect. Therefore, when the plenary

legislation had not been given that power to make retrospective Regulations, the subordinate legislative authority viz., AICTE will not have the

power to make regulations with retrospective effect. AICTE, in their public notice for the academic year 2010-11 published on 31.12.2009,

specifically stated that applications received after June 2009 will be processed as per new norms and procedure. Therefore, even going by their

above said public notice, the new norms and procedures would be applicable only to applications received after June 2009. AICTE Act does not

authorise the AICTE to make regulations with retrospective effect. Therefore, what is now required is an inspection by the Expert Committee for

the purpose of verifying the infrastructure and thereby to get the approval for starting the college.

28. Mr. R.Krishnamurthy, learned Senior Counsel appearing for the petitioner in W.P. No. 4585 of 2010 would contend that the norms now

prepared are different from the earlier norms prescribed in the Regulations 2006. Earlier regulations prescribed discretionary quota for the

management for NRIs at 15% and now the present regulations reduced it to 5%. Also, the procedure formulated in the new regulations is

repugnant to what is contemplated in various provisions of the Act and therefore the new regulations prescribing the norms and standards are

contrary to law. Besides that, the learned Senior Counsel has specifically opposed the penal provisions under Regulation 11.1.

29. Mr. G.Masilamani, learned Senior Counsel appearing for the petitioner in W.P. No. 4823 of 2010, while adopting the arguments of the other

Senior Counsel, would contend as follows :

29.1. AICTE passed new Regulations on 15.01.2010. Simultaneously, as per the said Regulations, a Hand Book was also brought into existence

by AICTE to give effect to the aforesaid Regulations. New Regulations were published in the Government of India Gazette on 06.02.2010.

However, the Hand Book was not published in the Government of India Gazette. The Public Notice dated 08.01.2010 was published with

reference to AICTE Regulations dated 15.01.2010, which came into effect only on 06.02.2010, even before the said Regulations have been

published in Gazette of Government of India. Therefore, the Public Notice dated 08.01.2010 had not been validly issued under AICTE New

Regulations dated 15.01.2010. The Public Notice dated 08.01.2010 cannot be enforced against the Technical Institutions for the academic year

2010-2011. Even as per the Hand Book made pursuant to AICTE New Regulations, a schedule of dates is mentioned for presentation of

applicants for extension of approval to the existing colleges. As per the schedule of dates contained in the said New Regulations, the last date for

submission of applications was 31.12.2009. As on the date of 08.01.2010, Public Notice, the last date for filing application as per Hand Book

which shall form part of the Regulations had expired. Hence, directing the technical institutions to upload their applications afresh during

February/March 2010 is neither legal nor proper. The Hand Book referred to in the New Regulations if enforceable as such, the schedule of dates

is to be adhered to. The scheduled dates mentioned in the Hand Book (Part of Regulations) cannot be changed by way of Public Notice in the

Newspaper, that too with reference to the date of presentation of application without consequent amendment to the other scheduled dates. The

Hand Book made pursuant to the New Regulations has not been amended as per the procedure contemplated for the making of Regulations. The

Hand Book which forms part of the Regulations had not been published in the Government of India Gazette and placed on the table of Parliament

as required under Sections 23 and 24 of the Act, as such, the Hand Book has no legal force and hence the AICTE cannot direct the Technical

Institutions to comply with the same. On the date the new Regulations were published in the Government of India Gazette dated 06.02.2010, the

date mentioned for submission of applications had expired. Therefore, the said schedule of dates can be made applicable only for the Academic

Year 2011-2012 and not for 2010-2011. Consequently, for the academic year 2010-2011, the applications presented during August/September

2009, only the Existing Regulations 2006 have to be applied.

30. Mr. N.R.Chandran, learned Senior Counsel appearing for the petitioner in W.P. No. 3656 of 2010 has argued on the principle of legitimate

expectation, stating, what is offered in the counter affidavit is only a concession and it cannot be a right conferred on the petitioner institution and

that the Hand Book has not all been gazetted and therefore it will not have the force of law.

31. Mr. R.Muthukumarasamy, learned Senior Counsel for the petitioner in W.P. No. 3657 of 2010 has vehemently contended that the existing

institutions have applied for extension of approval and they have made applications in advance as per the old procedure, whereas the

respondent/AICTE has waited for some time to give application of the new norms and they have framed the new norms in order to defeat the

rights of the petitioners and, therefore, as far as the existing institutions are concerned, Clause 4.2 of the new Regulations is ultra vires, as the Act

does not provide for obtaining approval of the Council for extension of approval and therefore the new norms should be struck down.

32. Mr. K.Doraisamy, learned Senior Counsel appearing for the petitioner in W.P. No. 7569 of 2010, in his submissions, has pointed out that the

Hand Book initially contained 114 pages and thereafter it was 99 pages and further it has been shown in the web portal as 110 pages. Therefore,

the contents are different. In view of the differences in the pages, it is not known under what authority the Council has shown the difference of

pages and that the effect of the new Regulations will be from 06.02.2010 and it is only a subordinate legislation. Therefore, the applications already

made have to be processed in accordance with the format of 2006 Regulations. He also argued that the Council had not undertaken any survey

and study and no scientific or rational method was followed in framing the new regulations, which are not advantageous to any of the institutions.

33. In support of their contentions, the learned Senior Counsel appearing on behalf of the petitioners have relied on the following decisions of the

Supreme Court :

(a) (i) a judgment reported in State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others,

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show

that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make

such rules).

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also

the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute.

Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where

the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the

object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.

18. In Supreme Court Employeesï¿½ Welfare Assn. v. Union of India4 this Court held that the validity of a subordinate legislation is open to

question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or

unreasonable that no fairminded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are

manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague

that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or

otherwise disclose bad faith.

(ii) a judgment reported in (2006) 12 SCC 753 in the case of Vasu Dev Singh and Ors. v. Union of India and Ors.

24. We may notice that in State of Rajasthan v. Basant Nahata it was pointed out: (SCC p. 103, para 66)

66. The contention raised to the effect that this Court would not interfere with the policy decision is again devoid of any merit. A legislative policy

must conform to the provisions of the constitutional mandates. Even otherwise a policy decision can be subjected to judicial review.

31. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India the question which arose for consideration therein was as to whether the

exemption notification issued u/s 25 of the Customs Act, 1962 was beyond the reach of the Administrative Law. Venkataramiah, J. speaking for

the Bench, held that the Court exercising power of judicial review of a piece of subordinate legislation can exercise its jurisdiction, apart from the

grounds on which a plenary legislation can be challenged, but if it is contrary to other statute or if it is so unreasonable so as to attract the wrath of

Article 14 of the Constitution of India opined that the arbitrariness is not treated as a separate ground in India as it is a part of Article 14 of the

Constitution stating: (SCC p.691, para 78)

A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into

and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which

administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant

matters into consideration, etc., etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or

contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into

consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional

requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not

reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

It was categorically held that a subordinate legislation would not enjoy the same degree of immunity as a legislative act would.

32. To the same effect are the decisions of this Court in Khoday Distilleries Ltd. v. State of Karnataka and Dai-Ichi Karkaria Ltd. v. Union of

India wherein Indian Express Newspapers (Bombay) (P) Ltd. was followed. We, therefore, need not deal with them separately.

(iii) a judgment reported in Kunj Behari Lal Butail and Others Vs. State of H.P. and Others,

13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is

given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to

fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to

be seen if the rules made are protected by the limits prescribed by the parent act. (See: Sant Saran Lal v. Parsuram Sahu AIR para 19.) From the

provisions of the Act we cannot spell out any legislative intent delegating expressly, or by necessary implication, the power to enact any prohibition

on transfer of land. We are also in agreement with the submission of Shri Anil Divan that by placing complete prohibition on transfer of land

subservient to tea estates no purpose sought to be achieved by the Act is advanced and so also such prohibition cannot be sustained. Land forming

part of a tea estate including land subservient to a tea plantation have been placed beyond the ken of the Act. Such land is not to be taken in

account either for calculating the area of surplus land or for calculating the area of land which a person may retain as falling within the ceiling limit.

We fail to understand how a restriction on transfer of such land is going to carry out any purpose of the Act. We are fortified in taking such view

by the Constitution Bench decision of this Court in Bhim Singhji v. Union of India whereby sub-section (1) of Section 27 of the Urban Land

(Ceiling and Regulation) Act, 1976 was struck down as invalid insofar as it imposed a restriction on transfer of any urban or urbanisable land with

a building or a portion only of such building which was within the ceiling area. The provision impugned therein imposed a restriction on transactions

by way of sale, mortgage, gift or lease of vacant land or buildings for a period exceeding ten years, or otherwise for a period of ten years from the

date of the commencement of the Act even though such vacant land, with or without a building thereon, fell within the ceiling limits. The

Constitution Bench held (by majority) that such property will be transferable without the constraints mentioned in sub-section (1) of Section 27 of

the said Act. Their Lordships opined that the right to carry on a business guaranteed under Article 19(1)(g) of the Constitution carried with it the

right not to carry on business. It logically followed, as a necessary corollary, that the right to acquire, hold and dispose of property guaranteed to

citizens under Article 19(1)(f) carried with it the right not to hold any property. It is difficult to appreciate how a citizen could be compelled to own

property against his will though he wanted to alienate it and the land being within the ceiling limits was outside the purview of Section 3 of the Act

and that being so the person owning the land was not governed by any of the provisions of the Act. Reverting back to the case at hand, the learned

Counsel for the State of Himachal Pradesh has not been able to satisfy us as to how such a prohibition as is imposed by the impugned amendment

in the Rules helps in achieving the object of the Act.

14. We are also of the opinion that a delegated power to legislate by making rules ""for carrying out the purposes of the Act"" is a general delegation

without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not

contemplated by the provisions of the Act itself.

(iv) a judgment reported in Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union Vs. Srinivasa Resorts Ltd. and Others,

67. It was argued by the learned Counsel for the appellant that there could not have been a comparison between the provisions of the Payment of

Gratuity Act and the present provisions while deciding the constitutionality. For this purpose, the learned Counsel relied on the law laid down by

this Court in State of M.P. v. G.C. Mandawar. The following observations in that case were relied upon: (AIR p.496, para 9)

9. ... Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same

subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be

unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being

different, Article 14 can have no application.

68. It may immediately be clarified that though it is true that both the laws i.e. the Shops Act and the Payment of Gratuity Act have been passed

validly under Entry 24 of List III of the VIIth Schedule, it is incorrect to say that the High Court has compared the two provisions. It is one thing to

refer to a provision and quite another to compare it with the impugned provision.

69. The High Court has actually gone into the concept of gratuity right from its inception and has come to the conclusion that for earning the

gratuity, the employee does not have to contribute anything, as in the case of a provident fund. Gratuity is more or less a gratuitous payment by the

employer in consideration of long and faithful service by the employee. The concept of gratuity came to be developed firstly in the industrial

jurisprudence and was crystallised by the Central legislation by way of an Act, where a provision of five years of minimum service was made for an

employee to be entitled for payment of gratuity. However, as has been held in Bakshish Singh v. Darshan Engg. Works the length of five years of

service could not have been reduced in an absurd manner to a minuscule period of one year or even less than that. The High Court, therefore,

found fault that the basic concept of gratuity was being abused by the reduction of the required service to an almost non-existent level. It cannot,

therefore, be said that the High Court compared the two provisions. This is apart from the fact that the reduction to a period of six months was

already held to be unconstitutional in Suryapet Coop. Mktg. Society Ltd. v. Munsif Magistrate which judgment had attained finality.

77. This is apart from the fact that the High Court has correctly observed that even if the law cannot be declared ultra vires on the ground of

hardship, it can be so declared on the ground of total unreasonableness applying Wednesburyï¿½s ""unreasonableness"" principles. The Court,

specifically, has also found that this reasonableness (sic unreasonableness) is apparent from the fact that the employees falling within sub-sections

(1) and (3), although from different classes, had been treated equally, giving them the same benefit. For this purpose, the Court also relied on the

observations made in Bennett Coleman & Co. v. Union of India. The High Court also referred to the observations made in Peerless General

Finance and Investment Co. Ltd. v. RBI in this behalf and rightly concluded that the impugned provision was totally unreasonable.

(v) a judgment reported in Delta Engineers Vs. State of Goa and Others,

34. We may next consider whether the 1992 and 1994 Amendments to the Rules were retrospective in operation. In Zile Singh v. State of

Haryana this Court held: (SCC p. 8, para 13)

13. It is a cardinal principle of construction that every statue is prima facie prospective unless it is expressly or by necessary implication made to

have a retrospective operation. But the rule in general is applicable where the object of the statue is to affect vested rights or to impose new

burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing

rights, it is deemed to be prospective only....

(emphasis supplied)

The Amendment Rules do not provide that they are retrospective in operation. Nor do the circumstances warrant such an interference. In fact, the

contention of the respondents is not that power to levy fees/charges for use of riverine land was created/vested in the Port Authorities, by virtue of

the Amendment Rules and that such power was given to levy fees/charges retrospectively. The contention has been that the power to levy

fees/charges existed ever since the Rules came into force on 05.04.1984 and that position was merely clarified by the Amendment Rules in 1992

and 1994.

(vi) a judgment reported in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,

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. The Council is further to evolve suitable performance appraisal system incorporating

such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to

withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time

to time are not followed. 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. This country as is well known, consists of regions and population which are at different levels of progress and development

or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of

opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the

educational institutions or to pass the examinations, may not only deprive a vast majority of the people of the benefit of the education and the

qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the country of a

large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind,

for a major debate before us centred around the right of the States to prescribe standards higher than the one laid down by the Council. What is

further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have,

therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to

time. The Council has further the Regional Committees, at present, at least, in four major geographical zones and the constitution and functions of

the Committees are to be prescribed by the regulations to be made by the Council. Since the Council has the representation of the States and the

professional bodies on it which have also representation from different States and regions, they have a say in the constitution and functions of these

Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List I and

Entry 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central

Government under the Act are to be laid before Parliament. Hence, on the subjects covered by this statute, the State could not make a law under

Entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second Amendment. If there

was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the

Madras University Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the

Central Act would stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests

which are applied for adjudging repugnancy under Article 254 of the Constitution.

(vii) a judgment reported in Islamic Academy of Education and Another Vs. State of Karnataka and Others,

139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon

reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally

granted or the manner adopted for its disposal. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj.)

140. In Padma Sundara Rao v. State of T.N. it is stated: (SCC p. 540, paragraph 9)

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered

that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington (Sub nom

British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between

conclusions in two cases.

(viii) a judgment reported in Rajendra Agricultural University Vs. Ashok Kumar Prasad and Others,

12. Section 36 of the Act lays down three steps for making or amending a statute. They are:

(a) The statute should be made by the Board of Management in the manner specified in sub-section (1);

(b) The statute should be approved and assented by the Chancellor;

(c) The statute so made and assented, shall be published in the Official Gazette

When the Act lays down the manner in which a Statute under the Act should be made, it shall have to be made in that manner and no other. The

requirement that the statute should be published in the Official Gazette is an integral part of the process of ""Statute making"" u/s 36 of the Act. It is

mandatory and not directory. Until publication in the Official Gazette, the Statute will be considered as still being in the process of being, even if it

had received the assent of the Chancellor. A ""Statute in the making"" or a ""Statute-in-process"" is incomplete and is neither valid nor effective as a

Statute. So long as the Statute is not completely made, but is still in the process of being made, it can be cancelled or withdrawn or modified,

without the need for ""publication"" of such cancellation, withdrawal or modification. The Chancellor kept the ""Statute-in-process"" pending and later

reconsidered it and held that the Statute proposing the time-bound promotion scheme was stillborn and non est.

(ix) a judgment reported in (2005) 6 SCC 537 in the case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors.)

131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indian (""NRI"" for short) or NRI seats. It is

common knowledge that some of the institutions grant admissions to a certain number of students under such quota by charging a higher amount of

fee. In fact, the term ""NRI"" in relation to admissions in a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither

the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students,

but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should

be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen their level

of education and also to enlarge their educational activities. It was also pointed out that pointed out that people of Indian origin, who have migrated

to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with the

Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children

should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs

depending on the discretion of the management subject to two conditions. First, such seats should be utilised bona fide by NRIs only and for their

children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from

such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the

educational institution may admit on subsidised payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI

quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted

pursuant to the direction in Islamic Academy to regulate.

(x) a judgment reported in (2007) 15 SCC 406 in the case of Nani Sha and Ors. v. State of Arunachal Pradesh and Ors.

12. It was tried to be impressed upon by the learned Counsel for the appellant that Rule 5(a) would operate retrospectively as its nature was

clarificatory. It was tried to be further impressed that even the Government has treated, right from the beginning that there was a quota and it was

only to redress the injustice done to the promotees that the Government passed the impugned Resolution dated 20.05.2004. Firstly, we must

clarify that there was no evidence put before us by the Government that it was all through treating, even before 1999, that there was a 50:50 quota

in between the promotees and direct appointees. Such an evidence was bound to be put before the High Court in the first instance which was not

so put. The exercise done on 20.05.2004 appears to be not a suo motu exercise on the part of the Government but on the basis of the

representations made by the present appellants. We can understand if the Government had made this exercise of 20.05.2004 on its own, that

would have given credence to the arguments that the Government had always been treating that there was a 50:50 quota in between the direct

appointees and the promotees but that did happen and the Government was ""persuaded"" to hold another DPC on the basis of the representations

and of course the advice tendered by P & AR Department in UO No. 409 dated 21.10.2003. That document is not before us and we have no

way to find out as to whether it was put before the High Court to support an argument that the Government was always under the impression that

there existed a quota. On the other hand DPC viewed that there were some posts which were bound to be reserved for the Scheduled Tribe

candidates and they were bound to be treated as backlog vacancies to be filled up as per 100-point roster and it is for this reason that the posts

were to be filled up by the appellants. So far so good, but we completely fail to understand that even when there were backlog vacancies how was

the Government justified in giving a retrospective effect from 02.11.1994 in four cases and from 31.12.1994 in favour of Shri.T.Tapi. There is no

justification whatsoever of giving the retrospective effect. We, therefore, endorse the view expressed by the High Court that there was no necessity

of giving the retrospective effect.

(xi) a judgment reported in Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others,

23. It is now well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well

settled that a little difference in facts or additional facts may lead to a different conclusion.

(b) Learned Senior Counsel for the petitioners, in support of their case, have also relied on the decisions rendered by this Court, as enumerated

below:

(i) a judgment reported in (2008) 4 CTC 776 in the case of Tamilnadu Mercantile Bank Share Holders'' Welfare Association, Thoothukudi -

628002 and Anr. v. Reserve Bank of India, Chennai-1 and Ors.)

11. According to the learned Senior Counsel appearing for the appellants, what actually transpired in Court was something different and there are

letters and correspondences to prove that the Advocate continued to represent the appellants. We will not countenance such submissions. What is

recorded by the learned Single Judge regarding what transpired in Court is accepted by us. If any party wishes to have what is recorded in Court

corrected, then the proper procedure to be adopted is to move a Review Petition before the same Judge and as expeditiously as possible so that

the alleged error can be rectified. It is not open to any party to contend in Appeal that what was recorded by a learned Judge was, in fact, not

correctly recorded. In Commissioner of Endowments and Others Vs. Vittal Rao and Others, , the Supreme Court held as follows:

Practice and procedure - Hearing - What transpired at the hearing - Statement of fact recorded in the judgment is conclusive of the facts so stated

and cannot be contradicted by affidavit or other evidence - Party which feels that a fact has been wrongly recorded in the judgment must invite the

attention of the Judge recording the statement immediately to the said fact, while the matter is still fresh in his mind and seek rectification - Further

held, sometimes in rare and appropriate case, a party may be allowed to resile from a concession on the ground that the concession was made on

a wrong appreciation of the law and had led to gross injustice, but he cannot call in question the very fact of making the concession as recorded in

the judgment - Constitution of India, Articles 136 and 226.

(ii) a judgment reported in 2002 (1) L.W. 732 in the case of The Government of Tamil Nadu v. The Director, Directorate of Govt. Examination,

College, Chennai

12. As already stated above, the academic year had started in June 2001 and ends in April 2002. In fact, main examination, which is called

ï¿½annual examinationï¿½ is held in March 2002 and what was held in September 2001 was only supplementary. There is no counselling for

admission into professional colleges after June and in the instant case, coming to the batch of cases, the counselling for admission to professional

colleges was held last in June 2001 and the next counselling due is only in June 2002. If that be so, each academic year from June of each year to

April of succeeding year has to be taken as a block period. Among the petitioners, there are students, who have passed their Higher Secondary

examination and have secured competitive marks enough for admission into professional courses - be it M.B.B.S., B.D.S., or engineering but

could not get the disciplines and colleges of their choice and some of them could not get ï¿½free seatsï¿½ and stood chance for ï¿½payment of

seatsï¿½. These petitioners, had they been apprised of the changed policy, as envisaged in the impugned G.O., soon after the March 2001

examinations or at least before the completion of the counselling held in June 2001, could have secured admissions according to their rankings in

the disciplines and educational institutions, even though not of their choice. Economically poor students could have raised money from other

sources to get admissions in ï¿½payment seatsï¿½. But all that is lost because of the sudden imposition of ï¿½all subjectsï¿½ theory by the

impugned G.O. issued later, on 12.09.2001. What is more significant and in fact arbitrary is that the last date for payment of fees for September

2001 examination was 11.07.2001, which notification clearly indicates that the students can opt for one or more subjects of their choice for

improvement examination. Waiver of fees for the balance of examinations not opted for, is no solace at all. Here, the fees is not the criteria as the

very object of the Scheme of improvement examination is to improve upon their previous performance and the same can be achieved only if

sufficient time and opportunity is given for preparation for examinations. It is highly impossible and totally arbitrary to expect a student to prepare

for the examinations in a matter of days while giving hopes to him all along, that he can write in subject of his choice....

13. There are plethora of precedents elucidating principles of doctrine of legitimate expectation. We feel it not necessary to refer all such decisions.

Suffice it to mention some judgments of the Supreme Court, which are closer to the point and which, in fact, have surveyed all the previous

judgments. Judgements on the topic of ï¿½legitimate expectationï¿½ dealt with by the Supreme Court in Navjyoti Coo-Group Housing Society

etc. Vs. Union of India and Others, , ...unanimously hold the view that the principle of legitimate expectation consists of two parts, i.e. (1)

substantive and (2) procedural and it was held that a case of substantive legitimate expectation would arise when a Government or an authority

within the meaning of Article 12 of Indian Constitution, by representation or by past practice, arouse expectation, which it would be within its

powers to fulfil and the Court can interfere when the decision taken by the authority is arbitrary, unreasonable or not taken in public interest. The

further requirement is that the representee should suffer detriment acting upon such representation. Yet another legal principle evolved by the above

judgments of the Supreme Court is that the doctrine of legitimate expectation as in the case of audi alteram partem, cannot be put into straitjacket

formula and that each case has to be weighed on its facts as to whether the doctrine of legitimate expectation is fit to be invoked or not.... The

doctrine of legitimate expectation invoked in the said case has been extended by the Full Bench and the action of the Government was set at

naught. We are of the considered view that the Full Bench judgment in Tamil Nadu Tamil & English Medium Schools Association (supra) is

applicable to the extent of setting at naught the impugned G.O. in so far as the retrospective operation is concerned, as by the said sudden policy,

the interest of the students are jeopardised for the reasons stated in paragraph 12 above.

(iii) a judgment reported in (2010) 2 L.W. 746 in the case of K.Sakthi Rani v. The Secretary of the Bar Council of Tamilnadu, Chennai - 600 104

and Ors.

79. Insofar as the application of legitimate expectation is concerned, it is a well settled principle of law that the said principle is not a very strong

right, but it is based upon various other factors and it can be invoked incidentally. The doctrine of legitimate expectation can be invoked where

there is an irreparable loss to the party and public interest does not suffer. In the present case on hand, as observed earlier, we are dealing with the

unintended anamoly since the petitioners had completed the course and there is no question of allowing anyone else with the post graduate

qualification from the Open University either to be admitted into the law course or to be enrolled in the State Roll.

80. Even though a right based upon the legitimate expectation is not a legal right, when the expectation is legitimate, reasonable, logical and valid

and a certain degree of fairness is required from the other persons, then the doctrine of legitimate expectation can be invoked. In Secretary, State

of Karnataka and Others Vs. Umadevi and Others, , the Constitution Bench referred to the claim of the employees based on the doctrine of

legitimate expectation and observed as under:

46. ...The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage

which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue

to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment;

or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing

reasons for contending that they should not be withdrawn.

34. On the other hand, Mr. R.Thiagarajan, learned Senior Counsel for the respondents would contend that Section 23 of the Act provides for

making regulations in furtherance of the object and provisions of the Act with a view to ensuring coordinated and integrated development of

technical education and maintenance of standards for the purpose of performing its functions in order to lay down the norms and standards for

courses, curriculum and facilities such as physical and instrumental, staff pattern, staff qualification, quality instruction, assessment and examination

and also for grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the

agencies concerned. Further, the Act confers enormous powers and functions on the Council under Sections 10 and 11 including the inspection

powers, which include the survey and collection of field data and forecast of the needed growth in order to achieve the provisions of the Act. It is

not pointed out by any of the petitioners that the regulations lack legislative competence and therefore the subordinate legislation is made by the

incompetent authority and it is also not pointed in any of the pleadings or arguments though they have stated that there is violation of fundamental

rights, guaranteed under Articles 14, 19(1)(g), 21 and 300-A of the Constitution, it is not materially proved by them or shown to this Court that

this legislation is in infringement of fundamental rights or any other provisions of the Constitution of India.

34.1. The learned Senior Counsel would also contend that under Clause 4.3 of the regulations, it is provided that the Council shall publish, from

time to time, Approval Process Hand Book, detailing the procedure to process the applications of institutions and/or promoters and also under

Clause 4.6, it is provided that the procedure for grant of approval shall be prescribed in the Approval Process Hand Book by the Council from

time to time. He would further submit that as many as 10,001 technical institutions inclusive of the institutions running engineering courses have

applied to AICTE for various approvals required under the regulations as per the procedure prescribed, but, so far as Tamil Nadu is concerned,

309 of the existing Engineering Colleges have applied for approval as per the procedure under the Regulations of the year 2010. It is also pleaded

that out of 2,805 new institutions which have applied for approval as per the new regulations all over the country, 123 are from the State of Tamil

Nadu and the Council shall process the applications of the said institutions, who opted for new regulations.

35. Mr. AR.L.Sundaresan, learned Senior Counsel appearing for AICTE in some of the Writ Petitions, has strenuously contended that the scope

of judicial review in examining a policy matter particularly the regulations framed by AICTE is limited and the repeated rulings of the Supreme

Court have laid down a yardstick for intervention in such matters that too when there is any violation of fundamental rights of the citizens or

opposed to the provisions of the Constitution, arbitrary or unreasonable. He would also stress that in a mater of policy decision by an executive or

any authority under the law, unless it is shown that the particular policy, in this case the regulations framed by AICTE, is faulted with on the

grounds of malafide, unreasonableness, arbitrariness, unfairness, irrationality, perversity, policy would not be rendered unconstitutional and the

hardship cannot be a ground to interfere with such policy decision. The learned Senior Counsel have relied on the following :

(i) a decision of the Supreme Court reported in State of Tamil Nadu Vs. Hind Stone and Others,

13. Another submission of the learned Counsel in connection with the consideration of applications for renewal was that applications made sixty

days or more before the date of G.O.Ms. No. 1312 (02.12.1977) should be dealt with as if Rule 8-C had not come into force. It was also

contended that even applications for grant of leases made long before the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8-C had not

come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for

renewal pending for a long time and then to reject them on the basis of R. 8-C notwithstanding the fact that the applications had been made long

prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot

on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the

application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or

renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by

applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to

the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are,

therefore, unable to accept the submissions of the learned Counsel that applications for the grant or renewal of leases made long prior to the date

of G.O.Ms. No. 1312 should be dealt with as if Rule 8-C did not exist.

(ii) a decision reported in State of M.P. and Others Vs. Krishnadas Tikaram,

2. The appellant contends that this Court in Rural Litigation and Entitlement Kendra v. State of U.P. and Ambica Quarry Works v. State of

Gujarat had held that even the renewal of the lease cannot be granted without the prior concurrence of the Central Government. We find force in

the contention. It is settled law that the grant or renewal is a fresh grant and must be made consistent with law. Section 2 prohibited the grant or

renewal. In case the State Government decides to grant fresh lease or renewal of the lease it is mandatory that it should obtain prior approval of

the Central Government. Admittedly, no prior approval of the Central Government had been obtained u/s 2 of the Act. The State Government thus

had realised the mistake in directing renewal when the Forest Department had objected to the renewal of the lease in favour of the respondent.

Therefore, the cancellation of the order, before it came into effect by registering, had been properly made by the appellant. The High Court was,

therefore, not right in directing grant of renewal of the lease.

(iii) another decision of the Supreme Court reported in S.B. International Ltd. and Others Vs. Asstt. Director General of Foreign Trade and

Others,

10. We are, therefore, of the opinion that the contention that a vested right accrues to an applicant for issuance of advance licence on the basis of

the norm obtaining on the date of application is unacceptable. The scheme and the context militate against the contention. The fact that the policy is

statutory in nature (delegated legislation) has no relevance on the question at issue. It would be wrong to equate the filing of an application for

advance licence with the filing of a suit where it is held that appeal being a substantive right, the right of appeal inhering in the party on the date of

filing of the suit cannot be taken away by a subsequent change in law.

(iv) a decision reported in Divisional Forest Officer and Others Vs. S. Nageswaramma,

3. ...The lease is right to extract minerals and the renewals should be in accordance with the law in operation as on the date of renewal. Renewal of

lease not being a vested right, the application for renewal must be disposed of according to law prevailing as on that date. On expiry of the lease

period, on 13.09.1989, an application came to be made for renewal thereof...

(v) a decision reported in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.,

35. This may be angulated from yet another legal perspective, namely, consequences that would flow from the meaning of the word ''renewal'' of a

permit u/s 81 of the Act. Black''s Law Dictionary, Sixth Edn., defines the word ''renewal'' at p. 1296 thus:

The act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made anew or re-established. The substitution of a

new right or obligation for another of the same nature. A change of something old to something new. To grant or obtain extension of;

38. It is settled law that grant of renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted as per

existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal. The right to

get renewal of a permit under the Act is not a vested right but a privilege subject to fulfillment of the conditions precedent enumerated under the

Act. u/s 58 of the Repealed Act, renewal of a permit is a preferential right and refusal thereof is an exception.

41. In State of M.P. v. Krishnadas Tikaram this Court had held that it is settled law that renewal is a fresh grant and must be granted consistent

with law in operation as on that date. In that case, it was held that renewal of mining lease in the forest area for extraction of minerals under the

Mines and Minerals Concessions Rules should be consistent with Forest (Conservation) Act, 1980. Section 2 mandates the State Government to

obtain prior approval of the Central Government, renewal granted without prior approval was subsequently cancelled. When its validity was

questioned, the High Court set aside the order. On appeal, this Court reversed the High Court''s order and had held that the Government was not

precluded from cancelling the renewal of the lease granted without obtaining prior approval of the Central Government. The order of cancellation

was, therefore, upheld.

(vi) a decision reported in State of Madhya Pradesh and Another Vs. Bhola @ Bhairon Prasad Raghuvanshi,

20. A delegated legislation can be declared invalid by the court mainly on two grounds: firstly, that it violates any provision of the Constitution and

secondly, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any

provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the

enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated

legislation cannot be held to be in violation of the enabling Act.

35.1 Mr. AR.L.Sunderesan, learned Senior Counsel has relied on the following Policy decisions of the Supreme Court :

(i) a judgment reported in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc.,

23. The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be. Let us now

examine this new policy. Learned Senior Counsel for the appellants submits that the new policy is more liberal inasmuch as it gives freedom of

choice to every employee to undertake treatment in any private hospital of his own choice anywhere in the country. The only clog is that the

reimbursement would be to the level of expenditure as per rates which are fixed by the Director, Health and Family Welfare, Punjab for a similar

package treatment or actual expenditure, whichever is less. Such rate for a particular treatment will be included in the advice issued by the

District/State Medical Board for fixing this. Under the said policy a Committee of Technical Experts is constituted by the Director to finalise the

rates of various treatment packages and such rate list shall be made available to the offices of the Civil Surgeons of the State. Under this new

policy, it is clear that none has to wait in a queue. One can avail and go to any private hospital anywhere in India. Hence the objection that, even

under the new policy in emergency one has to wait in a queue as argued in Surjit Singh case does not hold good.

25. Now we revert to the last submission, whether the new State Policy is justified in not reimbursing an employee, his full medical expenses

incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which

is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as

questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and

cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it,

based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of

law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is

also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts

set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to

be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

(ii) a judgment reported in M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others,

18. The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the courts, in exercise of their

power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala

fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy

unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party,

does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference,

to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular

situation any such policy should have been adopted or not. It is best left to the discretion of the State.

22. The State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is ""liquor of good

quality"" in the interest of health, morals and welfare of the people. One of the modes for determining that the quality of liquor is ""good"" is to

ascertain whether that particular brand of liquor has been tested and tried extensively elsewhere and has found its acceptability in other States. The

manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of

the Government so long as the discretion is not exercised mala fide, unreasonably or arbitrarily. The allegations of mala fide made in the writ

petition are totally bereft of any factual matrix and we, therefore, do not detain ourselves at all to consider challenge on that ground. In fairness to

the learned Counsel for the petitioner we may record that challenge to notification on grounds of mala fide was not pressed during arguments.

Laying down requirement of achieving Minimum Sales Figures of a particular brand of liquor in other States, as a mode for determination of the

acceptability"" of that brand of liquor, is neither irrelevant, nor irrational nor unreasonable. It appears that prescription of MSF requirement is

aimed at allowing sale of only such brands of liquor which have been tested, tried and found acceptable at large in other parts of the country.

23. The policy objective as reflected in the impugned notification is to provide liquor of good quality in Delhi. The executive policy to determine

whether a particular brand of liquor is of good quality or not, on the basis of larger acceptability of the particular brand in other parts of the

country, appears to us to be a fair and relevant mode. The manner for determining whether a particular brand of liquor has acquired larger

acceptability or not so as to qualify for it being ""liquor of good quality"" has to be decided by the State in its discretion so long as the manner

adopted by the State is ""just, fair and reasonable"". It is not in dispute that the criteria of MSF is being uniformly applied and no pick-and-choose

policy has been adopted by the State in that behalf. Learned Counsel for the petitioners has been unable to convince us that fixation of MSF

requirements as a criteria for such determination is in any manner ""unfair, irrational or unreasonable.

(iii) a judgment reported in BALCO Employees Union (Regd.) Vs. Union of India and Others,

46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as

to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at

the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with

economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on

economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts

would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to ""trial and error"" as long as

both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO

is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is

conducting its business, inasmuch as its policy decision may have an impact on the workersï¿½ rights, nevertheless it is an incidence of service for

an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant,

having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For

example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee

cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-

government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III

of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in

economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects

into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of

hearing or consultation prior to the taking of the decision.

92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift

in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed

in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the

court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is

contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic

policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament

and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

(iv) a decision reported in Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others,

9. It is well settled now that the courts can scrutinise the award of the contracts by the Government or its agencies in exercise of their powers of

judicial review to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of the power of judicial review in such

matters. The point as to the extent of judicial review permissible in contractual matters while inviting bids by issuing tenders has been examined in

depth by this Court in Tata Cellular v. Union of India. After examining the entire case-law the following principles have been deduced: (SCC pp.

687-88, para 94)

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be

substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally

speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not,

such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body

functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of

Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or

actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

(emphasis supplied)

12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny, the same being in the realm

of contract. That the Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary

concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is

arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular

circumstances. The courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms in the

tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide.

(v) a decision reported in Ekta Shakti Foundation Vs. Govt. of NCT of Delhi,

11. ""5. While exercising the power of judicial review of administrative action, the court is not the Appellate Authority and

''[t]he Constitution does not permit the court to direct or advise the executive in [the matter] of policy or to sermonise qua any matter which under

the Constitution lies within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or

statutory power''. (See Asif Hameed v. State of J&K, SCC p. 374, para 19, Shri Sitaram Sugar Co. Ltd. v. Union of India.)

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or [is

violative of] the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision

taken by the Government does not appear to be agreeable to the court, it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a

matter of concern in judicial review and the court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt (sic decide) which policy should be adopted after considering all the

points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of

fundamental rights is not shown the courts will have no occasion to interfere and the court will not and should not substitute its own judgment for

the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second

view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Co. v. City of Chicago: (L

Ed p. 734)

''The problems of Government are practical ones and may justify, if they do not require, rough accommodations, - illogical, it may be and

unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be

disputed or condemned. Mere errors of Government are not subject to our judicial review.'' "" (See State of Orissa v. Gopinath Dash, SCC p.

497, paras 5-8)

35.2. Learned Senior Counsel has relied on the following Supreme Court decisions regarding judicial review:

(i) a decision reported in Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, .

16. The Scope of judicial review of governmental policy is now well defined. 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 (vide Asif Hameed v. State of J&K, Sitaram Sugar Co. Ltd. v. Union

of India, Khoday Distilleries Ltd. v. State of Karnataka, BALCO Employees'' Union v. Union of India, State of Orissa v. Gopinath Dash and

Akhil Bharat Goseva Sangh (3) v. State of A.P.)

(ii) a decision reported in Basic Education Board, U.P. Vs. Upendra Rai and Others, .

14. The respondent admittedly got appointment after the Circular dated 11.08.1997 and hence this circular applies to him. Admittedly, the

respondent does not possess the qualification mentioned in the said circular. He does not either possess BTC, Hindustani Teaching Certificate,

JCT or Certificate of Teaching. The DEd Certificate is no longer regarded as equivalent to BTC after the Circular dated 11.08.1997. This was a

policy decision of the U.P. Government, and it is well settled that the court cannot interfere with policy decision of the Government unless it is in

violation of some statutory or constitutional provision. Hence, we are of the opinion that the respondent was not entitled to be appointed as

Assistant Master of a junior basic school in U.P.

15. Grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned,

and the court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the Government, and the court

does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it.

(iii) a decision reported in (2010) 2 MLJ 43 in the case of Common Committee constituted for the Selection of Eminent Sports persons at Anna

University, Chennai 600 025 and Ors. v. Minor B.Praveena Devi rep. by her father & Guardian P. Boopathy Raj and Ors.

15. In the case of State of Rajasthan and Others Vs. Lata Arun, , the Supreme Court held that prescribing minimum educational qualification for

admission to a course and recognising certain educational qualifications as equivalent to or higher education than the prescribed one are matters,

which fall within the realm of policy decision are to be taken by the State Government or the authority vested with the power under the statute.

Scope of interference by Court in such matters discussed and the Supreme Court held that the Court cannot suggest as to which policy to be

followed.

The eligibility criteria can be interfered with only in case if it is arbitrary or discriminatory or on the ground of bias. It is not open to interfere with

such policy merely because the Court feels that some other terms would have been more preferable. This is the finding of Supreme Court in

Directorate of Education and Others Vs. Educomp Datamatics Ltd. and Others, .

In the case of Ekta Sakthi Foundation v. Govt. of NCT of Delhi (2006) 10 SCC 336 : (2007) 7 MLJ 730, while dealing with a question of

interference in policy matters, the Supreme Court held that in matter of policy decision or exercise of discretion by the Government, so long as

infringement of fundamental right is now shown, the Courts will have no occasion to interfere and Court should not substitute its own judgment for

that of the executive in such matters.

16. In view of the authoritative pronouncements of the Supreme Court as referred to above, we are of the view that learned single Judge ought not

have substituted the policy by holding that the earlier policy is better than the present policy, particularly when the Court has not found the present

policy ultra vires Article 14.

35.3. With regard to the Principle of legitimate expectation, the learned Senior Counsel has relied on a judgment reported in Punjab

Communications Ltd. Vs. Union of India and Others, :

23. A review of the facts and the subsequent events would show that the issues which were live when the writ petition of the appellant was pending

in the High Court have now lost all their relevance. The entire tender was based on the ADB loan. If the ADB loan itself has now stood withdrawn,

there is now no possibility of the ADB loan project for Eastern U.P. being started or completed. It will well-nigh be impossible to issue any

directions to the Union of India to seek a renewal of the lapsed loan or to issue any directions to continue the project for Eastern U.P. on the basis

of the ADB loan.

24. Even so, learned Senior Counsel for the appellant and the petitioner in the transfer petition have argued the case on merits as if the ADB loan

were still alive. We have been taken through several volumes of correspondence between the various departments and the minutes of various

officers and of the High-Level Committee to prove arbitrariness in the non-acceptance of the appellant''s bid on two counts. We have heard these

submissions very patiently but the point is whether this Court is to give findings on issues which have become non-issues now after the withdrawal

of the ADB loan. We have given our anxious consideration to the various contentions raised on behalf of the appellant and the petitioner in the

transfer petition and we are of the view that a detailed decision on the said questions is not called for. A question of fraud was also raised. But

once the ADB loan is withdrawn the question has also become a non-issue. The position is that in respect of the ADB loan project, no fresh

tenders based on ""analog"" system have been invited nor has any multinational company been awarded any contract based on outmoded analog

system. The said question of fraud is no longer relevant. On all these issues we should not be understood as having expressed any opinion. Further,

there cannot be a cause of action on the basis of an ""attempt at fraud"" which did not materialise. It is true as stated in de Smith''s Administrative

Law (para 13.010) (5th Edn.) that it is fundamental to the legitimacy of public decision-making that official decisions should not be infected with

motives such as fraud (or dishonesty) malice or personal self-interest. Duty to act in good faith is inherent in the process. Learned Senior Counsel

for the petitioner in the transfer petition, Shri Rajeev Dhavan referred to Shrisht Dhawan v. Shaw Bros. where the distinction between fraud in

public law and private law has been adverted to. But all these legal principles are not relevant if the so-called or alleged attempt at fraud did not

fructify. We accordingly do not think it worthwhile to go into the question of ""fraud"" either. We may once again clarify that we should not be

understood as having decided anything on the merits of these questions. Point 1 is decided accordingly.

26. The principal of ""legitimate expectation"" is still at a stage of evolution as pointed out in de Smith''s Administrative Law (5th Edn.) (para 8.038).

The principle is at the root of the rule of law and requires regularity, predictability and certainty in the Government''s dealings with the public.

Adverting to the basis of legitimate expectation its procedural and substantive aspects, Lord Steyn in Pierson v. Secy. of State (All ER at p. 606)

goes back to Dicey''s description of the rule of law in his Introduction to the Study of the Law of the Constitution (10th Edn., 1959, p. 203) as

containing principles of enduring value in the work of a great jurist. Dicey said that the constitutional rights have roots in the common law. He said:

The ''rule of law'', lastly, may be used as a formula for expressing the fact that with us the law of constitution, the rules which in foreign countries

naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the

courts; that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the

position of the Crown and its servants, thus the constitution is the result of the ordinary law of the land.

This, says Lord Steyn, is the pivot of Dicey''s discussion of rights to personal freedom and to freedom of association and of public meeting and that

it is clear that Dicey regards the rule of law as having both procedural and substantive effects. ""[T]he rule of law enforces minimum standards of

fairness, both substantive and procedural."" On the facts in Pierson the majority held that the Secretary of State could not have maintained a higher

tariff of sentence than recommended by the judiciary when admittedly no aggravating circumstances existed. The State could not also increase the

tariff with retrospective effect.

27. The basic principles in this branch relating to ""legitimate expectation"" were enunciated by Lord Diplock in Council of Civil Service Unions v.

Minister for the Civil Service at pp. 408-409. It was observed in that case that for a legitimate expectation to arise, the decisions of the

administrative authority must affect the person by depriving him of some benefit or advantage which either

(i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until

there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons

for contending that they should not be withdrawn.

The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The

substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in

receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser

accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn

because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a

little further when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership. The

interest in regard to which a legitimate expectation could be had must be one which was protectable. An expectation could be based on an express

promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a

representation to the individual or generally to a class of persons.

30. To a like effect are the observations of Lord Diplock in Hughes v. Deptt. of Health and Social Security AC at p. 788:

Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make

such changes is something that is inherent in our constitutional form of government.

[See in this connection Mr Dotanï¿½s article ""Why Administrators Should be Bound by Their Policies"" (Vol. 17) 1997 Oxford Journal of Legal

Studies, p.23.] But today the rigidity of the above decisions appears to have been somewhat relaxed to the extent of application of the

Wednesbury rule whenever there is a change in policy and we shall be referring to these aspects presently

37. The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and

that the decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or

past conduct unless some overriding public interest comes in the way. The judgment in Raghunathan case requires that reliance must have been

placed on the said representation and the representee must have thereby suffered detriment.

36. Mr. P.Wilson, learned Additional Advocate General, appearing for the State in some of the Writ Petitions would contend that unless the

petitioner institutions are approved, the State is not in a position to call the students for counselling and allot seats, as the counselling is already

scheduled. He would also submit that some institutions have opted for new norms and if the approval is not granted, the Government would be put

to great hardship.

37. I have heard the learned Senior Counsel for the parties; gone through the records; analysed various provisions of law and the decisions relied

upon.

38. All India Council for Technical Education (AICTE) has been established under the All India Council for Technical Education Act, 1987 (Act

No. 52 of 1987), hereinafter referred to as ""the Act"", with a view to secure proper planning and co-ordinated development of the technical

education system throughout India, the 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 and for matters connected therewith.

39. Section 10 of the Act lays down the functions of the Council (AICTE) inter alia that it shall be the duty of the Council to take all such steps as

it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purpose of

performing its functions under the Act, the Council may (a) undertake survey in the various fields of technical education, collect data on all related

matters and make forecast of the needed growth and development in technical education; (i) lay down norms and standards for courses, curricula,

physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations; (j) fix norms and guidelines

for charging tuition fee and other fees; (k) grant approval for starting new technical institutions and for introduction of new courses or programmes

in consultation with the agencies concerned; (q) withhold or discontinue grants in respect of course, programmes : to such technical institutions

which fail to comply with the directions given by the Council within the stipulated period of time and take such other steps as may be necessary for

ensuring compliance of the directions of the Council.

40. Section 11 deals with the power of AICTE to conduct inspection. Section 23 empowers the Council to make regulations not inconsistent with

the provisions of the Act and the rules generally to carry out the purposes of the Act, by a notification in the Official Gazette.

41. In exercise of the powers conferred under sub-section (1) of Section 23 read with Section 10 and Section 11 of the All India Council for

Technical Education Act, 1987 (52 of 1987) and in supersession of the Regulations F. No. 37-3 (ii)/Legal/AICTE dated 31-03-2001, F. No. 26-

7/Legal/2002 dated 24-04-2002, F. No. 26-7/Legal/2002 dated 15-07-2002, F. No. 37-3/Legal/2004 dated 21-01-2004 regarding Non-

Resident Indian (NRI), Foreign Nationals, Persons of Indian Origin (PIOs) Category in AICTE approved institutions and F. No. 37-3/Legal/2005

dated 16-05-2005 and F. No. 37-3/Legal/2005 dated 05-12-2005 regarding Entry and Operation of Foreign Universities in India imparting

technical education and F. No. 37-3/Legal/2006 dated 14-09-2006 regarding grant of approval for starting new technical institutions, introduction

of courses or programs and increase/variation of intake capacity of seats for the courses or programs and extension of approval for the existing

technical institutions, the All India Council for Technical Education framed the All India Council for Technical Education (Grant of Approval for

Technical Institutions) Regulations,2010.

42. Apart from the persons who desire to establish new engineering colleges, even the managements of the existing engineering colleges have to

approach the Council year after year either for continuation of approval or for increase in intake or for additional courses.

Examination of the validity of legislation/Regulations :

43. A perusal of the impugned Regulations,2010, shows that some of the said Regulations have been framed with certain changes. The faculty

requirements have completely been changed. The post of Lecturer has been abolished and several lecturers working in the institutions as per the

existing Regulations will now lose their employment. As per the existing norms, First Class Bachelor Degree holders are eligible for appointment as

lecturers. A further provision was given for Bachelor Degree Holders to complete Master''s Degree within five years failing which the only

consequence would be to stop the annual increments until post-graduate degree level is acquired. However, in the impugned regulations, the post

of lecturers have been abolished thereby insisting upon the new requirement of minimum qualification of post-graduate degree for appointment as

Assistant Professor, which is impossible of performance.

44. The main thrust of the petitioners, assailing the new regulations, is on certain certain provisions, such as Regulation 4.2, which provides that the

technical institutions shall require prior approval of the Council for extension in existing approval and Regulation 4.3, which contemplates that the

Council shall publish, from time to time, Approval Process Hand Book, detailing the procedure to process the applications of institutions and /or

promoters; further, in Regulation 4.6, the formats of the application and the documents to be attached to the application, the fee to be remitted, the

manner by which the applications are prescribed, the norms and standards, requirements and the procedures for grant of approval shall be

prescribed in the Approval Process Hand Book by the Council from time to time and, similarly, in Regulation 4.18, the recommendations of the

Regional Committee, along with the note and comments of the concerned Bureau, shall be placed before Executive Committee of the AICTE,

which, in turn, after considering the recommendations and the comments made thereon by the concerned Bureau of the AICTE, in respect of the

procedure adopted in processing the cases and fulfilment of the norms and standard prescribed by the Council, and on confirmation of submission

of fixed Deposit Receipt, along with the affidavit, as applicable, shall take a decision at its meeting on grant of approval or otherwise and,

therefore, these Regulations are inconsistent with the object and provisions of the Act.

45. In addition, Regulation 11.1, which provides for penalty, has been strongly assailed by the petitioners on the ground that under this regulation,

an institution, running any technical education in violation of the Regulations, shall be liable for initiation of legal civil action including withdrawal of

approval, if any, and/or legal criminal action by the Council against the institution and/or its promoter Society/Trust and Individuals associated as

the case may be, which is without the approval of any law either under the Act or otherwise provided for and, therefore, the penal provision, even

for the smallest violation, which can be rectifiable, if allowed, then, it amounts to the rule making authority, exceeding its authority, inconsistent with

the provisions of the Act, and, though they have challenged the regulations in totality and Approval Process Hand Book, they assailed mainly on

the above provisions, as they are ultra vires of the provisions of the Act, patently unreasonable and arbitrary and particularly they go against the

very scheme of the Act.

46. The scathing attack of the petitioners is also that due to downloading problems and connectivity to the Server, the web portal is not reliable;

confidentiality of the information of the institution is at stake; there is no protection mechanism in the new norms and, therefore, Regulations 4.12

and 4.21 are arbitrary. Their attack is also that the impugned Regulation 4.14 provides for State Government/Union Territory administration and

the affiliating University to forward their views on the applications under the impugned Regulations 4.1 and 4.2 within a prescribed date; since the

application is uploaded through web portal, it is impracticable for the State and the University to forward their views and hence the impugned

Regulation 4.14 is arbitrary and further the requirement in the impugned Regulation 4.19 that the Council shall grant approval only after the

applicant institution fulfils the norms and stands as prescribed in the impugned Regulations is arbitrary, contrary to ground reality and impracticable

of performance. That apart, their contention is that the impugned Regulation 4.21 that the institutions shall comply with the 2010 norms within the

time schedule prescribed in the Approval Process Hand Book is arbitrary since several of the new requirements are contrary to ground reality and

in view of the above mentioned arbitrary requirements, Regulation 4.33 stating that the Council shall not grant any conditional approval to any

institution is liable to be struck down.

47. It is pointed out by the learned Senior Counsel for the petitioners that the impugned Regulations are in violation of Articles 14, 19(1)(g), 21

and 300-A of the Constitution of India. It is their strong contention that before the introduction of the impugned regulations,2010, the Council was

discharging its functions in terms of the regulations, dated 14.09.2006, called old regulations or existing regulations; the old regulations withstood

the test of time and in working out the same, no difficulty or deficiency has been encountered all these years and particularly u/s 10(a) of the Act

makes it clear that it is the bounden duty of the Council to undertake survey in various fields of technical education, collect data on related matters

and make forecast of all the needed growth and development in technical education and in the absence of any such exercise, new regulations are

unwarranted.

48. To circumvent the above arguments, learned Senior Counsel for the respondents pointed out that Section 23 of the Act provides for making

regulations in furtherance of the object and provisions of the Act with a view to ensuring coordinated and integrated development of technical

education and maintenance of standards for the purpose of performing its functions in order to lay down the norms and standards for courses,

curriculum and facilities such as physical and instrumental, staff pattern, staff qualification, quality instruction, assessment and examination and also

for grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies

concerned. Further, the Act confers enormous powers and functions on the Council under Sections 10 and 11 including the inspection powers,

which include the survey and collection of field data and forecast of the needed growth in order to achieve the provisions of the Act. It is not

pointed out by any of the petitioners that the regulations lack legislative competence and therefore the subordinate legislation is made by the

incompetent authority and it is also not pointed in any of the pleadings or arguments though they have stated that there is violation of fundamental

rights, guaranteed under Articles 14, 19(1)(g), 21 and 300-A of the Constitution, it is not materially proved by them or shown to this Court that

this legislation is in infringement of fundamental rights or any other provisions of the Constitution of India.

49. Examination of validity and constitutionality of the subordinate legislation called the regulation can be made on the following grounds of (a)

Lack of legislative competence (b) Violation of fundamental rights or any provisions of the Constitution of India (c) Failure to conform to the

statute under which it is made for exceeding the limits of authority conferred by the enabling Act (d) Repugnancy or inconsistency to the laws of the

land and (e) Manifest arbitrariness/unreasonableness, to an extent where the court might well say that the legislature never intended to give

authority to make such rules or regulations. Further, while examining the validity of a subordinate legislation, the Court has to take note of the

nature, object and scheme of the enabling Act and the area over which the power has been delegated under the Act and then decide whether the

subordinate legislation conforms to the parent statute. It is also a settled principle that a delegated legislation can be declared invalid by the Court

mainly on two grounds viz., (i) violation of the provisions of the Constitution and (ii) violation of the provisions of the enabling Act. If the rule

making authority exceeds its authority and makes any provision inconsistent with the provisions of the Act, it can be held to be a violation of the

provisions of the enabling Act.

50. Regulation 11.5 refers to Non-fulfilment in Faculty : Student Ratio, not adhering to pay-scales and/or qualifications prescribed for teaching

staff. Under this, the institutions not maintaining prescribed faculty, student ratio as prescribed for more than 18 months, not adhering to pay-scales

and/or qualifications prescribed for teaching staff shall be liable to any one of more of the following actions :

(a) Suspension of approval for supernumerary seats,if any;

(b) reduction in intake in the respective courses ;

(c) No admission status in respective courses ;

(d) Withdrawal of approval of the respective courses ;

(e) Withdrawal of approval of the Institution.

51. To illustrate the ground reality, if the institutions affiliated to Anna University-Coimbatore are taken as a test case, it can be seen that out of 127

institutions, only 35 institutions have post graduate courses viz., M.E. and M.Tech., having only 2675 post-graduate intake per year, whereas the

total number of students in the colleges affiliated to Anna University-Coimbatore alone is 39,060 students per year. For four years, if put together,

it is 1,56,240 students and, therefore, the staff required as per the new Regulations 2010 would be 10,772 at the rate of 1:15 ratio. When such

ground reality exists, insisting upon the institutions to have teaching faculty of Assistant Professor and above is contrary to the ground reality and it

is impossible of performance.

52. In paragraphs 10 and 11 of the additional counter affidavit, dated 18.03.2010, filed on behalf of AICTE in W.P. No. 3848 of 2010, it is

stated as follows :

10. I respectfully submit that the Council, considering the shortage of M.Tech. Degree holders in itself has resolved in its meeting held on 26th

February to allow technical institutions to recruit B.Tech.Degree holders with such requirements as given in the earlier Regulations on qualifications

and pay scales of teachers as Pro Term Lecturers on consolidated pay of Rs. 30,000/- (Rs. Thirty Thousand) per month for 3 years. This

Resolution also encourages the institution to motivate the above said Pro-Term Lecturers to earn M.Tech.Degrees and become eligible for

appointment as Assistant Professors.

11. I respectfully submit that the existing teachers, including lecturers in the technical institutions shall remain with the institutions concerned and

would be governed by the scheme under the new Regulations and designated accordingly. In other words, an existing Lecturer who does not

possess the M.Tech.qualification shall be designated as Assistant Professor and shall be placed in the Pay Band of Rs. 15,600-39,100 with an

AGP of Rs. 6,000/-.

53. Impugned Regulation 11.1 reads as under :

11.1. An institution running any technical education in violation of these Regulations, shall be liable for initiation of legal civil action including

withdrawal of approval, if any, and/or legal criminal action by the Council against the institution and/or its promoter Society/Trust and Individuals

associated as the case may be.

Provided further that if any technical institution contravenes any of the provisions of these Regulations, the Council after making such inquiry as it

may consider appropriate and after giving technical institution concerned, an opportunity to clarify the matter may take any or all actions as

prescribed below and as the case may be.

54. Under the Act, there is no provision for penal action and, therefore, the Regulation, prescribing the penal action, is outside the scope of the

Act. In addition, the penal provision is arbitrary and against Articles 14, 19(1)(g) and 21 of the Constitution of India.

55. It is well settled that a subordinate legislation can be challenged when there is (a) lack of legislative competence to make it; (b) violation of

fundamental rights guaranteed under the Constitution of India; (c) violation of any provision of the Constitution of India; (d) failure to conform to

the statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (e) repugnancy to the laws of the land, that is,

any enactment and (f) manifest arbitrariness/unreasonableness. The court considering the validity of a subordinate legislation, will have to consider

the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether

the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of

course, the task of the court is simple and easy. But, where the contention is that the inconsistency or non-conformity of the rule is not with

reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution

before declaring invalidity. The validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or

repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fairminded authority could ever have made it. A

subordinate legislation would not enjoy the same degree of immunity as a legislative act would. It is very common for the legislature to provide for a

general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the

enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If

the rule-making power is not expressed in such a usual general form, then it shall have to be seen if the rules made are protected by the limits

prescribed by the parent Act.

56. A delegated power to legislate by making rules ""for carrying out the purposes of the Act"" is a general delegation without laying down any

guidelines and it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions

of the Act itself.

57. The above principle has been laid down in many rulings of the Supreme Court as referred to above and the Supreme Court repeated the same

in the case of State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, . In the said case, the test of deciding the constitutional validity

of a subordinate legislation has been laid down. It is held therein that the Court considering the validity of a subordinate legislation will have to

consider the nature, object and scheme of the enabling Act and also the area over which power has been delegated under the Act and then decide

whether the subordinate legislation conforms to the parent statute. Similar view was also taken by the Supreme Court in State of Madhya Pradesh

and Another Vs. Bhola @ Bhairon Prasad Raghuvanshi, , wherein the issue in question was when a delegated legislation can be declared invalid. It

is held therein that a delegated legislation can be declared invalid mainly on two grounds viz., (i) when it is in violation of any provision of the

Constitution and (ii) when it is in violative of the enabling Act.

58. In Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union Vs. Srinivasa Resorts Ltd. and Others, , the Supreme Court

held that the High Court has correctly observed that even if the law cannot be declared ultra vires on the ground of hardship, it can be so declared

on the ground of total unreasonableness applying Wednesburyï¿½s ""unreasonableness"" principles. The Court, specifically, has also found that this

reasonableness (sic unreasonableness) is apparent from the fact that the employees falling within sub-sections (1) and (3), although from different

classes, had been treated equally, giving them the same benefit. For this purpose, the Court also relied on the observations made in Bennett

Coleman and Co. and Others Vs. Union of India (UOI) and Others, . The High Court also referred to the observations made in Peerless General

Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, in this behalf and rightly concluded that the impugned provision was

totally unreasonable.

59. Further, in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the Apex Court has categorically held

that the 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. The Council is further to evolve suitable performance appraisal system incorporating

such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to

withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time

to time are not followed. 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.... They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council

for such education from time to time... The provisions of the law if repugnant to the provisions of the Central Act would stand impliedly repealed to

the extent of repugnancy and such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy

under Article 254 of the Constitution.

60. On a cursory reading of the entire provisions of the Regulations,2010, even word by word, what comes to be known is, that, except the penal

provisions, the Regulations are in conformity with the statute and are in furtherance of achieving the object of the enabling Act and it is not shown

to this Court that the authority has exceeded its limits in framing the regulations. But, on the penal provisions, it is not made out by the Council as to

under what authority of law, it can proceed against the institutions for penal action. In the absence of any inconsistency with the provisions of the

Act, this Court cannot sit in appeal over examining the correctness or validity of the regulations. Therefore, the delegating power for the authority,

which made the legislation/regulations, is in conformity with the provisions of the Act and that delegation when not exceeded, except the penal

provision under Clause 11.1 of the Regulations, this Court is not in agreement with the contention raised by the petitioners that the entire

regulations are ultra vires of the Act. Hence, the regulations are in conformity with the provisions of the Act and in furtherance of the object of the

enabling Act and there is no infringement of any of the fundamental rights. Therefore, no interference is required in the said regulations. However,

Regulation 11.1, which authorises civil and criminal action against the defaulting institutions, is not contemplated under the provisions of Act.

Therefore, it is ultra vires of the enabling Act. In such a situation, there is no other scope for this Court except to confirm the validity of the

Regulations 2010, excluding Clause 11.1, which is a penal provision, made without the authority of law.

Subordinate Legislation : Scope of Judicial Review -

61. On the question of scope of judicial review, learned Senior Counsel appearing for the AICTE would strenuously contend on the plea of ouster

of the court''s jurisdiction, that in essence, the position with regard to the justiciability of exercise of the policy decision by the authority is limited.

While exercising the power of judicial review of the authority, the court is not the appellate authority and the law does not permit the court to direct

or advise the authority in the matter of the policy, which exclusively lies under the Constitution within the sphere of the Legislature or the Executive.

The only scope is while examining the Policy, the Government has to check whether it violates the fundamental rights of the citizens or is opposed

to the provisions of the Constitution or opposed to any enabling Act or manifestly arbitrary. In the absence of any such thing, the petitioner has no

right to challenge the Regulation framed by the competent authority. On the other hand, learned Senior Counsel appearing for the petitioners have

pointed out that the respondents, who have framed the Regulations, transgressed their statutory power, affecting the constitutional rights of the

petitioners and the Regulations have been arbitrarily and unreasonably made in a hasty manner. Therefore, this has to be judicially reviewed by this

Court within the ambit of the framework of the judicial review.

62. The law is well settled. The constitutional system of Government abhors absolutism and it being the cardinal principle of our Constitution that

no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere co-ordinate constitutional status, or even

the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which

partake the character of judicial or quasi-judicial decision. The power of judicial review is a constituent power and cannot be abdicated by judicial

process of interpretation. However, justiciability of the decision taken by the authority is an exercise of power by the court hedged by self-imposed

judicial restraint. The courts are entitled to examine as to whether those circumstances were existing when the decision was made. In other words,

the existence of the circumstances in question is open to judicial review, though the opinion formed by the authority is not amenable to review by

the courts. This can be done by the courts while confining this to the acknowledged parameters of the judicial review namely, illegality, irrationality

and mala fides. Such scrutiny of the materials will also be within the judicially discoverable and manageable standards.

63. In Ekta Shakti Foundation''s case reported in Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, , the Supreme Court has held that while

exercising the power of judicial review of administrative action, the court is not the Appellate Authority and the Constitution does not permit the

court to direct or advise the executive in the matter of policy or to sermonize quo any matter, which under the Constitution lies within the sphere of

the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. Similarly, in the case of

Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, , the scope of judicial review of governmental policy has been well

defined. In the said judgment, the Supreme Court has held that 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 any statutory provision or manifestly arbitrary. In the case of Basic Education Board, U.P. Vs. Upendra Rai and Others, , a similar

view was taken by the Supreme Court that the court cannot interfere with policy decision of the Government unless it is in violation of some

statutory or constitutional provision.

64. In the instant case, on examination of the Regulations challenged, it is seen that there is no lack of competency to make the above subordinate

legislation, namely, the Regulations and it is not made out that it has infringed the fundamental rights also. While examining the above Regulations, it

is also found that it is not opposed to the provisions of the Constitution or the enabling Act and in the absence of any arbitrariness and

unreasonableness, the cardinal principles laid down by the Supreme Court holding that the courts cannot interfere with the 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. AICTE has framed the regulations to improve the standard of technical education, which

is a welcome measure. This court does not find any of the violations as stated supra and the scope of judicial review of the above Regulations is

not made out except to one clause i.e., Regulation 11.1, which provides for civil and criminal action against the institutions, which is not

contemplated under the enabling Act. Therefore, the regulations, except Regulation 11.1, are valid.

Policy Decisions - Interference of Court :

65. With regard to the interference of court in Policy Decisions, learned Senior Counsel appearing for the petitioners would strenuously contend

that any Regulation will be repugnant, if it is not in conformity with the object and scheme of the provisions of the Act. Even if the law can be

declared ultra vires on the ground of arbitrariness and total unreasonableness when any criterion is fixed by a statute or by a Policy, an admission

should be made by the authority making delegated legislation to follow the Policy formulation broadly and substantially and in conformity therewith.

Therefore, the Regulations must conform to the provisions of the Act and if it is not so, the provisions of the Constitution mandates that even the

Policy decision can be subjected to judicial review and subordinate legislation may be struck down. Per contra, learned Senior Counsel appearing

for the AICTE while refuting the above contention, would contend that the right of the State to change its policy from time to time under the

changing circumstances could not be challenged on the ground of arbitrariness or unreasonableness. When the petitioner questions the validity of

the Government Policy, it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the

degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good

reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provisions of the enabling act.

66. In the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., , it was held that so far as questioning the validity of

governmental policy is concerned, it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and

test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good

reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. In the case of M/s. Ugar Sugar

Works Ltd. Vs. Delhi Administration and Others, , the Supreme Court has held that if the policy cannot be faulted on grounds of malafide,

unreasonableness, arbitrariness or unfairness, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In

tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts

are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been

adopted or not. It is best left to the discretion of the State.

67. In the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, , the Supreme Court has held that in a democracy, it is the

prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in

economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of

the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court. In Ekta

Sakthi Foundation'' case referred to above, the Supreme Court has held that the scope of judicial enquiry is confined to the question whether the

decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the

provisions of the Constitution.

68. In the case of Vasu Dev Singh and Ors. v. Union of India and Ors. reported in (2006) 12 SCC 753, the Supreme Court has held that a

legislative policy must conform to the provisions of the constitutional mandates. Even otherwise, a policy decision can be subjected to judicial

review. It was further held therein that a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account

very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the

Constitution, which can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article

14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into

account relevant circumstances which the Court considers relevant. The Supreme Court has categorically held that a subordinate legislation would

not enjoy the same degree of immunity as a legislative act would.

69. While analysing the above legal position in the matter of policy decision or exercise of discretion by the Government, so long as infringement of

fundamental rights is not shown, the courts will have no occasion to interfere and the court should not substitute its own judgment for that of the

executive in such matters. The Regulations issued by the AICTE are no way in infringement of any fundamental rights and are contrary to the

provisions of the Act and therefore, such Policy decision has been exercised with the discretion of the authority based on the changing needs of the

technical education and such a Policy conforms to the provisions of the Act and this Court cannot sit in appeal to examine the correctness of such

Policy. It is not normally within the domain of any court to weigh the pros and cons of the Policy or to scrutinise it and test the degree of its

beneficial or equitable disposition for the purpose of varying, modifying or annulling it.

70. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is

also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts

set out on affidavits. The Court would dissuade itself from entering into this realm which belong to the executive. It is within this matrix that it is to

be seen whether the new policy violates Article 21. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or

non-compliance by the State with its constitutional or statutory duties.

71. In this case, this Court does not see any violation of the constitutional or statutory provisions in framing the regulations. In other words, the

regulations framed by AICTE are well within its powers, except Regulation 11.1. So, no interference is called for with the same.

Whether the Regulations are Prospective or Retrospective in nature ?

72. According to the learned Senior Counsel for the petitioners, as per the provision u/s 10(a) of the Act , the norms and standards fixed under the

impugned Regulations can be done only by conducting appropriate survey and collecting data and following the rational method to change the

Regulations. The norms and standards prescribed under the new Regulations are in various aspects different from the norms and standards of 2006

Regulations. As per 2006 Regulations, the existing Institutions submitted an explanation for extension of approval, additional intake etc., in time.

The Council has not processed those applications which were made in time. At the fag end of the year, i.e. on 31.12.2009, the Council chose to

publish a notification purporting to inform all the Institutions that the Council was in the final phase of introducing e-governance process and revising

the procedure for granting approval to the applicants of the existing Technical Institutions and for the establishment of new Technical Institutions,

kicking off programmes, new courses, additional intakes, extension of approval and thereafter it has intended to address the respective Institutions

to submit revised representations by uploading the same in the web portal with the AICTE by 28.02.2010. The Gazette notification of the new

Regulation dated 15.01.2010 was published on 06.02.2010. According to the learned Counsel, it will have prospective effect and it cannot have

retrospective effect to those institutions who have applied already, i.e. before 31.08.2009. Circumventing the above submission, learned Senior

Counsel appearing for the AICTE would submit that the Regulations which are framed by the Council are applicable to the petitioners and their

applications are to be processed as per the new Regulation and they cannot claim that the applications should be processed based on 2006

Regulations.

73. As per the Existing Regulations, the existing institutions submitted applications within the prescribed time viz., 31.08.2009 for the academic

session 2010-2011 for extension of approval, additional intake etc. But, the Council has not processed these applications which were in time.

Surprisingly, at the fag end of the year on 31.12.2009, the Council chose to publish a notification, purporting to inform all the institutions that the

Council was in the final phase of introducing e-governance process and revising its procedure for granting approval for the following types of

applications of technical institutions :

(a) Establishment of new technical institutions including integrated campus.

(b) Starting of new programs, new courses, additional divisions and change in intake in the existing AICTE approved technical institutions.

(c) Extension of approval for the existing AICTE approved technical institutions.

(d) Provision of seats for PIO/NRI category/Tuition Fee Waiver Schemes.

(e) Entry and operation of foreign universities/institutions/collaborations imparting technical education in India.

(f) Closure of AICTE approved courses.

(g) Second shift institutions/courses.

74. Even in the said public notice published in December 2009, there is no whisper that the Council was going to introduce a new set of regulations

which were yet to be framed and published. On the contrary, towards the end of the said public notice, the Council reassured all the institutions

that all pending accreditation proposals will also be processed from 10th January as per the norms and procedures existing before June,2009, and

that applications received after June,2009, will be processed as per the new norms and procedures. However, these applications need to upload

afresh on the web portal www.nba.india.org in the revised formats giving the details of the processing fee if already remitted.

75. Subsequently, by a letter dated 01.02.2010 addressed to the institutions, the Council required the institutions to submit revised reports by

uploading the same in the web portal of the Council by 28.02.2010. Even in this communication, there was no suggestion that the Council was

framing new Regulations revising the earlier norms and standards and even the existing institutions will have to comply with the same. By another

public notice dated 07.02.2010, the Council informed the institutions the various softwares that would be required for the institutions concerned for

uploading the compliance report.

76. The above acts of the Council would go to show the intention of the Council to apply new regulations to the existing institutions, which will

have some adverse consequences. Therefore, if the new regulations are given retrospective effect, it will adversely affect the institutions, which are

with a legitimate expectation that their applications would be processed in time in order to proceed with the admissions for the academic year

2010-2011. Though many decisions of the Supreme Court have been pointed out stating that the law as on the date of process of application has

to be applied, in the given peculiar facts and circumstances of the case, as there were existing regulations, the petitioners have applied with a fond

hope that their applications would be processed as per the said regulations. In such view of the matter, while giving due consideration to the law

laid down by the Supreme Court, in this case, the petitioners had already submitted applications but the same were not processed. Now, the

intention of the Council to bring in new regulations in furtherance of the Act in order to have transparency and accountability is certainly a factor to

be taken note of, but it is for the prospective effect and it cannot be given retrospective effect. In addition, in paragraph 12 of the additional

counter affidavit, dated 18.03.2010, filed on behalf of AICTE in W.P. No. 3848 of 2010, it has been categorically admitted by the Council as

follows :

12. I respectfully submit that it is also clarified that the new norms and standards specified vide Regulations published on 6th February 2010 shall

have prospective effects. It means that the ongoing technical education programmes in existing technical institutions shall not be affected adversely.

If the existing institutions intend to start new programmes or courses etc. their applications for these programmes shall be evaluated as per the new

Regulations. However, the new Regulations will be fully applicable for the applications seeking approval for establishment of new technical

institutions. However, all the applications, whether for establishment of new institution or seeking various kinds of approval by the existing

institutions are required to be filled on line on the web portal of AICTE.

77. It is admitted by AICTE in paragraph 10 of the additional counter that there is shortage of M.Tech.faculty and the existing colleges would be

allowed to recruit B.Tech.Degree holders with such requirements as given in the earlier Regulations. But, in paragraph 12 of the same counter, it is

stated that if the existing colleges apply for new courses/additional intake in existing courses, then, they have to comply with 2010 norms. Having

admitted that there is a shortage of M.Tech.faculty, it is irrational to insist upon M.Tech faculty for new courses and additional intake for existing

courses.

78. When the existing institutions have validly presented their applications as per 2006 Regulations, AICTE is bound to process the same under the

said Regulations and it is not justified in refusing to process the applications and to demand the uploading of fresh applications as per the new

Regulations 2010 for the year 2010-2011.

79. In Nani Shah''s case reported in (2007) 15 SCC 406, the Supreme Court has held that so far so good, but we completely fail to understand

that even when there were backlog vacancies how was the Government justified in giving a retrospective effect from 02.11.1994 in four cases and

from 31.12.1994 in favour of Shri.T.Tapi. There is no justification whatsoever of giving the retrospective effect. We, therefore, endorse the view

expressed by the High Court that there was no necessity of giving the retrospective effect. In the case of Divisional Forest Officer and Others Vs.

S. Nageswaramma, , the Supreme Court has held that, renewal of lease not being a vested right, the application for renewal must be disposed of

according to law prevailing as on that date. In the case of State of Madhya Pradesh v. Krishnadas Tikaram reported in 1995 Supp (1) SCC 587,

the Supreme Court has held that it is settled law that the grant of renewal is a fresh grant and must be made consistent with law.

80. In the case of State of Tamil Nadu Vs. Hind Stone and Others, , the Supreme Court has held that the submission was that it was not open to

the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the

basis of R. 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. In Delta

Engineers Vs. State of Goa and Others, , the Supreme Court has held that it is a cardinal principle of constitution that every statute is prima facie

prospective unless it is expressly or by necessary implication made to have a retrospective operation.

81. An analysis of the above facts and the principles laid down by the Supreme Court would reveal that as per the 2006 Regulation, which was in

force during which period, the existing petitioner Technical Institutions applied were required to submit their applications on or before 31.08.2009.

Accordingly, the petitioner Institutions submitted their applications for the academic year 2010-2011. The legitimate expectation of the petitioner

Institutions is that their applications and petitions should be processed as provided under the Schedule; but the AICTE has failed in its statutory

duty to process the applications as per the 2006 Regulations, which were the only Regulations in force at that point of time and then they were

repealed by 2010 Regulation, which came in to force only on 06.02.2010, after expiry of the date of submission of the applications. Therefore, the

Regulation framed by the AICTE will have prospective effect and it cannot be applied retrospectively.

82. It is a cardinal principle of law that every statue is prima facie prospective unless it is expressly or by necessary implication made to have a

retrospective operation. But, the rule in general is applicable where the object of the statue is to affect vested rights or to impose new burdens or to

impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is

deemed to be prospective only.

83. Also, in view of the clear stand taken by the Council that the new Regulations 2010 shall have only prospective effect and that the ongoing

technical education programmes in the existing technical institutions shall not be affected adversely, the Council is estopped from pressing for the

new norms for the existing institutions for the present academic year. That apart, the New Regulations 2010 specifically repealed AICTE 2006

Regulations. Such a repeal can take effect only prospectively with effect from 06.02.2010 i.e., the date of publication of New Regulations in the

Gazette of Government of India and not retrospectively. Hence, AICTE 2006 Regulations alone apply for the academic year 2010-2011.

Accordingly, this Court holds that the Regulations are prospective in nature.

Whether the Approval Process Hand Book to be gazetted separately ?

84. As regards the validity of the Approval Process Hand Book, it is contended by the learned Senior Counsel for the petitioners, that the Hand

Book has no force of law, as it was not gazetted, and though the regulation has been gazetted on 06.02.2010, it is mandatory on the part of the

respondents to publish Approval Process Hand Book also in the gazette.

85. On the other hand, it is vehemently contended by the respondents that under Clause 4.3 of the regulations, it is provided that the Council shall

publish, from time to time, Approval Process Hand Book, detailing the procedure to process the applications of institutions and/or promoters and

also under Clause 4.6, it is provided that the procedure for grant of approval shall be prescribed in the Approval Process Hand Book by the

Council from time to time.

86. In this connection, the statement of the petitioners in paragraphs 9,10,11 and 12 of the affidavit filed in support of W.P. No. 6093 of 2010 is

relevant :

9. It is stated that that downloading of the earlier Approval Process Hand Book containing 114 pages was possible only for a few institutions and

the on-line application format could not be downloaded from the website for many institutions, since the Server was continuously busy and not

available.

10. It is stated that another advertisement was given by AICTE in The Hindu dated 07.02.2010 giving configuration for smooth access of the web

portal. However, the web portal was accessible only during the second week of February2010.

11. It is stated that the earlier Approval Process Hand Book contained 114 pages and the subsequent version which was made available from

10.02.2010 contained only 99 pages. It is now understood that in between there was yet another Hand Book containing 110 pages.

12. It is stated that the contents of these Hand Books were not similar and there were several changes in the requirement at every stage.

87. The Council did not file any counter denying these averments specifically made in the affidavit. Therefore, the averments contained in

paragraphs 9 to 12 are deemed to have been admitted by the Council to be true. When such is the position, the Council issued the impugned

Regulations and published the same on 06.02.2010. The Council insisted that even the existing institutions should apply as per the new norms and

standards prescribed under the Approval Process Hand Book. Some of the drastic changes introduced under the new norms and standards are as

follows :

(a) Qualification of the faculty insisting upon post-graduation as pre-requisite qualification;

(b) Post of Lecturer has been abolished resulting in the Lecturers facing threat of losing their employment ; and

(c) Penal provision in Regulation 11.1.

88. A perusal of the material documents and regulations would reveal that the Approval Process Hand Book is a procedure, which forms part of

the regulations and, therefore, there is no need for a separate notification in the gazette. It has also been indicated in the regulations that the Hand

Book forms part of the regulations once the regulations are notified in the official gazette. In Rajendra Agricultural University Vs. Ashok Kumar

Prasad and Others, , the Supreme Court has held that the requirement that the statute should be published in the Official Gazette is an integral part

of the process of ""statute making"". Therefore, it goes without saying that the Had Book also is notified.

Doctrine of Legitimate Expectation :

89. A question has been raised that there is a substantive right available to the petitioners and they expect that right has to be secured to them even

on the changed Policy. An argument was placed that they had a substantive right on the date of submissions of their application on or before

31.08.2009 as per the Regulation substantially provided under 2006 Regulation. Accordingly, they have applied and they expected that their

applications have to be processed but their applications were kept pending by the AICTE without processing for quite some time. The substantive

right under 2006 Regulation for their extension of time for approval as per the schedule of dates has to be granted to them, but it is not done so.

Though the learned Counsel for the AICTE refuted this position stating that the Public Notice has been made on 31.12.2009, intending to promote

transparency and accountability for changing the Policy in the progress in the Technical Institutions and they have framed the Regulations on

15.01.2010 and gazetted on 06.02.2010. Therefore, the petitioners have expected that their applications have to be considered immediately after

they made it.

90. The doctrine of legitimate expectation is well settled. A plethora of precedents elucidating the principles of doctrine of legitimate expectation is

laid by the Supreme Court. In the case of Government of Tamil Nadu v. The Director, Directorate of Government Examination reported in 2002

(1) L.W. 732, the Supreme Court has held that the principle of legitimate expectation consists of two parts, i.e. (1) substantive and (2) procedural

and that a case of substantive legitimate expectation would arise when a Government or an authority within the meaning of Article 12 of Indian

Constitution, by representation or by past practice, arose expectation, which it would be within its powers to fulfil and the Court can interfere when

the decision taken by the authority is arbitrary, unreasonable or not taken in public interest. The further requirement is that the representee should

suffer detriment acting upon such representation. Another legal principle evolved by the Supreme Court in Navjyoti Coo-Group Housing Society

etc. Vs. Union of India and Others, , is that the doctrine of legitimate expectation as in the case of audi alteram partem, cannot be put into

straitjacket formula and that each case has to be weighed on its facts as to whether the doctrine of legitimate expectation is fit to be invoked or not.

91. The said principle has been upheld by a Division Bench of this Court in the case of Sakthi Rani v. The Secretary of the Bar Council of Tamil

Nadu reported in (2010) 2 L.W. 746, wherein, this Court has held that insofar as the application of legitimate expectation is concerned, it is a well

settled principle of law that the said principle is not a very strong right, but it is based upon various other factors and it can be invoked incidentally.

The doctrine of legitimate expectation can be invoked where there is an irreparable loss to the party and public interest does not suffer.

92. Doctrine of legitimate expectation is not a very strong right, but it is based upon various other factors and it can be invoked incidentally. The

doctrine of legitimate expectation can be invoked where there is an irreparable loss to the party and public interest does not suffer. Though a right

based upon the legitimate expectation is not a legal right, when the expectation is legitimate, reasonable, logical and valid and a certain degree of

fairness is required from the other persons, then the doctrine of legitimate expectation can be invoked. The doctrine can be invoked if the decisions

of the administrative authority affect the person by depriving him of some benefit or advantage.

93. On analysis of the above facts and principles, it is expected by the petitioners that their applications made in time as per the schedule could be

processed in time, but this has not been done by the AICTE on the ground that they want to change the order to promote transparency and

accountability in technical education and they kept the applications without processing. The expectation of the petitioners are legitimate and it

should be granted to them. Therefore, on the doctrine of the legitimate expectation, the petitioners are entitled for processing all their applications

to the benefit of the Doctrine.

Epilogue:

94. It is pointed out by the Council that as many as 10,001 technical institutions inclusive of the institutions running engineering courses have

applied to AICTE for various approvals required under the regulations as per the procedure prescribed, but, so far as Tamil Nadu is concerned,

309 of the existing Engineering Colleges have applied for approval as per the procedure under the Regulations of the year 2010. It is also pleaded

that out of 2,805 new institutions which have applied for approval as per the new regulations all over the country, 123 are from the State of Tamil

Nadu and the Council shall process the applications of the said institutions, who opted for new regulations.

95. Learned Counsel for the petitioners have argued one factor that there is want of faculty in every institution and therefore the respondents have

relaxed the eligibility with regard to qualification for appointment of faculty members. Though I am not opposed to that, the quality of education and

the standard are to be maintained by our nation to cater to its needs reckoning with technological advancement and to compete with the multi-

national developments. Such being the requirement of every institution, the authorities concerned in this regard have to give important attention to

these areas in order to maintain the quality of education in our country. This concern of the Court is to be taken into account by all the authorities

concerned in their future endeavour and some immediate attention is required for that purpose.

96. For development and progress of any society, changes are required in terms of the newer technology, financial growth and other factors, which

are relevant for the introduction of a new concept, policy or a subordinate legislation. It shall be the endeavour of every authority under the

Union/State to ensure that there must be a scientific approach to the issue, by undertaking survey, collecting data, forecasting all the needed growth

and development of the technical education. If the said exercise is not done, any newer concept or policy or regulation will have some adverse

impact. Therefore, in the interest of nation, particularly, in the field of education, which takes the younger generation to the newer world on the

advancement of technology development, the authority must bear in mind every factor before resorting to any newer concept, policy or regulation

and carefully consider its effect.

97. In the governance of the system, it is the prerogative of each Government and its organs or authority concerned to follow its own policy. Often,

a change in government or authority may result in the shift in focus or change in educational policies. Any such change may result in adversely

affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a

decision bringing about change cannot per se be interfered with by the Court. Wisdom and advisability of educational policies are ordinarily not

amenable to judicial review, unless it can be demonstrated that the policy is contrary to any Constitutional principles or statutory provision. In other

words, it is not for this Court to consider relative merits of different policies/regulations and consider whether a wiser or better one can be evolved.

But, when there is arbitrary exercise of power, the Court can very well interfere with such policies of the Government.

98. In the light of my foregoing discussions and analysis of various legal provisions, after giving due consideration to the various decisions of the

Supreme Court and of this Court, and upon the material consideration of every aspect of the case, the following conclusions are arrived at : To

sum up,

(i) All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations 2010, except Regulation 11.1, are upheld.

(ii) Regulation 11.1 of the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations 2010, which

contemplates civil and criminal action against the institutions, is ultra vires of the All India Council for Technical Education Act, 1987, and without

authority of law. Therefore, it is struck down. However, it is open for AICTE to substitute this clause by any provision in accordance with the

provisions of the Act.

(iii) The applications of the writ petitioners who applied on or before 31.08.2009, which was the last date for filing of applications as per the

AICTE Regulations,2006, for extension of approval/additional intake/introduction of new courses/variation intake shall be governed by the

Regulations, 2006 and approval be granted accordingly forthwith for this academic year 2010-2011. However, approval for the next academic

year will be governed by the new Regulations, 2010.

(iv) The applications of the writ petitioners who opted for new regulations shall be approved as per the new Regulations, 2010.

(v) New Regulations 2010 shall have only prospective effect.

(vi) Approval Process Hand Book is an integral part of the Regulations and, therefore, there is no need to publish the same in the Gazette of

Government of India.

(vii) In its future endeavour, AICTE shall take policy decisions based on ground realities after undertaking survey in various fields of technical

education, collecting data on all related matters and making forecast of the needed growth and development in the technical education, for which

purpose it should consult with the stakeholders i.e., the academicians, colleges and other experts in the field, as contemplated u/s 10(a) of the Act,

affording an opportunity to the institutions concerned.

99. Writ Petitions are disposed of accordingly. No costs. Consequently, the connected M.Ps. are closed.