

**Court No. - 7**

**Case :-** WRIT - C No. - 19815 of 2019

**Petitioner :-** Integrated Academy Of Management And Technology

**Respondent :-** All India Council For Technical Education And 4 Others

**Counsel for Petitioner :-** Abhinav Gaur, Anoop Trivedi (Senior Adv.), Vibhu Rai

**Counsel for Respondent :-** Rohit Pandey, Pranjal Mehrotra

**Hon'ble Ajay Bhanot, J.**

1. By the order dated 30.04.2019, the All India Council for Technical Education (AICTE), declined to grant the extension of approval for the academic year 2019-20 to the petitioner, and put the petitioner under the “no admission” category for the academic year 2019-20.

2. The petitioner is aggrieved by the order dated 30.04.2019 passed by the All India Council for Technical Education (AICTE), and has assailed it in this writ petition.

3. Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Abhinav Gaur, learned counsel for the petitioner, submits that the petitioner has been denied the requisite approval, overlooking the past credentials of the institution. The impugned order, dated 30.04.2019, was passed in violation of principles of natural justice. The provision for an occupancy certificate was introduced for the first time in the academic session 2017-18. No date has been fixed, for applicability, of the aforesaid provision, to pre-existing institutions. The institution, has been running since 1996, and has been continuously granted approvals' over the years.

4. Sri Pranjal Mehrotra, learned counsel for the All India Council for Technical Education (AICTE), in opposition to the writ petition, submits that the provision, for submission of occupancy certificate, is mandatory. He, emphatically contends, that the petitioner, has failed to submit the

occupancy certificate, and hence, cannot be granted the approval for academic year 2019-20.

5. Heard Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Abhinav Gaur, learned counsel for the petitioner, Sri Rohit Pandey, learned counsel for the respondent No.5-University and Sri Pranjal Mehrotra, learned counsel for the All India Council for Technical Education (AICTE).

6. From a perusal of pleadings, as well as submission of the learned counsel for the parties, certain facts, essential for a just adjudication of the controversy, are beyond the pale of dispute.

7. The petitioner-institute, is running post graduate courses in Business Administration. The institute is affiliated to the APJ Abdul Kalam University. The All India Council for Technical Education (AICTE) granted approval to the petitioner-institute, for conducting the post graduate diploma course in management, for the first time, in the year 1996. Thereafter, till the disputed academic year, the All India Council for Technical Education (AICTE) regularly granted approvals, without any break.

8. By letter dated 19.07.2016, the All India Council for Technical Education (AICTE), introduced the requirement, for submission of occupancy certificates, by all institutes. The occupancy certificate, is a mandatory condition for approval of the institution.

9. However, the letter dated 19.07.2016, bifurcates the institutes into two categories, namely, the new technical institutes applying for approval for the first time, and pre-existing institutes which were being granted approvals', in the previous years.

10. The letter, dated 19.07.2016, states that the new institutes, which had failed to submit an occupancy certificate, were not eligible for approval, on account of this deficiency. The letter, dated 19.07.2016, referencing the existing institutes, records “*however, this condition was not applied to existing institutes*”.

11. The order, dated 19.07.2016, discusses the rationale, for making the occupancy certificate, a compulsory requirement. The order finally clarifies, that the occupancy certificate, shall be compulsory, for all existing All India Council for Technical Education (AICTE) approved institutes, for getting extension of approval, from the academic year 2017-2018.

12. The petitioner-institute, comes in the category of pre-existing institutions, which had approval, prior to the letter dated 16.09.2017. The petitioner-institute does not possess the occupancy certificate.

13. The All India Council for Technical Education (AICTE), granted approval to the petitioner-institute for the academic session 2017-2018, without the occupancy certificate. The approval letter dated 10.04.2017, does not record any deficiency, regarding failure to submit the occupancy certificate.

14. Pursuant to an inspection, of the petitioner-institute on 07.10.2017, the petitioner-institute was alerted to the aforesaid deficiency.

15. By letter dated 31.07.2018, the petitioner-institute submitted a compliance report, stating, that the building completion certificate, was applied for and the reply of the authorities was awaited. The letter concludes with the

assurance, that the occupancy certificate, shall be submitted, as soon as it is issued by the competent authority. The matter apparently rested there.

16. The Standing Hearing Committee then, processed the application of the petitioner-institute, for the academic session 2018-2019. The observation, of the Standing Hearing Committee, regarding occupancy certificate is extracted hereunder:

1 4	Availability of occupancy certificate/completion certificate/form D/ Structural Stability certificate-No	Applied for occupancy certificate but no documentation provided
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17. On the foot of the aforesaid inquiry, the Standing Hearing Committee, made the following recommendation:

*“Intake to be reduced to 60 from 180 from academic year 2018-19. The Institute itself has applied for reduction in intake. EOA to be given for A.Y. 2018-19 with reduction intake.”*

*“Therefore, after examining the entire matter in the facts and circumstances mentioned herein above, and in terms of the provisions of the Approval Process Hand Book for the A/Y 2017-18 and also the terms and conditions mentioned in the Letter of Approval, it has been decided that **Integrated Academy of Management and Technology, Adhyatmik Nagar, Delhi-Hapur bypass (NH-24), Udyog Kunj, Ghaziabad U.P.-201009** be granted **“EOA with reduction in intake to 60 from 180”** for the academic year 2018-19.”*

18. From the record, it appears, that the reduction in intake of students, was at the behest of the petitioner-institute, and not imposed by the All India Council for Technical Education (AICTE).

19. The recommendations of the Standing Hearing Committee, were accepted. Extension of approval, was granted for the academic session 2018-19, on 10.04.2018.

20. The deficiency, regarding non-availability of occupancy certificate, is hence well within the knowledge, of the All

India Council for Technical Education (AICTE). The All India Council for Technical Education (AICTE), did not take any further action, on account of the aforesaid deficiency. The failure to implement, the criteria and requirement of occupancy certificate, has not been explained, by the All India Council for Technical Education (AICTE).

21. With this background, the current academic session 2019-20 was approached. Some interactive correspondence ensued, between the All India Council for Technical Education (AICTE) and the petitioner-institute, regarding the non-submission of occupancy certificate. But no final decision was taken.

22. Hearing before the Standing Appellate Committee, happened on 23.01.2019, for grant of affiliation, for the academic year 2019-20. The petitioner-institute presented its case, before the Standing Appellate Committee. The Standing Appellate Committee made the following recommendation:

*“Whereas, the matter was placed before Standing Appellate Committee (SAC) held on 23.01.2019 and Institute was requested to present their case before the Committee alongwith relevant supporting documents. The SAC had made the following recommendation:*

*'In light of undertaking given for occupancy/completion/D/Structural Certificates, Extension of Admission for academic session 2019-20 recommended.’*

23. The undertaking submitted by the petitioner-institute, as referenced in the Standing Appellate Committee proceedings, has been brought in the record, by the All India Council for Technical Education (AICTE). The undertaking, being relevant to the controversy, is reproduced below:

“To  
The Director (Approval)  
AICTE, Delhi

DT. 23/01/2019

*Sub: Submission of occupancy certificate/completion certificate*

Sir,

*This is to bring to your kind notice that we had applied for building completion certificate with concerned department, but he have not received the same from the department till date. In undertake to submit the certificate at AICTE as soon as I get it from concerned department. I will submit copy of proof of application submission at the earliest within 10 days.*

*Regards*

*XXXX*

*DR DEEPAK SAXENA*

*REGISTRAR*

*Submitted to AICTE (SAC)*

*23/01/2019”*

24. By communication dated 05.02.2019, the All India Council for Technical Education (AICTE), required the petitioner, to submit the occupancy certificate in light of its undertaking. The communication, has been the pivot in the arguments of the All India Council for Technical Education (AICTE), and hence, is being extracted in extenso:

*“Madam,*

*Reference SAC held on 23.01.2019 at AICTE, HQ to verify compliance of deficiencies by the Institute. With regard to the deficiencies of Occupancy Certificate/Completion/Form-D/Structural Stability Certificate, the SAC has made the following observations:-*

*Observations*

<i>S No.</i>	<i>Deficiencies noted by EVC on 07.10.2017</i>	<i>Observation of SAC on 23.01.2019</i>
<i>1</i>	<i>Availability of occupancy certificate/completion certificate/form-D/Structural stability certificate No</i>	<i>Documentary evidence was not shown for application of certificate. Undertaking is submitted.</i>

*In view of the above, you are informed to submit the Occupancy Certificate by 28.02.2019 to AICTE, HQ, Delhi for further necessary action.”*

25. At this stage, it would be pertinent to notice, the variance, between the undertaking given by the petitioner, which was accepted by the Standing Appellate Committee, on 23.01.2019, and the communication sent by the All India Council for Technical Education (AICTE), on 05.02.2019.

26. The All India Council for Technical Education (AICTE), in its communication dated 05.02.2019, insisted on

submission of the occupancy certificate by 28.02.2019. The submission of the occupancy certificate, by a specific date, was not part of the undertaking given by the petitioner. The submission of the occupancy certificate was also not insisted upon, by the Standing Appellate Committee.

27. Later on, the review proceedings of the Standing Appellate Committee, were initiated. The review proceedings, of the Standing Appellate Committee, were conducted on 05.04.2019.

28. The submission of the petitioner, during the course of the arguments, consistent with the pleadings in the writ petition, is that the Standing Appellate Committee (Review) proceedings, were ex parte to the petitioner. The petitioner, was never put to notice, on the Standing Appellate Committee (Review) proceedings. Neither was the petitioner heard before the impugned order dated 30.04.2019 was passed. Consequently, the petitioner could not tender its defence before the review proceedings, or before the authority passing the impugned order. The petitioner was prejudiced, on account of adverse material, relied upon and unfavourable recommendations, made by the Standing Appellate Committee (Review), which were accepted by the authority, passing the impugned order.

29. Specific pleadings, in regard to lack of opportunity of hearing, and violation of the principles of natural justice, have been taken in the writ petition. Regard may be had to paras 10, 13, 14 and 18 of the writ petition. The assertions made in the aforesaid paras of the writ petition, have not been traversed in the counter affidavit.

30. Sri Pranjal Mehrotra, learned counsel for the respondent-

All India Council for Technical Education (AICTE), could not establish from the record, that the petitioner was given an opportunity of hearing, before the Standing Appellate Committee (Review), and by the authority passing the impugned order.

31. Moreover, the submissions, on behalf of the petitioner, stand corroborated by the endorsement, made in the Standing Appellate Committee (Review) proceedings. The minutes of the proceedings, record “*not called*”, under the head of “*cases presented by and position of the appellate organization*”.

32. The Standing Appellate Committee (Review) made the following recommendations on 05.04.2019:

*“Since the institute has not submitted any documentary evidence for the application submitted for the occupancy certificate i.e. no proof of fee etc., the committee recommends, “No EOA” to the institute for the A/Y 2019-20.”*

Based on the aforesaid recommendations, made by the Standing Appellate Committee (Review), the competent authority of the All India Council for Technical Education (AICTE), passed the impugned order on 30.04.2019.

33. The recommendation of the Standing Appellate Committee (Review) dated 05.04.2019, as well as impugned order dated 30.04.2019, have been made in violation of principles of natural justice. The prejudice caused to the petitioner is beyond recall.

34. The documents submitted by the petitioner, which in its understanding, attest to the fact, of submission of the application for occupancy certificate, before the Ghaziabad Development Authority, have not been considered. The receipt of the documents is not disputed. The impugned order suffers from non-application of mind, to relevant



material in the record. The impugned order, dated 30.04.2019, is rendered arbitrary and illegal.

35. The impugned order, dated 30.04.2019, records the deficiencies in the institution for placing it in the no admission category, in the following manner:

*“Since the institute has not submitted any documentary evidence for the application submitted for the occupancy certificate i.e. no proof of fee etc., the Committee recommends, 'No EOA' to the institute for the A/Y 2019-20.”*

36. The word 'etc.' employed in the impugned order dated 30.04.2019, shows that the criteria, on which the approval was declined to the petitioner-institution, was uncertain. The regulatory body, cannot afford to judge the eligibility of institutions for grant of approval, on the foot of uncertain criteria. This vitiates the decision making process, and also the order assailed in the writ petition.

37. The trail of relevant documents, and arguments of the All India Council for Technical Education (AICTE), leading up to this judgement, need consideration.

38. The Standing Appellate Committee (Review) recommendation dated 05.04.2019, does not demand the occupancy certificate. The Standing Appellate Committee (Review) recommendation dated 05.04.2019, and the impugned order dated 30.04.2019, do not disqualify the petitioner, for not submitting the occupancy certificate. The requirement posed by the All India Council for Technical Education (AICTE), to the petitioner, in these proceedings/order, was to tender, proof of submission of application, for occupancy certificate before the competent authority of the State.

39. The demand for occupancy certificate was explicitly made by the All India Council for Technical Education

(AICTE), in its communication dated 05.02.2019. It is also a requirement in the Approval Handbook. Subsequently, the demand for occupancy certificate, was specifically emphasized, by the All India Council for Technical Education (AICTE), in its arguments before this Court.

40. The inconsistency in the stands of the All India Council for Technical Education (AICTE), thus evidenced, does not augur well for a statutory regulator.

43. The order dated 30.04.2019, is arbitrary and illegal. The order dated 30.04.2019 cannot stand.

41. The order dated 30.04.2019, passed by the All India Council for Technical Education (AICTE), is quashed.

42. Before remitting the matter to the respondent-authorities, this Court is constrained to observe, that a regulatory body, like All India Council for Technical Education (AICTE), has to ensure fairness and transparency in its proceedings. It is the prerogative of the All India Council for Technical Education (AICTE), to set the norms for infrastructure, and prescribe the criteria, for ensuring excellence, in higher technical education in the country.

43. The provision in dispute, has a laudable purpose. The occupancy certificate, (called completion certificate under the U.P. Urban Planning & Development Act, 1973) is issued by the competent authority of the State. In the instant case, it is the Ghaziabad Development Authority. The occupancy certificate, serves many purposes. Such certificate, attests to the safety standards of the buildings and also, adherence to the building bye-laws, and conformity with building plans. This prevents institutions from compromising with the infrastructure, by deviating from the

building bye-laws. Deviation from the building bye-laws, most often, operates to the detriment of the student community. The provision is mandatory in nature.

44. However, the vast powers of the All India Council for Technical Education (AICTE), also create vast responsibilities. The All India Council for Technical Education (AICTE), has to identify its norms in a clear manner. The All India Council for Technical Education (AICTE), has to alert the institutions, to the eligibility norms prior to consideration of applications for approval. The norms, have to be stated with clarity and implemented with uniformity. Uncertain standards, patchy implementation, and inconsistent stands by the All India Council for Technical Education (AICTE), have been evidenced in this case. These impeach, the credibility of the All India Council for Technical Education (AICTE). Such actions are contrary to the legislative mandate of the All India Council for Technical Education (AICTE), and defeat the purpose of its existence.

45. A clearly specified criteria for approval of institutions, is a pre-requisite of regulatory standards. Equal and faithful implementation of the criteria, are the touchstones of conduct, to which the All India Council for Technical Education (AICTE), being a statutory regulator is accountable.

46. The matter is remitted to the competent authority, of the All India Council for Technical Education (AICTE), for fresh consideration.

47. A writ of mandamus is issued commanding the competent authority, of the All India Council for Technical

Education (AICTE), to execute the following directions:

I. The competent authority of the All India Council for Technical Education (AICTE), shall decide the issue afresh, within a period of one week, from the date of receipt of a certified copy of this order.

II. Any material adverse to the petitioner shall be provided to the petitioner before the date of hearing.

III. The petitioner shall be given a fair opportunity of hearing, by the competent authority of the All India Council for Technical Education (AICTE), before passing any order.

IV. After hearing the petitioner, the competent authority of the All India Council for Technical Education (AICTE), shall pass a reasoned and speaking order as per law.

V. The entire exercise shall be completed within a period of one week, from the date of receipt of a certified copy of this order.

48. The writ petition is partly allowed, to the extent indicated above.

**Order Date :-** 19.07.2019  
Ashish Tripathi