

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.2367 OF 2018

IN

CIVIL APPEAL NO.17922 OF 2017

INSTITUTION OF MECHANICAL ENGINEERS (INDIA)  
THROUGH ITS CHAIRMAN

...Appellant

VERSUS

STATE OF PUNJAB & ORS.

...Respondents

**J U D G M E N T**

**Uday Umesh Lalit, J.**

1. Civil Appeal No.17922 of 2017 (arising out of Special Leave Petition (CC) No.7390) was filed in this Court by the appellant challenging the judgment and order dated 06.11.2012 passed by the High Court<sup>1</sup> in Civil Writ Petition No.12909 of 2009 and connected matters. Insofar as the case of the

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<sup>1</sup> High Court of Punjab and Haryana at Chandigarh

appellant was concerned, Writ Petition No.12909 of 2009 was disposed of by the High Court<sup>1</sup> holding, that the Membership Certificate granted by the appellants could not be treated as equivalent to a Degree in Engineering.

2. The appellant, a Society registered under the Societies Registration Act, 1860 is said to have been established to promote the profession and practice of Mechanical Engineering Professionals. Amongst its activities, it conducts bi-annual examinations known as Technician Engineers' Part-I and Part-II, Automobile Technician Engineers' Examination Part-I and Part-II, Production Technician Engineers' Part-I and Part-II, Refrigeration and Air Conditioning Technician Engineers' Examination Part-I and Part-II and Section-A and Section-B of Associate Membership Examination in Mechanical Engineering. On successful completion of such examinations, the Certificate "Associate Member of Institution of Engineers" ('AMIE' for short) is awarded by the appellant.

3. The University Grants Commission Act, 1956 ("the UGC Act", for short) was enacted to make provisions for coordination and determination of standards in Universities and Section 2(f) defines University to mean "... a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation

with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act”. In terms of Section 3, status of “deemed to be University” can be conferred upon an Institution for higher studies other than a University. In terms of Section 22(1) of the UGC Act, right to confer degrees can be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or by an institution deemed to be a University under Section 3 of the UGC Act or by an institution specially empowered by an Act of Parliament to confer or grant degrees.

4. On 26.05.1976, the Government of India, Ministry of Education and Social Welfare, Department of Education, on the recommendation of Board of Assessment for Educational Qualifications provisionally recognized *“a pass in the Associate Membership Examination of the Mechanical Engineers Association of India at par with a degree in Mechanical Engineering from a recognized Indian University/Institution for the purpose of recruitment to superior posts and services under the Central Government for a period of three years.”* On 06.10.1981 the Government of India, Ministry of Education and Culture, Department of Education, on the recommendation of Board of Assessment for Educational Qualifications, decided to continue to recognize a

pass in AMIE of the appellant for the purpose of recruitment to superior posts and services under the Central Government.

5. All India Council for Technical Education Act, 1987 ('the AICTE Act' for short) was enacted to provide for the establishment of the All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement 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. The terms 'technical education' and 'technical institution' are defined in Section 2 (g) & (h) as under:-

“(g) “technical education” means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programmes or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(h) “technical institution” means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;”

Section 10 of the AICTE Act enumerates functions of the AICTE<sup>2</sup>

established under Section 3. Said Section 10 is as under:-

10. Functions of the Council. – 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 purposes of performing its functions under this 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;

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

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

(i) technical institutions, and  
(ii) Universities imparting technical education in coordination with the Commission;

(d) promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes;

(e) formulate schemes for promoting technical education for women, handicapped and weaker sections of the society;

(f) promote an effective link between technical education system and other relevant systems

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<sup>2</sup> All India Council for Technical Education

including research and development organisations, industry and the community;

(g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability;

(h) formulate schemes for the initial and in-service training of teachers and identify institutions or centres and set up new centres for offering staff development programmes including continuing education of teachers;

(i) lay down norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations;

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examinations and awarding of membership certificates;

(m) lay down norms for granting autonomy to technical institutions;

(n) take all necessary steps to prevent commercialisation of technical education;

- (o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;
- (p) inspect or cause to inspect any technical institution;
- (q) 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;
- (r) take steps to strengthen the existing organisations, and to set up new organisations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements;
- (s) declare technical institutions at various levels and types offering courses in technical education fit to receive grants;
- (t) advise the Commission for declaring any institution imparting technical education as a deemed University;
- (u) set up a National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme;
- (v) perform such other functions as may be prescribed."

6. A Notification was issued on 11.07.1988 by the Government of India, Ministry of Human Resource Development (Department of Education) to the following effect:-

“On the recommendations of the Board of Assessment for Educational Qualifications, the Government of India has been pleased to recognize the Part-I and Part-II Technician Engineers’ Examination (T) conducted by the Institution of Mechanical Engineers (India) at par with a Diploma in Mechanical Engineering from State Polytechnic for the purpose of employment to subordinate posts and services under the Central Government.”

By endorsement dated 19.08.1988 issued by Government of Punjab, Department of Education, the qualifications mentioned in the said Notification dated 11.07.1988 were recognized for the purpose of recruitment to subordinate posts and services under the control of Government of Punjab.

7. While dealing with certain complaints against the appellant, Member Secretary, AICTE in his letter dated 27.04.2000 addressed to Government of India, Department of Education; MHRD<sup>3</sup> stated that many deficiencies were found in the curriculum offered by the appellant in its programmes. Later, the recognition granted insofar as examinations conducted and certificates issued by the appellant for the purposes of employment under the Central

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<sup>3</sup> Ministry of Human Resource Development



Government was withdrawn by MHRD<sup>3</sup> vide Notification dated 10.06.2002.

The exercise was preceded by hearing given to the appellant by a High Level Committee which was appointed to review the recognition granted to Parts I & II of Technician Engineers Examination conducted by the appellant and the relevant portion of the Notification was:-

“The High Level committee for recognition of Education Qualification in its special meeting held on 12.2.2002 and 15.5.2002 in pursuance of the directions of the Hon’ble High Court of Delhi dated 31.1.2002 in the matter of Civil Writ Petition No.3570/2001 and LPA No.49-50/2002 relating to Institution of Mechanical Engineers (India), Mumbai reviewed the recognition granted to Part-I and II of Technician Engineers Examination of the Institution of Mechanical Engineers (India), Mumbai for the purpose of employment under Central Government.

2. After giving a fair hearing to the Institution of Mechanical Engineers (India), Mumbai, the High Level committee took following decisions:

- (i) Recognition of Associated Membership Examination of Section A & B and Part-I and II of Technician Engineers Examination (T) of the Institution of Mechanical Engineers (India), Mumbai for the purposes of employment under the Central Government stand withdrawn with immediate effect.
- (ii) Withdrawal of the recognition will be effective prospectively, i.e. students who have already got

Section A & B and Part\_I and II awards from IME (India), Mumbai will continue to be eligible for employment in Central Government.

- (iii) IME (India), Mumbai will be at liberty to approach the Ministry of Human Resources Development for recognition of awards granted by them for employment purposes in the Central Government as and when they remove all deficiencies with regard to revision and upgradation of curriculum, examination system, procedure for appointment and qualification of examiners, and other related issues, as pointed out by the Group constituted by the High Level Committee.”

8. The appellant challenged said Notification dated 10.06.2002 by filing Civil Writ Petition No.3907 of 2002 in the High Court of Delhi which by its order dated 24.06.2002 had initially stayed the operation of said Notification. However, said Writ Petition was dismissed on 07.07.2003 by the Single Judge. Letters Patent Appeal (LPA) No. 584 of 2003 arising therefrom was disposed of by the Division Bench by order dated 09.03.2004 with following observations: -

“The appellant is aggrieved by the order passed by the learned Single Judge dated 7.7.2003 by which the writ petition was dismissed. The short grievance in this appeal is that the recognition of the appellant was withdrawn by notification dated 10.6.2002 for the purpose of employment under Central Government and as a matter of fact the notification itself

mentioned that Mechanical Engineers (India) (hereinafter referred to as “IME”), would be at liberty to approach the Ministry of Human Resource Development for recognition of awards granted by them for employment purposes in the Central Government as and when they remove all deficiencies with regard to the revision and upgradation of curriculum, examination system, procedure for appointment and qualification of examiners and other related issues as pointed out by the Group constituted by the High Level Committee.

Learned counsel appearing for the Union of India submits that after the appellant has removed all the deficiencies as indicated in para (iii) of the Notification and as and when they would approach the Government of India, Ministry of Human Resource Development, Department of Secondary and Higher Education, the same will be considered as expeditiously as possible and in any event within three months from the date of receipt of the request for recognition from the appellant.

No further directions are necessary in these appeals. Both appeals and all pending applications are disposed of accordingly.”

The matter was carried further by the appellant by filing Special Leave Petition (Civil) No. 9387 of 2004 which was disposed of by this Court as under:-

“Mr. Parasaran, learned Additional Solicitor General, states that the application made by the Petitioner to the Government will be considered within six weeks from today. He states that whilst so considering the representation, the Government will also consider, whether the students who had joined prior to the withdrawal of the recognition, be allowed to graduate.

In view of this statement, learned senior counsel appearing for the Petitioner applies for withdrawal of the Special Leave Petition. The Special Leave Petition is allowed to be withdrawn.”

9. Thereafter, the matter was re-examined and the recognition granted for its educational qualifications and enjoyed by the appellant was restored with effect from 16.10.2006 vide Notification dated 24.11.2006. The relevant part of the Notification was as under:-

“The Institute of Mechanical Engineers(India), Mumbai has been running Section A & B of Association Membership course, equivalent to Degree in Mechanical Engineering since 1976, vide this Ministry’s letter No.F.18-31/71-T.2 dated 28.05.1976 and Part I & Part II of Technical Engineers (T), equivalent to Diploma in Mechanical Engineering from a State Polytechnic, since 1988, vide this Ministry’s letter No.F.1-5/87/T.7/T.13 dated 11.07.1988. In the year 2002, while withdrawing the recognition of these courses, Government of India allowed the IME (India), Mumbai to approach this Ministry for recognition of their Diploma/Degree courses only after the removal of all the deficiencies pointed out by AICTE. Accordingly, the above Institute submitted a request along with the requisite material for review and consideration of this Department. This Department got the material re-examined by AICTE. AICTE through its Expert Committee re-examined both the courses and submitted its recommendations with revision of syllabus for both the courses.

The High Level Committee for recognition of educational qualification considered the matter in its

meeting held on 16.10.2006 and on its recommendation, Govt. of India has decided the following:-

(i) The recognition of the courses run by IME, Mumbai may be restored with effect from 16.10.2006. With this recognition IME will run the courses based on new syllabus approved by All India Council for Technical Education (AICTE). As per the approval, the Technical Engineering courses Part-I & II (Diploma Level) will have 22 papers in place of existing 14 papers and Degree level course of Section A & B of Associate Membership will include 24 papers in place of 11 papers at present. In addition to this, there will be nine elective subjects. After completing theory papers, students will have to undergo at least 3 months mandatory apprenticeship/practical training/project report at an All India Council for Technical Education approved Polytechnic for Part I & II of Technician Engineers Course for award of Certificate equivalent to Diploma in Mechanical Engineering and the Apprenticeship/Practical training of the same duration in AICTE approved Degree Colleges for award of Certificate equivalent to Bachelors Degree in Mechanical Engineering for Section A & B of Associate Membership Course.

(ii) The students who were registered prior to 10.06.2002 for Part I & II of Technician Engineers (Diploma Level) and Section A & B of Associate Membership course (Degree Level) will be allowed to complete the courses with pre revised syllabus till the next scheduled examination, to be held in December 2006. Their Degree/Diploma will be recognized for employment in Central Government. Those who do not complete their courses by that time (December 2006), will have to follow the revised syllabus.”

10. In the year 2008, Writ Petition (Civil) No. 1640 of 2008 (Kartar Singh vs. Union of India and others) was filed in public interest before the High Court submitting *inter alia* that number of study centres and illegal institutions were running in the State which were virtually selling Degrees and Diplomas and the petition prayed for appropriate reliefs holding Degrees and Diplomas awarded by such study centres/institutions to be invalid for government jobs. The appellant was not a party to this petition.

Writ Petition (Civil) No.12909 of 2009 (Jagmohan Singh vs. State of Punjab and others) was filed in the High Court<sup>1</sup> to which the appellant was a party and the petition prayed *inter alia* that the Certificate of Membership issued by the appellant be declared invalid for recruitment and promotion to the service concerning State affairs. An application was preferred by the appellant in said Writ Petition that the matter was covered by the earlier decision of the Division Bench of the High Court in “Tejinder Singh vs. Punjab State Electricity Board and others”. Writ Petition (Civil) No.12909 of 2009 was thereafter disposed of by a consent order dated 06.07.2011 in terms of the earlier judgment in Tejinder Singh’s case. A Review Application was, however, preferred against said consent order dated 06.07.2011 by original

Respondent No.5 and the matter was directed to be placed along with Writ Petition (Civil) No.1640 of 2008.

11. On 10.07.2012, a letter was issued by Government of India, Ministry of Human Resource Development, Department of Higher Education to the appellant stating as under:-

“It has been decided that a review of the curriculum, mode of delivery of the program, its duration, etc. would be carried out by the concerned Regulator and until such a review is complete, the Institutions with permanent recognition will not make fresh admissions. Alternatively, the institution has the option of realigning its curriculum with the National Vocational Educational Qualification Framework (NVEQF) and proceed further.”

12. By common Judgment and Order dated 06.11.2012 the matters were disposed of by the High Court<sup>1</sup>. Insofar as the case of the appellant was concerned, the Review Application was allowed and in paragraphs 205 to 213 of its Judgment, the High Court<sup>1</sup> observed:-

“205. In CWP NO.12909 of 2009, the issue is in respect of Certificate of Membership obtained from the institute of Mechanical Engineers (India), Mumbai (respondent No.4), as a degree for promotion to the post of Sub Divisional Engineer in terms of the Punjab Water Supply and Sanitation (Engineering Wing), Group ‘A’ Service Rules, 2007. In CWP No.9200 of 2012, the petitioners claim promotion on

the basis of similar membership from the same Institute.

206. The petitioner in CWP No.12909 of 2009 is a degree holder from Panjab University, whereas respondent No.5 is said to have obtained a Certificate of Membership from respondent No.4 i.e. the Institute of Mechanical Engineers (India), Mumbai alleging the same without attending any regular classes, undertaking practicals and without taking any study leave from the Department. It is the contention of the petitioner that the certificate issued by the said respondent is not a degree in terms of Section 22 of the UGC Act, as respondent No.4 is not authorized to confer any right of degrees.

207. A Division Bench of this Court in CWP No.12502 of 2004 titled “Tejinder Singh Vs. Punjab State Electricity Board & others” decided on 02.04.2007, has considered the question of recognition of AMIE degree granted by the Institute of Mechanical Engineers (India), Mumbai. It was found that the degree from the Institute of Mechanical Engineers (India), Mumbai is recognized by the Government of India vide letter dated 06.10.1981, which was accepted by the Government of Punjab. In view of such finding, the writ petition was allowed, as the petitioner has obtained degree prior to its de-recognition in the year 2003.

208. A perusal of the Certificate relied upon by the petitioner in Tejinder Singh’s case (supra) as also the present case (Annexure A-2) shows that the Institute of Mechanical Engineers (India), Mumbai is a Society registered under the Societies Registration Act, 1860. It appears that such institute is taking advantage of its similarity in name with the Institution of Engineers established under Royal Charter, as discussed above. The Institute of Mechanical Engineers (India), Mumbai is a registered Society and is thus a Technical



Institution and is required to obtain approval from AICTE in respect of its courses in technical subjects. The membership of such institute cannot be treated as equivalent to a degree, as the candidate qualified from such institute cannot be said to be at par with the members of Institution of Engineers established under the Statute.

209. The distinction between Institute of Mechanical Engineers (India), Mumbai and that of an Associate Members of Institution of Engineers, was not brought to the notice of the Court in Tejinder Singh's case (supra). The scope of Institution of Engineers established under the Royal Charter has been examined above.

210. Learned counsel for the respondent has referred to a notification dated 24.11.2006, wherein the request of Institute of Mechanical Engineers (India), Mumbai for recognition of its Diploma/Degree courses was examined by the Government of India only after the removal of all the deficiencies pointed out by AICTE. The notification is to the effect that AICTE has re-examined both the courses and submitted its recommendation with revision of syllabus for both the courses. The Government of India decided that IME (India), Mumbai will run the courses based on new syllabus approved by AICTE w.e.f 16.10.2006. As per another communication produced in Court on 18.10.2012, The Government of India has communicated to respondent No.4 to the following effect:-

“Please refer to this Ministry's notification No.23-2/2001-TS.III dated 24.11.2006 regarding Section A & B of Association Membership course, equivalent to Degree in Mechanical Engineering and Part I & II of Technician Engineers (T), equivalent to Diploma in Mechanical Engineering from

a State Polytechnic. It has been decided that a review of the curriculum, mode of delivery of the program, its duration, etc. would be carried out by the concerned Regulator and until such a review is complete, the Institutions with permanent recognition will not make fresh admissions. Alternatively, the institution has the option of realigning its curriculum with the National Vocation Education Qualification Framework (NVEQF) and proceed further. This issue with the approval of competent authority.”

211. In terms of such communication, till the review is completed by the Regulator, which in the case of Respondent No.4 would be AICTE, the Institutions with permanent recognition have been prohibited from making admission. There is no document produced or alleged that Respondent No.4 has permanent recognition from any Council or Board in respect of its courses. Therefore, the degrees or the membership granted by respondent No.4 cannot be treated as equivalent to Degree in Engineering.

212. Even in terms of the notification dated 26.11.2006, the students such as respondent No.5 registered prior to 10.06.2002 have been allowed to complete the course with pre-revised syllabus till the next scheduled examination to be held in December, 2006 and those, who do not complete their courses by that time will have to follow the revised syllabus. Since respondent No.5 is not said to have completed course in terms of notification dated 24.11.2006, he cannot claimed to be a degree-holder entitled to be promoted. We may state that such notification can be treated as a qualification recognized by Government of India for the purpose of employment. Thus, we find that respondent No.5 is not qualified to claim that such certificate is equivalent to a degree.

213. In view of the above, CWP No.12909 of 2009 is allowed and CWP No.9200 of 2012 claiming the qualification from Institution of Mechanical Engineers (India), Mumbai as equivalent to degree is dismissed.”

13. On 06.12.2012 in modification of its earlier communication dated 10.07.2012, a Notification was issued by the Central Government, the relevant part of which was as under:-

“i. Above order dated 10.07.2012 regarding cases of recognition in perpetuity for equivalence in Central Government jobs, stands withdrawn.

ii. All those students who are enrolled with the institutions with permanent recognition upto 31.05.2013 would be eligible for consideration in accordance with MHRD office memorandum/order in force pertaining to their course for equivalence in Central Government jobs. However, these concerned orders will cease to have effect from 01.06.2013 onwards.

iii. After 31.05.2013, based on the review by the regulator i.e. AICTE, a decision on continuation of the certification of equivalence of degree/diploma shall be taken by statutory regulator.

iv. Statutory regulators should review the fresh proposals/extension as per their statute and regulations.

2. In case, the institution desires to opt for realigning curriculum with NVEQF, it is advised to

use this transition period upto 30.05.2013 for necessary action in this regard.”

14. On 09.03.2013 the appellant filed SLP (C) No.7390 of 2013 in this Court, challenging the aforesaid decision of the High Court dated 06.11.2012. According to the appellant, the Review Application was allowed without giving any opportunity to the appellant. In its counter affidavit, State of Punjab submitted that the appellant was neither a University nor a deemed University nor was it conducting any technical examination through distance mode and the Certificate granted by the appellant was nothing more than an honour; that the appellant did not have approval from the UGC<sup>4</sup> or AICTE nor was it declared by State of Punjab to be a recognized institution for the purposes of relevant service rules and as such, the Certificate of Membership awarded by the appellant could not be held to be an essential qualification; and that MHRD<sup>3</sup> had not granted any approval to the appellant but simply granted recognition to the qualification only for the purposes of employment under the Central Government.

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<sup>4</sup> University Grants Commission

15. The Notification dated 06.12.2012 was challenged by Institution of Electronics and Telecommunication Engineers before the High Court of Delhi in Writ Petition (Civil) No. 3239 of 2013. It was submitted that though all the requisite information was supplied by said writ petitioner, no final decision was taken by the respondents in the matter. A Single Judge in his order dated 23.05.2013 observed:-

“10. Learned senior counsel for the petitioners submit that at this stage the Court should grant protection to the petitioners to the extent that the deadline of 31.5.2013 should not come in their way of granting admissions and also leaving the fate of the students in uncertainty, more particularly, for the reasons that the institutions are not aware as to the criteria what they have to met.

11. I have heard counsel for the parties and considered their submissions. Having regard to the stand taken by counsel for the parties, the O.M. dated 6.12.2012 qua the petitioners only with respect to the deadline of 31.5.2013 shall remain stayed till the next date of hearing, however, it is made clear that the admissions, which are made, will be subject to final orders, which will be passed in the writ petition.”

16. The appellant also challenged the Notification dated 06.12.2012 by filing Writ Petition No.7840 of 2014 in the High Court of Delhi in which following order was passed by a Single Judge on 19.11.2014:-

“Keeping in view the interim order dated 23<sup>rd</sup> May, 2013 in W.P.(C) No.3239/2013 as well as order dated 06<sup>th</sup> August, 2013 in W.P. (C) No.945/2013, the O.M. dated 6<sup>th</sup> December, 2012 with regard to the deadline of 31<sup>st</sup> May, 2013 qua the petitioner shall remain stayed till further order of this Court.”

17. During the pendency of the aforesaid Writ Petitions challenging the Notification dated 06.12.2012, certain information was called for from the appellant by AICTE and after having received responses from the appellant and similarly situated institutions, the matter was placed before a High Level Committee.

18. In August 2017, a Public Notice was issued by AICTE<sup>2</sup> to the following effect:-

“PUBLIC NOTICE

(For Professional Bodies/Institutes Imparting  
Technical Education)

Whereas MHRD, Govt. of India, through an order (vide OM No.11-15/2011-AR (TS.II) dated 06.12.2012) withdrew the recognition granted to all certificates/qualifications awarded by professional bodies/institutions in the field of technical education. The MHRD further stipulated that from 01.06.2013 onwards the courses for equivalence will cease to have effect for employment in Central Government and the decision on the continuation of the certification of equivalence of degree/diploma would be taken by the statutory regulator (AICTE) after review.

Accordingly, the Council in its 52<sup>nd</sup> Emergent Meeting held on August 03,2017 decided to recognize equivalence for all purposes including Higher Education & Employment to Technical Courses conducted by various Professional Bodies/Institutions which were duly recognized by MHRD with permanent recognition upto 31<sup>st</sup> May 2013. Thus all those students who were enrolled with these institutions with permanent recognition upto 31.05.2013, stand recognized.”

19. The matters arising from the decision of the High Court<sup>1</sup> were taken up together with the matters raising similar issues from Orissa and were considered and dealt with by this Court in its decision dated 03.11.2017 in Civil Appeal Nos.17869-17870 of 2017 etc. (Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro and others)<sup>5</sup>. Though Civil Appeal No.17922 of 2017 (arising out of SLP (CC) No.7390 of 2013) preferred by the appellant was listed along with all those matters, no submissions were advanced on behalf of the appellant. The decision rendered on 06.11.2012 by the High Court in ***Kartar Singh vs. State of Punjab***<sup>6</sup> etc. was affirmed by this Court.

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<sup>5</sup> (2018) 1 SCC 468

<sup>6</sup> 2012 SCC OnLine P&H 21066

20. Certain applications moved by various other parties seeking clarification of the decision dated 03.11.2017, were dealt with by this Court in its order dated 22.01.2018<sup>7</sup>.

21. Thereafter an application for clarification and modification of the decision of this Court dated 03.11.2017 was preferred by the appellant praying for following reliefs:-

- “(a) Clarify that the Final Judgment dated 03.11.2017 does not apply to Civil Appeal No.17922 of 2017 arising out of Special Leave Petition (Civil) No.15283 of 2013.
- (b) De-tag the Civil Appeal No.17922 of 2017 arising out of Special Leave Petition (Civil) No.15283 of 2017 filed by the Applicant herein, and list it for hearing; and/or
- c) Modify paragraph 55 of the Judgment to the extent that the view taken by the Punjab and Haryana High Court in so far as it relates to the Applicant herein (i.e. paragraphs 205-2013) is set aside.”

22. The matter came up before the Registrar of this Court who refused to register the application holding that the application for clarification/modification was intended to seek review of the judgment dated 03.11.2017 passed by this Court. The order of the Registrar is presently under

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<sup>7</sup> (2018) 2 SCC 298



challenge in M.A. No.2367 of 2018. On merits, the submissions of the appellant are:-

“B. It is submitted that the appellant herein has merely sought to clarify that the Final Judgment does not apply to the Appellant institution as it is a professional body that does not impart any education but merely conducts bi-annual examinations and awards certificates, and is fundamentally distinct from ‘deemed to be universities’ which are imparting technical education through the distance mode.

... ..

The Subject matter of the batch of Special Leave Petitions considered by this Hon’ble Court, as also, the batch of petitions before the Hon’ble High Court of Punjab and Haryana, was the validity of degrees granted by “Deemed to be Universities” imparting technical education through the distance education mode on the strength of only DEC permission, without having been conferred the “Deemed University” status for technical education by the UGC, and without approval under the AICTE Act for imparting technical education. Further, the batch of matters considered the inter-relations; contradictions if any, and the role of the authorities under three central statutes i.e. University Grants Commission Act, 1956, Indira Gandhi National Open University Act, 1985, and All India council for Technical Education Act, 1987, particularly in respect of technical/professional courses offered through the Distance Education mode.

... ..

It is submitted that the Appellant herein is not governed by either of the aforementioned three central

statutes, and it is a professional body that has been specifically accorded recognition by the Government of India. It is submitted that the judgment of the Hon'ble High Court of Punjab and Haryana has been inadvertently upheld qua the Appellant institution, and therefore it is imperative that the clarification as sought by the Appellant herein, for reasons detailed in the Application be rendered by this Hon'ble Court."

23. This Court issued notice on 14.09.2018 to the Respondents and requested Mr. C.A. Sundaram, learned Senior Counsel who had appeared as Amicus Curiae in the main matter to assist this Court. Notices were also issued to AICTE<sup>2</sup> and MHRD<sup>3</sup>. The learned Amicus Curiae placed before this Court Memos 1 and 2 on 11.10.2018 and 5.12.2018.

We heard Mr. Dhruv Mehta, learned Senior Advocate for the appellant, Mr. Karan Bharihoke, learned Advocate for the State, Mr. Ajit Kumar Sinha, learned Senior Advocate for MHRD<sup>3</sup>, Mr. Harish Pandey, learned Advocate for AICTE<sup>2</sup>, apart from Mr. C. A. Sundaram, learned Amicus Curiae.

24. According to the learned Amicus Curiae, the instant matter was completely covered by the decision of this Court in Orissa Lift Irrigation Corporation case (supra). He submitted that the stand of the appellant itself was that neither any education was imparted by the appellant nor did it

possess any infrastructure. The following portion from written submission filed by the appellant was relied upon:-

“That the Institution of Mechanical Engineers (India), Mumbai is a non-profit organization, registered as a Society. It receives no grant-in-aid or funding of any nature whatsoever, from the Central or any State Government or any of its autonomous or statutory bodies by whatever name. It is not and has never been a teaching institution. It is a “professional body” and merely conducts examinations in specialized engineering discipline-Mechanical Engineering and awards certificates to its member. The mode of conduct of the examination followed by the Institution of Mechanical Engineers (India), Mumbai, with basic minimum essential exposure to engineering and technology, are set out as under:

- i) No training is imparted directly by the Institution of Mechanical Engineers (India), Mumbai, as only the specific course curriculum (both theory/practical) and the study materials are only suggested.
- ii) The examination is only the qualifying exam, without drawing any equalization with the board/university, diploma or degree, as the certificate awarded for the same enables the candidates only to be confirmed in service and promoted in their respective departments.
- iii) The examinees privately study the course material and get practical experience and training on the job in their respective units or in their states/UT training institutes.”

The learned Amicus Curiae further submitted that though there was no regulatory framework for grant of certificates which were awarded by the appellant, over a period of time MHRD<sup>3</sup> had taken prevaricating stand. A decision was finally taken as communicated by public notice issued in August 2017 that all such certificates granted prior to 2013 would be recognized. However, the validity of the certificates pertaining to the period subsequent to 2013 was put on hold and AICTE<sup>2</sup> was required to consider the matter. In the light of the factual aspects on record, according to the learned Amicus Curiae following questions arise for consideration by this Court:-

“1. Whether a mere certification without any course or training can be treated as equivalent to a Degree/Diploma obtained pursuant to a Technical Education course for the purposes of government employment?

2. Whether, if so permissible, then the AICTE approval and setting of standards is not required prior to recognition of such Certificate?”

25. Mr. Dhruv Mehta, learned Senior Advocate for the appellant relied upon the communications issued by the Government of India from time to time recognizing the Certificate issued by the appellant to be at par with a degree in Mechanical Engineering from a recognized Indian University for the

purpose of recruitment to superior posts and services and more particularly the communications dated 26.05.1976, 06.10.1981, 11.07.1988 and 24.11.2006. It was submitted that the exercise undertaken pursuant to communication dated 10.07.2012 and public notice issued in August, 2017 put the matter beyond any doubt in so far as certificates issued prior to 2013 were concerned and as regards period subsequent thereto the matter was still engaging the attention of the concerned authorities. In the circumstances it was submitted that the High Court was not justified in observing that the certificates of Membership granted by the appellant could not be treated as equivalent to degrees in engineering and as such Civil Appeal No.17922 of 2017 preferred by the appellant be allowed.

26. Mr. Mehta, learned Senior Advocate also produced on record a compilation titled, “Methodology, Norms and the Curriculum that are followed for various programs conducted by the Institution IME (India)” Following extracts from said compilation are quite relevant:-

**“Functions of Examinations Committee:** the IME examinations are conducted under the supervision of an Examination Committee and by the Controller of Examinations. The Examination Committee is appointed by the Council to frame the academic rules, revise the syllabuses on the advice of Advisors or the Subject Experts Committee, overview the conduct of

the examinations, supervise the examination centers, declaration of the results and take other decisions pertaining to the examinations. The meeting of the examination committee is also held at least 5-6 times in a year.

**IME Examinations:** The institute conducts the IME examinations twice in a year. The examinations are held in the months of June and December. On successful completion of the academic requirement, the student is declared pass in TE II or Section B (Equivalent to Diploma or Degree in Mechanical Engineering). These courses are specially suitable for in service persons having no resources (Money and time) for enrolment as full time students and for those, who are age bar to get admission in the regular courses of study.

After completing IME qualifications, they can seek employment in government, public & private sectors and appear in GATE to get admissions in the institution of higher learning in India and abroad.

The council has appointed academicians and leading entrepreneurs as Advisors to help the council for carrying out the academic activities, revision of syllabuses, evaluation of scripts, supervising the practical training, suggesting the names of experts for academic assignments etc.

**Eligibility for Admission to Examinations:** Only student members of the institution are allowed to enroll/appear in any of the institution examination.

**Section B (Equivalent to B.E./B.Tech. Degree) in Mechanical Engineering:** IME is conducting Section-A and Section-B examinations in mechanical engineering, which have been recognized by the Government of India, State Governments and the Universities, in India and abroad, treating at par with

B.E./B.Tech. degree in mechanical engineering. The students who acquire the qualification from IME can apply for jobs either in state government, central government, government undertaking or in private sector and people in service, on acquiring the IME qualifications can get the benefit of promotion, if applicable.

**TE Part II (Equivalent to Diploma) in Mechanical Engineering:** IME is conducting T.Eng Part I and T. Eng. Part II examinations, as per the pattern of Section-A and Section-B examinations, leading to the award of qualification equivalent to the diploma in mechanical engineering, which has also been recognized by the Government of India, State Governments and the Universities, in India and abroad, treating at par with diploma in mechanical engineering. The students who acquire the qualification from IME can apply for jobs either in state government, central government, government undertaking or in private sector and people in service, on acquiring the IME qualification can get the benefit of promotion, if applicable.”

.....

**“Syllabus of Various Examinations:**

The IME syllabus is regularly subjected to revision regularly. The syllabus submitted to the AICTE through the Ministry of Human Resources Development, Government of India in 2005, which was approved and the IME was granted permanent permission to enroll the students and conducts the examinations, was based on the following principles:

- It was based on model syllabus of AICTE
- It incorporated the compulsory provision of conducting practicals in an AICTE approved

institution for a period of six months and writing a practical & project report and submitting the evaluation report.

- A student is required to appear in total of 6 papers in Part I of T.Eng; 5 Part II of T.Eng; 12 in Section A and 11 in Section B.
- A student cannot take more than 3 papers at one time in one semester (June/December) in part I of T.Eng. examinations and not more than 5 papers in Section A, B and Part II in one semester examinations.
- There have to be a gap of one year after passing Part I of T.Eng and Section A before appearing in next higher group.
- The duration to complete diploma and the degree (after diploma) in 3½ years.

**Revisions of Syllabus:** The syllabuses of the examinations, after 2005 have been revised in the year 2007 to include the subject of Environment as per directive of the Hon'ble Supreme Court of India. A major revision has taken place in the year 2011-12 to revise the contents in view of recent development, specially in the field of Computer, Design, Renewable Energy, Control and including Disaster Management in the contents. The experts, who have been acting as Advisors and others invited from the grading institutions were involved in the revision of the syllabuses.

The syllabuses revised in 2007 and 2012 and being followed, at present, are given at **Enclosure A1 and A2.**

**Appointment of the Examiners for Paper Setting and Evaluation of the Answer Sheets:** The Panel of



the Examiners is drawn from across the country preferably from among the teachers of engineering colleges/universities working/retired, from all the regions throughout country. The Panel of the Examiners is finalized by the Examination Committee and the appointment of the Examiner is done by the Controller of Examinations. The Chairman Examination Committee monitors the process regularly. In most of the cases to maintain secrecy more than one question paper is got set and one is picked up by the Controller of Examination.

**Standard and Pattern of Question Paper:** The paper setters are appointed having reasonably long experience of setting question papers in the university examinations. The question papers can be compared with the papers of any university, institution or society. The question papers of the last examinations conducted by the IME are enclosed **Enclosure B.**

**Practical Training and Project Report:** The candidates are required to undergo practical training for 3 months and/or write training cum project report to complete the requirements of T.Eng./Associate Membership examinations, after passing all the theory papers. The candidate will have to obtain prior approval of the IME for the choice of the institution, referee and topic for the project work. The rules for the practical training and projects are displayed on the website and given in the syllabus booklet.

The IME has signed the MOU with more than 100 institutions in different regions for the practical training and Project work, the list is given at **Enclosure C.”**

.....  
.....

**“No Local Centres and not Conducting Coaching Classes:** The institution does not recognize, allows or

conduct any coaching classes or local centre helping the candidates appearing in the examinations. The complete information is provided online and the candidate can contact the help line for any clarification. The candidates are also advised through the website of the institution to be aware of any such person or institution or coaching centre. Further, the students are also regularly advised that it is neither necessary nor required nor mandatory to submit the membership/examination/enrolment form through coaching institutes.”

.....

#### **“Academic Activities**

**Professional Activities:** The institution regularly organizes technical lecture meetings, symposia, seminars and workshops, intensive tutorials and workshop visit for the benefit of its members. The institution has instituted various Gold & Silver Prizes to honour the contributions of eminent engineers in the broad areas of engineering, sciences and technology.

The institution has brought out many monograms on topics of interests, course material for the students and engineering bulletin/newsletter.

**Non Formal Academic Programmes:** The institution regularly organizes or collaborates for organisation of the non formal academic programme. During earlier years, the IME has organised such activities in collaboration with Osmania University, College of Technology and Engineering, Maharana Pratap University of Agriculture and Technology, Shrinathji Institute of Technology and Engineering, Nathdwara etc.

The institution has set up a computer laboratory, which has been kept open during the years 1990-2005 for the students, who were not exposed to the

computer, to enable them to learn computation techniques, programming and data processing.”

27. Mr. Ajit Kumar Sinha, learned Senior Advocate for MHRD<sup>3</sup> stressed following aspects of the matter:-

1. No formal education in the nature or form of theory and/or practicals was being imparted by the appellant;
2. As found by the expert bodies, there was difference in curriculum; and
3. Admittedly, the appellant did not have any infrastructure and laboratories to impart any practical training.

28. Mr. Harish Pandey, learned Advocate appearing for AICTE<sup>2</sup> invited attention of this Court to the stand taken by the MHRD<sup>3</sup> in pending matters viz. Writ Petition No.7840 of 2014 in the High Court of Delhi. The stand as appearing in the affidavit was to the following effect:-

“15.It is submitted that Hon’ble Supreme Court of India in its decision on Civil Appeal No.17869-17870/2017 of Orissa Lift Irrigation Corp. Ltd. Vs. Rabi Sankar Patrao & Ors. had noted that AICTE has always maintained that courses leading to degree in Engineering cannot be undertaken through distance mode..... for the present purpose, that is the final word and is binding. Hon’ble Supreme

Court has also observed in the above judgment at para 38 that:-

*“Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory under the watchful eyes of Demonstrators or Lecturers. Face to face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals thus, constitute an integral part of the technical education system.”*

16. While the courses for which degree/diploma is given by these professional bodies is not exactly on distance mode, but in view of the findings of the gap analysis of AICTE, it is observed that the quality of courses conducted by these professional bodies is even worse than that conducted by the Open and Distance learning Institutes. As engineering is a subject, which requires intensive practical and workshop training and these professional bodies compromise on that very aspect, giving equivalency to the courses conducted by these bodies leads not only to compromise in the standard of education, but also adversely affects the future of students/participants of these courses.

17. It is submitted that earlier there were times, when there were very few Engineering Colleges and there was need to enhance the spread of engineering education and therefore, the course run by these professional bodies were given equivalency by MHRD. However, at present there is excess engineering education capacity created in the country and about 50% of the seats remain vacant every year.

Even some of the engineering colleges are closing due to lack of adequate admissions. Therefore, there is no need to continue to give equivalence, as this creates a system, where the quality of education is not ensured and the future of students is adversely affected.

18. Therefore, Ministry of Human Resource Development is of the considered view that in the interest of the future of students and maintenance of quality of education, it is necessary that no further equivalency is granted to those courses run by these professional bodies.”

29. Even though the hearing was concluded, in view of the stand as disclosed in the affidavit filed in Writ Petition No.7840 of 2014, the appellant was given an opportunity to reply to said affidavit. It was submitted by the appellant in response as under:-

“(n) It is submitted that the affidavit filed by the MHRD pursuant to the order of 19.02.2019 ought not to be considered for the following reasons:

- The affidavit contains nothing but a bald averment without either referring or annexing any order/minutes or decision of the MHRD. This is especially significant since the affidavit filed by the MHRD before this court by another Under Secretary is completely contrary.
- Only an order/decision/notification in this regard may be considered as a notification granting recognition which remains valid cannot be reversed without an order passed after procedure established by law.

- There is no indication of procedural or substantive due process having been followed.
- It is clear that there are no findings of gap analysis against the Petitioner.
- There Petitioner's valuable fundamental right to carry on business cannot be deprived without following due process of law.
- In the event the MHRD withdraws the Petitioner's recognition, the Petitioner must have a right and an opportunity to challenge the same.
- The case in that regard is pending before the Hon'ble High Court of Delhi and this valuable legal right including the right of appeal cannot be taken away."

30. At the outset, it must be stated that Civil Appeal No.17922 of 2017 preferred by the appellant stood disposed of by this Court on 03.11.2017. No submissions were advanced on behalf of the appellant at the time the entire group of matters was heard and considered by this Court. In our view, the Registrar of this Court was right in refusing to register Application for Clarification and Modification preferred by the appellant. However, since the record did not clearly indicate whether the Review Application was allowed by the High Court after hearing the appellant, in the interest of justice, the appellant was permitted to raise all the submissions on merits and we now proceed to consider the entire matter.

31. On its own showing, the appellant “does not impart any education but merely conducts bi-annual examinations and awards certificates”. The compilation referred to in paragraph 26 hereinabove also makes the position clear that the appellant “does not recognize, allow or conduct any coaching classes or local centres helping the candidates appearing in the examinations”.

32. In Orissa Lift Irrigation Corporation case<sup>5</sup> two questions were posed for consideration in paragraph 45 of said decision and the first of those two questions was as under:-

“A. Whether the deemed to be universities concerned in the present case, could start courses through distance education in subjects leading to award of degrees in Engineering:

(a) Without any parameters or guidelines having been laid down by AICTE for conduct of such courses in technical education through distance education mode?

(b) Without prior approval under the AICTE Act?”

The discussion in that behalf appearing in paragraphs 46 and 48 of the decision was:-

“46. The definition of “technical education” in Section 2(g) of the AICTE Act shows that the

emphasis is on the programmes of education, research and training in Engineering Technology in general and the idea is not limited to the institutions where such programmes of education, research and training are to be conducted or imparted. However, the definition of “technical institution” in Section 2(h) leaves out an institution which is a university. The distinction between the broader concept of “technical education” and the limited scope of “technical institution” is clear from Section 10 of the AICTE Act where certain functions concern the broader facets or aspects of technical education which by very nature must apply to every single institution (whether university or not) where such courses are conducted or imparted. At the same time, certain functions are relatable to technical institutions alone, which by definition are not applicable to universities. For example, functions in clauses (a), (b), (d), (e), (f), (l) and (n) are concerned with broader facets of technical education, while functions in clauses (k), (m), (p) and (q) deal with matters concerning technical institutions and thus may not apply to universities, whereas there are certain functions as set out in clauses (g) and (o) which apply to both “technical institutions” and “universities” imparting technical education. Clauses (c), (d) and (f) of Section 10 deal with subjects, inter alia, coordination of the technical education in the country at all levels; promoting innovation, research, development, establishment of new technologies, generation, adoption and adaptation of new technologies to meet the developmental requirements; and promoting and effecting link between technical education and systems and other relevant systems. AICTE is thus the sole repository of power to lay down parameters or qualitative norms for “technical education”. What should be course content, what subjects be taught and what should be the length and duration of the courses as well as the manner in which those courses be conducted is a part of the larger concept of “technical education”. Any idea or



innovation in that field is also a part of the concept of “technical education” and must, as a matter of principle, be in the exclusive domain of AICTE.

... ..

**48.** Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory under the watchful eyes of demonstrators or lecturers. Face to face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals, thus, constitute an integral part of the technical education system. If this established concept of imparting technical education as a qualitative norm is to be modified or altered and in a given case to be substituted by distance education learning, then as a concept AICTE ought to have accepted it in clear terms. What parameters ought to be satisfied if the regular course of imparting technical education is in any way to be modified or altered, is for AICTE alone to decide. The decision must be specific and unequivocal and cannot be inferred merely because of absence of any guidelines in the matter. No such decision was ever expressed by AICTE. On the other hand, it has always maintained that courses leading to degrees in Engineering cannot be undertaken through distance education mode. Whether that approach is correct or not is not the point in issue. For the present purposes, if according to AICTE such courses ought not to be taught in distance education mode, that is the final word and is binding—unless rectified in a manner known to law. Even National Policy on Education while emphasising the need to have a flexible, pattern and programmes through distance education learning in technical and managerial education, laid down in Para 6.19 that AICTE will be responsible for planning, formulation and maintenance of norms and standards

including maintenance of parity of certification and ensuring coordinated and integrated development of technical and management education. In our view, whether subjects leading to degrees in Engineering could be taught in distance education mode or not is within the exclusive domain of AICTE. The answer to the first limb of the first question posed by us is therefore clear that without the guidelines having been issued in that behalf by AICTE expressly permitting degree courses in Engineering through distance education mode, the deemed to be universities were not justified in introducing such courses.”

33. The role of AICTE<sup>2</sup> in Technical and Management education was emphasized in National Policy of Education, published by the Government of India in 1986, which was noted by this Court in Orissa Lift Irrigation Corporation case<sup>5</sup>. The concerned Regulations issued by AICTE<sup>2</sup> in the year 1994 were also considered under which no course or programme could be introduced by any technical institution except with the approval of AICTE<sup>2</sup>. Paragraphs 23.2 and 23.3 of the decision had extracted relevant portions of the National Policy of Education and the concerned Regulations of AICTE<sup>2</sup> as under:-

“23.2. In 1986, National Policy on Education was published by the Government of India, Part VI of which dealt with Technical and Management Education, Paras 6.6, 6.8 and 6.19 of the Policy were:-

“6.6. In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial education, programmes through a distance learning process, including use of the mass media will be offered. Technical and management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counselling service will be provided.

\* \* \*

6.8. Appropriate formal and non-formal programmes of technical education will be devised for the benefit of women, the economically and socially weaker sections, and the physically handicapped.

\* \* \*

6.19. The All India Council for Technical Education, which has been given statutory status, will be responsible for planning, formulation and maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring the coordinated and integrated development of technical and management education. Mandatory periodic evaluation will be carried out by a duly constituted Accreditation Board. The Council will be strengthened and it will function in a decentralised manner with greater involvement of State Governments and technical institutions of good quality.”

23.3. The AICTE (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes) Regulations were issued in 1994 (“the 1994 AICTE Regulations”, for short). Clause 4 of these Regulations was to the following effect:

“4.0. Requirement of grant of approval

4.1. After the commencement of these Regulations,

(a) No new Technical Institution or University Technical Department shall be started; or

(b) No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College or;

(c) No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma courses or programmes;

(d) No approved intake capacity of seats shall be increased or varied;  
Except with the approval of the Council.”

34. It was laid down in said decision that AICTE<sup>2</sup> is the sole repository of power to lay down parameters or qualitative norms for “technical education” and that it was within the exclusive domain of AICTE<sup>2</sup> to consider whether

subjects leading to Degrees in Engineering could be taught in distance education mode or not. The issue whether courses leading to degrees in Engineering could be taught through distance education learning was dealt with in extenso. It was laid down that by very nature, practical training would be an essential and integral part of engineering courses and that until and unless a clear policy was laid down by the AICTE<sup>2</sup>, no courses in engineering could be taught or imparted through distance education mode. It was held that in the absence of any guidelines having been issued by AICTE<sup>2</sup> expressly permitting courses leading to Degrees in Engineering through distance education, no such courses could be introduced. The consistent stand taken by the AICTE<sup>2</sup> was also noted in said judgment.

35. The point in question was again dealt with in the Order dated 22.01.2018<sup>7</sup> in paras 23 and 24 and it was stressed that conferral of degrees in Engineering through distance education mode was never approved in principle by AICTE. The appellant does not even claim to be imparting any education through distance education mode and only conducts bi-annual examination and awards certificates to those who qualify such examination. Considered in the light of the decision of this Court in Orissa Lift Irrigation

Corporation case<sup>5</sup>, the learned Amicus Curiae is right in his submission that the case of the appellant would be on a footing lower than the cases of deemed to be Universities as dealt with in that decision.

36. The consistent stand of the appellant has been that it is not covered under any of the Acts viz. the UGC Act, Indira Gandhi National Open University Act, 1985 and the AICTE Act. However, since it offers courses or programmes of technical education, as rightly held by the High Court, the appellant comes within the definition of “technical institution” as defined in the AICTE Act. Neither does the appellant, on its own grant Degrees in Engineering nor does it, in its capacity as an affiliated institution to a recognized University, prepare students in courses leading to Degrees in Engineering. Though it does not impart any instructions either in theory or in practical, it holds an examination, on satisfactory clearance of which it awards Certificates of Membership to candidates. The question is whether such Certificate could, as a matter of law, be recognised as equivalent to a Degree in Mechanical Engineering from a recognised Indian University? Nothing is clear as to under what statutory regime or under which legal provision can such equivalence to the Certificate issued by the appellant be granted or

conferred. No statutory provision has been pressed into service or relied upon to suggest that given the particular circumstances and/or, on satisfaction of certain parameters the appellant would be entitled to conferral of such equivalence or status.

37. In terms of Section 22(1) of the UGC Act, right to confer degrees can be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or by an institution deemed to be a University under Section 3 of the UGC Act or by an institution specially empowered by an Act of Parliament to confer or grant degrees. The idea appearing in Sub-Section (1) of said Section 22 is made emphatically clear by Sub-Section (2) which stipulates: “Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree”. The intent of the Parliament is clear that it is only that body which is referred to in sub-Section (1) of Section 22, that is competent to confer or grant degrees. The appellant does not fall under any of these categories enumerated in Section 22(1) of the UGC Act.

38. In Orissa Lift Irrigation Corporation Case<sup>5</sup>, it also arose for consideration whether a deemed to be University, without taking appropriate

prior permission could start courses leading to degrees in Engineering through open distance learning. That aspect of the matter does not arise in the present case and it is also not the case of the appellant, that it is entitled to award degrees in Engineering. Its submission however is, having been conferred the status of being equivalent to degrees in Engineering in respect of Certificates awarded by it, the appellant is entitled to continue having such benefit or advantage. There is nothing on record either in the form of any statutory provision or any statutory regulations or any scheme under which such equivalence could be granted by the MHRD<sup>3</sup>. It appears that claims made by various institutions like appellant were considered on case to case basis and equivalence was granted by MHRD<sup>3</sup>. The first of those communications was of the year 1976 when AICTE<sup>2</sup> Act was not in force. If the mandate of Section 22 disentitles any authority or person other than those specified in Section 22 (1) to award degrees, there is no power or authority in any one including MHRD<sup>3</sup> to award such equivalence.

39. The principle that what cannot be done directly cannot be achieved indirectly is well settled and was elaborated by this Court in following decisions:-



A) In *State of Tamil Nadu and Others v. K. Shyam Sunder and Others*<sup>8</sup>

as under:-

***“VI. What cannot be done directly—cannot be done indirectly***

**43.** “21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*. An authority cannot be permitted to evade a law by ‘shift or contrivance’.”

(See *Jagir Singh v. Ranbir Singh*<sup>9</sup>, *M.C. Mehta v. Kamal Nath*<sup>10</sup> and *Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.*<sup>11</sup>, SCC p. 344, para 21)”

B) In *Jagir Singh v. Ranbir Singh*<sup>12</sup> as under:-

**“5.** In order to cross the hurdle imposed by Section 397(3) it was suggested that the revision application before the High Court could be treated as an application directed against the order of the Sessions Judge instead of as one directed against the order of the Magistrate. We do not think that it is permissible to do so. What may not be done directly cannot be

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<sup>8</sup> (2011) 8 SCC 737

<sup>9</sup> (1979) 1SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381

<sup>10</sup> (2000) 6 SCC 213 : AIR 2000 SC 1997

<sup>11</sup> (2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904 : JT (2010) 11 SC 273

<sup>12</sup> (1979) 1 SCC 560

allowed to be done indirectly; that would be an evasion of the statute. It is a “well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance” (per Abbot, C.J. in *Fox v. Bishop of Chester*). “To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.” (*Maxwell*, 11th Edn., p. 109). When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court’s jurisdiction was invoked to avoid the order ‘of the Magistrate and not that of the Sessions Judge. The bar of Section 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Session Judge’s order.”

40. If a degree can be awarded only by those institutions which satisfy the description given in sub-Section (1) of Section 22 of the UGC Act, the mandate of a Parliamentary legislation cannot be circumvented or nullified by awarding equivalence to a Certificate issued and awarded by the appellant. What is the value of that certificate will be considered by each employer as and when the occasion arises. The appellant would certainly be entitled to award Certificate of Membership to its Members. What weightage the Certificates must have is for the individual employers to consider in a given case. The concerned employer may attach due importance to such Certificates while considering the worth and ability of the concerned candidates but to say

that the Certificates are equivalent to a degree and as such all the candidates who hold such Certificates are entitled to derive the advantages which a degree holder can, is completely a different issue.

41. In the present case, the communication dated 26.05.1976 under which the Certificate issued by the appellant was recognized to be equivalent to a Degree in Mechanical Engineering from a recognized Indian University, does not indicate any statutory provision under which such equivalence could be granted or conferred. This point becomes more crucial, as after the enactment of AICTE Act, the entirety of the field concerning “technical education” is kept in the domain of AICTE by the Parliament. Section 10 of the AICTE Act entitles AICTE not only to lay down norms and standards for courses, curriculum and such other facets of “technical education” but also entitles it under clause (l) to advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges etc. Going by the width of the power, after the enactment of AICTE Act, even such privileges could be conferred only after express advice of AICTE and within the confines of various statutory provisions.

42. Consequently, neither can the appellant claim, as a matter of right to be entitled to confer any degree nor can it claim that Certificate awarded by it must be reckoned to be equivalent to a Degree in Mechanical Engineering.

43. The High Court<sup>1</sup> was, therefore, right in observing:-

“... .. the Institute of Mechanical Engineers (India), Mumbai is a registered Society and is thus a Technical Institution and is required to obtain approval from AICTE in respect of its courses in technical subjects. The membership of such institute cannot be treated as equivalent to a degree, as the candidate qualified from such institute cannot be said to be at par with the members of Institution of Engineers established under the Statute. (para 208)

... ..

... ..There is no document produced or alleged that Respondent No.4 has permanent recognition from any Council or Board in respect of its courses. Therefore, the degrees or the membership granted by respondent No.4 cannot be treated as equivalent to Degree in Engineering.” (para 211)

44. However, the fact remains that the equivalence to the Certificates awarded by the appellant was granted by the MHRD<sup>3</sup> in consultation with AICTE<sup>2</sup> upto 31.05.2013 as is evident from Notification dated 06.12.2012 issued by the Central Government and Public Notice issued by AICTE in August, 2017. These communications also indicate that all those students who were enrolled upto 31.05.2013 would be eligible for consideration in

accordance with MHRD office memorandum/order in course. Though we have laid down that the Certificates issued by the appellant on successful completion of its bi-annual examination to its Members cannot be considered to be equivalent to a Degree, an exception needs to be made in favour of students enrolled up to 31.05.2013 and benefit in terms of the Notification dated 06.12.2012 and Public Notice as aforesaid ought to be extended to such candidates. The candidates had opted to enroll themselves so that they could appear at the examinations conducted by the appellant under a regime which was put in place by the Central Government itself and the course content as well as the curriculum were reviewed by the AICTE. However, the aforementioned Notification and Public Notice were clear that after 01.06.2013 the concerned orders granting equivalence would cease to have any effect.

45. In the circumstances we do make an exception in favour of such candidates enrolled upto 31.05.2013 and declare that the conclusions drawn in the present matter will apply after 01.06.2013. The Certificate awarded by the appellant to such candidates enrolled upto 31.05.2013 shall be considered equivalent to a Degree in Mechanical Engineering for the purpose of employment in Central Government.

46. In the premises, we do not find any error in the assessment made by the High Court<sup>1</sup> in paragraphs 205 to 213 of its judgment. We, therefore, dismiss all the submissions raised by the appellant and reject Miscellaneous Application No. 2367 of 2018. No costs.

47. In the end, we express our sincere gratitude for the assistance rendered by Mr. C.A. Sundaram, learned Amicus Curiae.

.....J.  
(Uday Umesh Lalit)

.....J.  
(Deepak Gupta)

New Delhi;  
August 13, 2019.