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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **W.P.(C) 8397/2022**

Between: -

SHIVAM CHAUDHARY, AGED 19 YEARS,
S/O SATYENDER,
R/O KH. NO. 17/10, G-BLOCK,
QUTUB VIHAR PHASE-1,
GOYLA DAIRY, NEW DELHI-110071PETITIONER NO.1

SHREYA RAMAN, AGED 18 YEARS,
D/O R. RAMAN,
R/O B-4, FIRST FLOOR, BALA JI APARTMENT,
SANT NAGAR DELHI – 110084PETITIONER NO.2

PRINCE KUMAR, AGED 19 YEARS,
S/O MUKESH KUMAR,
R/O B-6/96 NANAD NAGRI,
DELHI-110093PETITIONER NO.3

CHAITANYA GOTHWAL, AGED 18 YEARS,
S/O RAJESH KUMAR
R/O F-2, ARUNA NAGAR,
MAJNU KA TILLA,
CIVIL LINES, DELHI-110054PETITIONER NO.4

ADARSH TIWARI, AGED 18 YEARS,

S/O DEVNATH TIWARI
R/O KH NO. 452,
EAST SANGAM VIHAR, BAHAITA HAJIPUR LONI
GHAZIABAD (U.P.) – 201102PETITIONER NO.5

NEERAJ KUMAR, AGED 21 YEARS,
S/O NARESH PRASAD
BLOCK 14 QTR. NO 867,
LODHI COLONY,
LODHI ROAD, DELHI-110003PETITIONER NO.6

HARIOM, AGED 19 YEARS,
S/O SHRI KRISHAN
R/O B 393, SANGAM VIHAR, LONI,
GHAZIABAD (U.P.) -201102PETITIONER NO.7

(Through: Mr.Rishabh Kapur, Advocate)

AND

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION
THROUGH ITS AUTHORISED REPRESENTATIVE,
NELSON MANDELA MARG, VASANT KUNJ,
NEW DELHI – 110070RESPONDENT NO.1

GOVT OF NCT OF DELHI
DIRECTORATE OF TRAINING & TECHNICAL EDUCATION
THROUGH ITS CHIEF SECRETARY,
DELHI SECRETARIAT, I.P. ESTATE,
NEW DELHI – 110002.RESPONDENT NO.2

DELHI TECHNOLOGICAL UNIVERSITY
THROUGH ITS AUTHORISED REPRESENTATIVE,
SHAHBAD DAULATPUR, MAIN BAWANA ROAD,
DELHI-110042.RESPONDENT NO.3

NETAJI SUBHASH UNIVERSITY OF TECHNOLOGY
THROUGH ITS AUTHORISED REPRESENTATIVE,
DWARKA SECTOR-3, DWARKA, DELHI 110078

.....RESPONDENT NO.4

INDRAPRASTHA INSTITUTE OF INFORMATION
TECHNOLOGY

THROUGH ITS AUTHORISED REPRESENTATIVE,
OKHLA INDUSTRIAL ESTATE, PHASE III,
NEAR GOVIND PURI METRO STATION,
NEW DELHI-110020

.....RESPONDENT NO.5

INDIRA GANDHI DELHI TECHNICAL
UNIVERSITY FOR WOMEN

THROUGH ITS AUTHORISED REPRESENTATIVE,
JAMES CHURCH, NEW CHURCH ROAD,
OPP. ST, KASHMERE GATE, NEW DELHI 110006

.....RESPONDENT NO.6

JAMIA MILIA ISLAMIA UNIVERSITY

THROUGH ITS AUTHORISED REPRESENTATIVE,
JAMIA NAGAR, OKHLA, NEW DELHI 110025

.....RESPONDENT NO.7

UNIVERSITY OF DELHI
CLUSTER INNOVATION CENTRE

THROUGH ITS AUTHORISED REPRESENTATIVE,
GC NARANG ROAD, DELHI 110007

.....RESPONDENT NO.8

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY

UNIVERSITY SCHOOL OF INFORMATION AND
COMMUNICATION TECHNOLOGY

THROUGH ITS AUTHORISED REPRESENTATIVE,
GGSIPU, GOLF COURSE ROAD, SECTOR 16C,
DWARKA, DELHI, 110078

.....RESPONDENT NO.9

*(Through: Mr.Anil Soni, Standing Counsel
alongwith Mr. Devvrat Yadav and Mr.Prateek
Rana, Advocates for AICTE.*

Mr. Anupam Srivastava, ASC with Mr.Ujjwal Malhotra, Advocate for R-2.

Mrs.Avnish Ahlawat, SC for R-3,4 and 6 with Ms. Aliza Alam, Ms. Laavanya Kaushik, Mr.N.K.Singh and Mr.Manish Gusai, Advocates.

Mr.Arjun Mitra, Advocate for R-5.

Mr.Pritish Sabharwal, SC for R-7/JMI.

Mr.Ankur Chhibber, Ms.Samridhi Bhatt, Mr.Arjun Pawar, Mr.Shivam Rai, Mr.Amrit Kaul and Mr.Anshuman Mehrotra, Advocates for R-8.

Mr.Harsh Kaushik and Mr.Adrija Mishra, Advocates for R-9).

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Pronounced on: 02.06.2023

J U D G M E N T

1. The petitioners have filed the instant writ petition under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents, especially respondent nos.3 to 9 to provide admission through the lateral entry process to second year, B.Tech. programme for diploma holders in engineering and technology.

2. The facts of the case would show that the petitioners are diploma holders/final year students of three year diploma course in engineering. The petitioners seek admission to second year B.Tech. programme in respondent nos.3 to 9-Public Universities through lateral entry process as per the guidelines laid down by the respondent no.1-All India Council for Technical Education (hereinafter referred to as 'AICTE') for admission of students in the Degree Engineering Programme through the **All India Council for Technical Education (AICTE) Admission of Students in Degree Engineering Programmes through Lateral Entry Regulations, 2007** (hereinafter referred to as '**Regulations, 2007**').

3. The respondent no.1 is a statutory body established under the **All India Council for Technical Education Act, 1987** (hereinafter referred to as '**AICTE Act, 1987**') with an object to provide and promote proper planning and coordinated development of technical education in India. The respondent no.2 is the Government of NCT of Delhi. The respondent nos.3 to 9 are Public Universities established either under the State Acts or under the Central Acts.

4. During the course of submissions, learned counsel appearing on behalf of the petitioners submits that respondent no.9-Guru Gobind Singh Indraprastha University which is established under the State Act, viz., **Guru Gobind Singh Indraprastha University Act, 1998** is fully complying with the Regulations, 2007. Therefore, no grievance against the said University remains to be agitated.

5. He submits that so far as the respondent nos.3 and 6 are concerned, the Universities have also started to partially comply with the Regulations, 2007. However, the manner in which the admissions through lateral entry process are being granted is *ex facie* illegal and arbitrary. The respondent nos.4, 5, 7 and 8 are not complying with the Regulations, 2007 at all. He submits that the grievance against respondent nos. 3 to 8 is required to be adjudicated on merits.

6. Learned counsel for the petitioners further submits that the Regulations, 2007 are framed by respondent no.1-AICTE in exercise of the powers conferred by sub-Section(1) of Section 23 read with Section 10(b), (o) and (v) of the AICTE Act, 1987. According to him, bare reading of the Regulations, 2007 would indicate that the same is binding on all technical institutions and Universities either Government, Government aided or private (self-financing) for conducting courses/programmes *inter alia* in the field of technical

education, training and research in Engineering, Technology, etc. According to him, the Universities set up under the State Act or Central Act are specifically covered under the Regulations, 2007. Therefore, there is no escape for the respondent-Universities from providing admission in accordance with the Regulations, 2007.

7. He further submits that the Regulations, 2007 have been framed by the respondent no.1-AICTE while keeping in mind various disparities which were prevalent on account of the admission being granted to diploma holders like the petitioners in the first year of the course. By the time they are admitted in first year, their batchmates, who were with them in class X, are already one session ahead to such candidates. According to him, the Regulations, 2007 ensures that by the time the candidates like the petitioners get into B.Tech. programme, they already have three years experience and, therefore, they are granted admission directly in second year so as to ensure that they do not suffer loss of one year. He also states that having completed three year diploma, if again they have to be admitted in first year of the B.Tech. programme, they would be losing one precious year. He, therefore, submits that in order to enable the petitioners not to lose their one year, such a Regulation has been framed and the same is mandatorily to be complied with by all other institutions.

8. While emphasizing Clause 6.1(b) of the Regulations, 2007, he states that a student who has acquired a diploma in Engineering through a minimum of three years of institutional study after class X (Secondary School Leaving Certificate Examination), can be considered to be academically equivalent to a student who has passed the first year of the four year Engineering degree programme for which the qualifying examination is of the class XII+ level.

According to him, except respondent no.9-Guru Gobind Singh Indraprastha University, none of the Universities have prescribed any standards much less minimum standards to ensure compliance with the Regulations, 2007.

9. He states that in case the Universities desire to prescribe higher standards, the petitioners do not have any grievance in that respect. However, non-providing of the admission at all, under the Regulations, 2007 is *de hors* the mandate of the very Regulations, 2007 and contrary to the provisions of the AICTE Act, 1987. He has placed reliance on the decisions of this court in the case of *Isha Wadhawa v. Guru Gobind Singh Indraprastha University and Ors.*¹, *Himanshu Pathak and Ors. v. NCT of Delhi and Ors.*² and the decision of the Hon'ble Division Bench of this court in LPA 1195/2007 dated 05.03.2013. He states that this court in the case of *Isha Wadhawa (supra)* and *Himanshu Pathak (supra)* has categorically held that the candidates are entitled for admission under the Regulations, 2007.

10. According to him, if the admissions are granted under the Regulations, 2007 the same would not cause any harm either to the Universities or to anyone else. According to him, the Regulations, 2007 entitles the Universities or the institutions to have the advantage of 10% supernumerary seats. He, therefore, submits that the same is in the larger public interest to ensure that maximum numbers of seats are occupied and maximum numbers of students are able to take advantage of the same.

11. Learned counsel also states that the petitioners are not seeking for direct admission under the Regulations, 2007 but, they are ready to

¹ 2010 SCC OnLine Del 3624

² 2002 SCC OnLine Del 1194

face any entrance examination that may be conducted by the concerned University. He also states that if such an examination is conducted and admissions are granted, the same should also be made applicable to unfilled seats out of permissible intake capacity of the first year. He, therefore, submits that the same would better utilise all available seats of any particular University.

12. Mr. Anil Soni, appearing on behalf of respondent no.1-AICTE, while placing reliance on its counter-affidavit states that respondent no.1-AICTE only lays down minimum standard for technical education. According to him, the Regulations, 2007 are not mandatory and the same are directory. He states that it is upto the Universities and technical institutions to either follow the Regulations, 2007 or they may evolve different set of higher standards. While placing reliance on the decision of the Hon'ble Supreme Court in the case of ***Bharathidasan University and Anr. v. All India Council for Technical Education and Ors.***³, he states that the role of interaction conferred upon AICTE *vis-a-vis* Universities is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such Universities.

13. According to him, at present, the Universities (except Deemed to be Universities) do not require any prior approval of respondent no.1-AICTE to commence a new department or course or programme in technical education. However, the Universities have an obligation or duty to conform to the standards and norms laid down by respondent no.1-AICTE.

³ (2001) 8 SCC 676

14. He has placed reliance on another decision of the Supreme Court in the case of *A.P.J. Abdul Kalam Technological University and Anr. v. Jai Bharath College of Management and Engineering Technology and Ors.*⁴, and emphasized that the same principles have been laid down in paragraph no.46 of the said decision.

15. It is to be noted that respondent no.1-AICTE in its first counter-affidavit has taken a categorical stand that the Regulations, 2007 are mandatory in nature. However, this court on the request of respondent no.1-AICTE granted the permission to file supplementary affidavit where the statement as to the facts of the Regulations, 2007, being mandatory, has been withdrawn by the respondent no.1-AICTE.

16. Mr. Ujjwal Malhotra, learned counsel appearing on behalf of respondent no.2-Government of NCT of Delhi during the course of his oral submissions states that respondent no.2-Government of NCT of Delhi does not have much role to play in the instant petition. He states that the grievances were received by the said respondent from various quarters which were sent to the concerned Universities for their compliance, however, some of the Universities responded negatively.

17. Mr. Arjun Mitra, learned counsel appearing on behalf of respondent no.5-Indraprastha Institute of Information Technology states that respondent no.5-Indraprastha Institute of Information Technology is a State University and is governed by the provisions of the Act known as **IIIT (Indraprastha Institute of Information Technology) Delhi Act, 2007** and other applicable Regulations/Guidelines. He submits that the Regulations, 2007 are not mandatory and according to him, a bare reading of various clauses of the Regulations, 2007 indicate that the same are directory in nature.

⁴ (2021) 2 SCC 564

According to him, the same are not automatically made applicable to all such Universities or educational institutions. According to him, Regulations are recommendatory and enabling in nature.

18. Learned counsel has taken this court through the Agenda of the meeting of the Board of Governors, where the concerned University has consciously decided to follow the pattern of Joint Admission Counselling (JAC). He submits that once the University has taken a conscious decision not to apply the Regulations, 2007, no mandamus can be issued by the court.

19. He has also indicated from Chapter VII titled 'Norms and Requirements' in the Approval Process Handbook, 2022-23 that the norms and standards which have been made applicable under the Regulations, 2007 are not synchronized with the requirement of the concerned course being offered by respondent no.5-Indraprastha Institute of Information Technology. He submits that even petitioner no.1 has not disclosed in the writ petition as to how he would be fulfilling the criteria laid down in the relevant admission mechanism by the said University. He states that the manner in which the courses are structured by respondent no.5-Indraprastha Institute of Information Technology would not be capable of adjusting the petitioners directly in second year. He also states that if the eligibility criteria is examined, the same would indicate that for respondent no.5-Indraprastha Institute of Information Technology, the candidate is required to have 70% mark in class XII examination whereas, in the concerned Regulation, there is no mention of class XII examination as the candidates are supposed to be admitted immediately after class X examination on the basis of 3-year diploma course.

20. He places reliance on the decision of this court in the case of *Buddhabhushan Anand Londhe and Ors. v Union of India, Through its Secretary, Ministry of Education and Ors.*⁵ decided on 3rd May 2023. While laying emphasis on paragraph nos.28, 29, 33 and 34 of the said decision, he states that the courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory, professional or technical bodies and take decisions in academic matters with regard to standard and quality of technical education.

21. Mr. Anshuman Malhotra, learned counsel appearing for respondent no.8-University of Delhi reiterates the submissions made by Mr. Arjun Mitra, learned counsel for respondent no.5 and while placing reliance on the counter-affidavit filed by the said respondent states that the University has taken a conscious decision not to follow the Regulations, 2007. He also places reliance on the decision of this court in the case of *Abhijay and Anr. v A.I.C.T.E. & Ors.*⁶ dated 03.05.2007. He has laid emphasis on paragraph no.19 of the said decision to state that the expression used in the Regulations, 2007 are similar to what have been considered by this court in the case of *Abhijay and Anr. (supra)* and the concerned Regulations were held to be directory in nature by the Coordinate Bench of this court.

22. Ms. Aliza Alam, learned counsel appearing on behalf of respondent nos.3, 4 and 6-Universities states that the admission criteria for admission against B.Tech. programme is governed by the applicable ordinance and Regulations of the concerned Universities. She submits that the admissions were granted on the basis of JEE Mains. According to her, the Universities cannot be forced to

⁵ SCC OnLine Del 2672

⁶ W.P.(C)-2293-94/2006

compulsorily grant admission through lateral entry under the Regulations, 2007. She has also placed reliance on the decisions which have been relied upon by the other respondents. She states that as far as the vacant seats are concerned, respondent no.3-Delhi Technological University is granting admission on the basis of a separate entrance examination. Therefore, there is no question of any seat going to waste.

23. Mr. Prithish Sabharwal, learned counsel appearing on behalf of respondent no.7-Jamia Millia Islamia University states that respondent no.7 is a Central University and according to him, the instant petition is not maintainable. The academic Council of respondent no.7-Jamia Millia Islamia University has not opted for the Regulations, 2007 for the admission of the diploma holders in second year B.Tech. programme. He submits that the admission to the students in B.Tech. programme is provided by respondent no.7-Jamia Millia Islamia University through JEE Mains and the general eligibility for the students appearing in JEE Mains Examination is class X+2 with P.C.M. He also placed reliance on a decision which has been relied upon by the other respondents.

24. Learned counsel appearing on behalf of the petitioners in his rejoinder submissions submits that in the instant case, the decision relied upon by the respondents would have no application as the Hon'ble Division Bench of this court in LPA 1195/2007 has clarified that the decision in the case of *Abhijay and Anr.* (*supra*) would not have any binding precedent and that the challenge to the subsequent Regulations can be considered without reference to any observations or findings rendered in the case of *Abhijay and Anr.* (*supra*) by the Coordinate Bench of this court. He also states that in the instant case, his submissions are not with respect to dilution of any of the minimum

standards laid down by respondent no.1-AICTE. According to him, if the respondent-Universities intend to lay down any higher standards, they are free to do so. However, they cannot unilaterally take a decision to completely not go by the mandatory Regulations, 2007. He submits that if the Regulations, 2007 are read to mean that they are directory in nature, the same would frustrate the very object of the Regulations. Once the respondent no.1-AICTE is empowered to lay down the standard in the field of technical education and if the norms are prescribed, the Universities have no option except to follow the same subject to prescribing any higher standard. He submits that in the instant case, unfortunately, the Universities are not prescribing any other mode which can be said to be prescribing a higher standard in enabling the candidates to be admitted in second year through lateral entry. He, therefore, states that such an approach of the Universities is erroneous and serves nobody's interest.

25. In rebuttal of submissions made by the respondent no.1-AICTE, he submits that the latest supplementary affidavit filed by respondent no.1-AICTE nowhere takes a different stand than the stand which was taken by the respondent no.1-AICTE in its first counter-affidavit which unequivocally states that the Regulations are mandatory in nature. Even this court also did not allow them to withdraw the earlier affidavit and liberty was only granted to file a clarificatory affidavit. The stand taken in the supplementary affidavit cannot be read in isolation and the same has to be read in continuation of the earlier stand taken by the respondent no.1-AICTE. Even while responding to the submissions with respect to respondent nos.3 and 6, he states that even the vacant seats are not being filled up in a transparent manner. The students already admitted are being allowed to upgrade their

seats. The upgradation is contrary to the mandate of the Regulations, 2007 and the provisions of the AICTE Act, 1987.

26. I have heard learned counsel appearing for the parties and perused the record.

27. The first and foremost question that requires to be considered by this court is whether the Regulations, 2007 are mandatory or directory in nature.

28. This court in the case of *Abhijay and Anr. (supra)* had an occasion to consider the prayer with respect to the directions to allow lateral entry to engineering diploma holders to the second year of undergraduate engineering programme in all approved colleges and courses in terms of the 'Admission Regulations, 1992' dated 11.07.1992. The Admission Regulations, 1992 containing guidelines for admission to engineering degrees and engineering programme was issued by AICTE in purported exercise of powers conferred under Sections 23(1) and 10(o) of the AICTE Act, 1987. Almost similar arguments were made on behalf of the petitioners in that case and the respondent-University had relied upon the decision in the case of *Bharathidasan University (supra)*.

29. This court in the case of *Abhijay and Anr. (supra)* while placing reliance on the decision of the Hon'ble Supreme Court in the case of *Bharathidasan University (supra)* where it has been held that the role of AICTE vis-a-vis Universities is only advisory, recommendatory, and a guiding factor, thereby sub-serving the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except by submitting a report to the University Grants Commission

(UGC) for appropriate action, in paragraph nos. 18 and 19 held as under:-

“18. I shall now refer to the decision of the Supreme Court in the case of Bharathidasan University (supra) which was relied upon by Mr Siddiqui. It was argued before the Supreme Court in view of the provisions of Section 10 of the said Act that the AICTE would have pervasive control over the universities also in addition to it having control over technical institutions. This argument was repelled by the Supreme Court in the following manner:-

“8. We have bestowed our thoughtful consideration to the submissions made on either side. When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act, particularly when the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority or autonomy of other statutory bodies, having their own assigned roles to perform. Merely activated by some assumed objects or desirabilities, the courts cannot adorn the mantle of the legislature. It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law. In the Statement of Objects and Reasons for the AICTE Act, it is specifically stated that AICTE was originally set up by a government resolution as a national expert body to advise the Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, “However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE” and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred

upon AICTE to play its role more effectively by enacting the AICTE Act.

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10. Since it is intended to be other than a university, the Act defines in Section 2(i) “university” to mean a university defined under clause (f) of Section 2 of the University Grants Commission Act, 1956 and also to be inclusive of an institution deemed to be a university under Section 3 of the said Act. Section 10 of the Act enumerates the various powers and functions of AICTE as also its duties and obligations to take steps towards fulfilment of the same. one such as envisaged in Section 10(1)(k) is to “grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned”. Section 23, which empowers the Council to make regulations in the manner ordained therein emphatically ad specifically, mandates the making of such Regulations only “not inconsistent with the provisions of this Act and the Rules”. The Act, for all purposes and throughout maintains the distinct identity and existence of “technical institutions” and “universities” and it is in keeping tune with the said dichotomy that wherever the university or the activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical institutions and wherever the university is to be left out and not to be roped in merely refers to the technical institution only in Sections 10, 11 and 22(2)(b). It is necessary and would be useful to advert to Sections 10(1)(c), (g), (o) which would go to show that universities are mentioned alongside the “technical institutions” and clauses (k), (m), (p), (q), (s) and (u) wherein there is conspicuous omission of reference to universities, reference being made to technical institutions alone. It is equally important to see that when AICTE is empowered to inspect or cause to inspect any technical institution in clause (p) of sub-section (1) of Section 10 without any reservation whatsoever when it comes to the question of universities it is confined and limited to ascertaining the financial needs or its standards of teaching, examination and research. The inspection may be made or cause to be made of any department or departments only and that too, in such manner as may be prescribed as envisaged in Section 11 of the Act. Clause (t) of sub-section (1) of Section 10 envisages AICTE to only advice UGC for declaring any institution imparting technical education as a deemed university and not do any such thing by itself.

Likewise, clause (u) of the same provision which envisages the setting up of 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 to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or derecognition of the institution or the programme. All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-a-vis the universities is only advisory, recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. The conscious and deliberate omission to enact any such provision in the AICTE Act in respect of universities is not only a positive indicator but should be also one of the determining factors in adjudging the status, role and activities of AICTE vis-a-vis universities and the activities and functioning of its departments and units. All these vitally important facets with so much glaring significance of the scheme underlying the Act and the language of the various provisions seem to have escaped the notice of the learned Judges, their otherwise well-merited attention and consideration in their proper and correct perspective. The ultra-activist view articulated in M. Sambasiva Rao case: 1997 (1) An L. T. 629 (FB) on the basis of supposed intention and imagined purpose of AICTE or the Act constituting it, is uncalled for and ought to have been avoided, all the more so when such an interpretation is not only bound to do violence to the language of the various provisions but also inevitably render other statutory authorities like UGC and universities irrelevant or even as non-entities by making AICTE a superpower with a devastating role undermining the status, authority and autonomous functioning of those institutions in areas and spheres assigned to them under the respective legislations constituting and governing them.

(underlining added)

A reading of the above extract from the Supreme Court decision makes it clear that the Supreme Court was of the view that the role of AICTE vis-a-vis universities is only advisory, recommendatory and a guiding factor and thereby sub-serve the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself, except submitting a report to UGC for appropriate action. This, to my mind, makes it clear that insofar as universities are concerned and that too universities constituted under the Central Acts, the role of the AICTE even in respect of technical education imparted by the said universities would be of an advisory nature and would not be required to be followed mandatorily by the said universities. It is in this context that paragraph 2.0 of the guidelines needs to be considered. If these guidelines, as mentioned by the Supreme Court, are merely advisory and recommendatory, then clearly they are not directory and, therefore, it would be open to the university to adopt them or not to adopt them. In such a situation, it would not be open to the petitioners to approach this court for a writ of mandamus because they do not have a right to the same. It is at the discretion of the university to adopt such guidelines or not to adopt such guidelines. As has been mentioned while recording the submissions of Mr Siddiqui and Mr Mariarputham, both the universities have considered these guidelines and have decided consciously not to adopt them so that their standards are not adversely affected. At the same time, both the universities have taken care to serve the objective of the guidelines and that is to provide an avenue for diploma holders to pursue their further studies to obtain degrees in engineering.

19. Apart from these considerations, even if it is assumed that the AICTE guidelines are directory, I would agree with the submissions made by Mr Siddiqui that the guidelines have to be read in the manner in which they have been laid down. The expressions “can be considered” and “will be allowed”, to my mind, indicate that they are suggestions and recommendations to the universities. Furthermore, it provides that it would be permissible for the university to permit lateral entry in the manner indicated in the guidelines. The said para 2.0 cannot be regarded as a binding direction even on its own meaning.”

30. A submission is made that the decision in the case of **Abhijay and Anr.** (*supra*) cannot be read as binding precedent in view of the observations made by the Hon’ble Division Bench of this court in an appeal filed by AICTE. To appreciate the aforesaid submissions, the order passed by the Hon’ble Division Bench of this court dated 05.03.2013 needs to be looked into. The same reads as under:-

“This appeal at the instance of All India Council for Technical Education (AICTE) challenges the order dated 3.5.2007 passed in the writ petition. The short question that arises for consideration is as to whether clause 2.0 relating to lateral entry to Degree Engineering Programmes, Admission Regulations issued by AICTE would be binding on the respondents no.6 and 7 including the Jamia Milia Islamia and particularly the courses run by the University of Delhi and its constituent colleges.

By the order under appeal, the learned Judge has held that the guidelines issued are only recommendatory in nature and for that matter it is only advisory. The contention of the appellant is that the AICTE as a Council established for the engineering courses has the power to issue such guidelines to regulate the admission procedure. Before we are called upon to decide as to whether the admission regulations issued by AICTE in the year 1992 would bind either Delhi University and/or its constituent colleges and University of Jamila Milia Islamia, we are informed that a set of fresh regulations have been issued by AICTE on 27.9.2012. The counsel for the appellant has submitted that in the event those regulations are questioned, the issue as to whether the regulations are recommendatory, advisory or they are binding on the respondents in question should be left open. There is no serious objection to the course being adopted at the instance of the respondents. The said submission can be considered with reference to the facts of this case. The writ petition came to be filed at the instance of students seeking for direction to the respondents for allowing them to lateral entry into the second year on the ground that they had completed diploma course. By the time the writ petition came to be disposed of, the period of that course came to an end and. In view of the above, the petition itself has become infructuous and for the same reason, appeal also requires no adjudication on merits. Therefore, we are of the considered view that instead of adjudicating the issue raised in this appeal, we dispose of the appeal, leaving the issue raised in this appeal open in the event subsequent regulations are questioned. The challenge to the subsequent regulations can be considered without reference to any of the observations or findings rendered in this judgment i.e. the order under appeal.

The appeal stands disposed of with above observations.”

31. A bare reading of the observations made by the Hon’ble Division Bench would indicate that the decision rendered by this court in the case of **Abhijay and Anr.** (*supra*) has not been set aside. Secondly, what has to be observed is to consider any subsequent Regulations independently without reference to any of the

observations or findings rendered by the Coordinate Bench of this court in the case of *Abhijay and Anr. (supra)*.

32. In accordance with the observations made by the Hon'ble Division Bench of this court, if the Regulations, 2007 are independently considered, the same would not result in any converse opinion. The legal position stated in *Abhijay and Anr. (supra)* is based upon the decision of the Hon'ble Supreme Court in the case of *Bharathidasan University (supra)*.

33. This view is taken keeping in mind the binding precedents of the Hon'ble Supreme Court of India and the source of power exercised by the AICTE in framing the Regulations, 2007.

34. The Regulations, 2007 have been framed in exercise of power under sub-Section (1) of Section 23 read with Section 10(b), (o) and (v) of the AICTE Act, 1987. Section 10 of the AICTE Act, 1987 calls upon the AICTE to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education, maintenance of standards and for the purpose of performing its functions under the AICTE Act, 1987. The AICTE may undertake various activities. Section 10 (b), (o) and (v) reads as under:-

“Section 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--

.....

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

...

(o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

...

(v) perform such other functions as may be prescribed.”

35. Sub-Section (1) of Section 23 of the AICTE Act, 1987 requires that the Council may, by notification in the Official Gazette, make Regulations not inconsistent with the provisions of the AICTE Act, 1987 and the rules generally, to carry out the purpose of the AICTE Act, 1987. It is thus seen that the source of power for framing the Regulations, 2007 is derived from Section 10(o) of the AICTE Act, 1987 which provides for framing of guidelines for admission of students to technical institutions and Universities imparting technical education.

36. A source of the power which is exercised in framing the Regulations, 2007 is itself in the nature of guideline. It is not a case where any of the Universities are granting admission through lateral entry in defiance of the Regulations, 2007.

37. No doubt, the Universities cannot dilute the basic minimum standard laid down under the provisions of AICTE Act, 1987 or the Rules and Regulations made thereunder. However, the Universities are entitled to lay down higher standards than the ones laid down by the AICTE. Such a position was accepted by the Hon'ble Supreme Court in the case of ***A.P.J. Abdul Kalam Technical University*** (*supra*). Paragraph no.46 of the said decision reads as under:-

“46. The law is now fairly well settled that while it is not open to the universities to dilute the norms and standards prescribed by AICTE, it is always open to the universities to prescribe enhanced norms. As regards the role of the universities vis-à-vis AICTE, this Court held in Bharathidasan University v. All India Council for Technical Education [Bharathidasan University v. All India Council for Technical Education, (2001) 8 SCC 676 : 1 SCEC 924] , that AICTE is not a super power with a devastating role undermining the status, authority and autonomous functioning of the universities in areas and spheres assigned to them. This view was followed in Assn. of Management of Private Colleges v. All India Council for Technical Education [Assn. of

Management of Private Colleges v. All India Council for Technical Education, (2013) 8 SCC 271 : 6 SCEC 255].”

38. Clause 3 of the Regulations, 2007 reads as under:-

“(3) *Purpose:-*

These Regulations provide for admission of diploma holders and B.Sc. graduates into second year degree programmes in Engineering and Technology through lateral entry.”

39. The purpose of the Regulations, 2007 is to provide for admission to diploma holders and B.Sc. graduates into second year degree programme in engineering and technology through lateral entry. It is upto the Universities to evolve a mechanism in accordance with the Regulations, 2007 or with a higher standard to provide a mode for such students. However, the same cannot be forced upon the Universities to mandatorily have the provision of lateral entry.

40. It is thus understood that if the Universities decide to grant admission through lateral entry, they have to mandatorily follow the Regulations, 2007 or any higher standards can be prescribed by the Universities. However, the very nature of the Regulations, 2007 and the purpose for which these were enacted, cannot be construed to be mandatory in nature to mean that all institutions must grant admission through lateral entry.

41. The decisions relied upon by learned counsel for the petitioners in the cases of *Isha Wadhawa (supra)* and *Himanshu Pathak (supra)* are not dealing with the issue involved in the instant writ petition. In those cases the Universities themselves were prescribing for the admission through lateral entry mode. It is under those circumstances that the observations have been made. In the instant case, the Universities have taken a categorical stand that they are not under an

obligation to grant admission through lateral entry. The decisions relied upon by the petitioners are, therefore, distinguishable on facts.

42. While interpreting a particular provision to be mandatory or directory, regard must be had to the context, subject matter and object of the statutory provision in question. A careful consideration of the entire scope of the enactment and the reasons behind it need to be considered. The intent of the legislature needs to be given weightage over the language deployed in the statute. The consequence which would follow from construing the legislation, one way or the other, is one of the important parameters. A relative impact on other existing enactments is also required to be considered.

43. In the instant case, the source of power of framing the Regulations, 2007 itself is directory in nature. All the Universities are set up by their independent Acts either of the State or of the Central Government. The Regulations, 2007 nowhere provides for any consequence in case of their non-compliance. It is thus seen that AICTE, in order to lay down uniform criteria enabling all institutions to grant admission directly in second year B.Tech. programme, has framed the threshold criteria. The same cannot be construed as mandatory.

44. Having considered the source of power to frame the Regulations, 2007 and the language employed in the Regulations, 2007, this court is of the opinion that the Regulations, 2007 are enabling and directory in nature and cannot be considered to be mandatory. If the Universities or technical institutions to whom the Regulations, 2007 applies decides to go for admission through lateral entry, the Regulations, 2007 would be the minimum threshold criteria to be adhered to, subject to any other higher standards to be prescribed

by respective Universities. However, the Regulations, 2007 cannot be forced upon the Universities to compulsorily provide for admission through lateral entry.

45. This court is, therefore, not inclined to interfere with the instant writ petition or to issue any mandatory directions against the respondents to mandatorily provide for admission through lateral entry.

46. The petition is accordingly dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JUNE 02, 2023
p'ma/MJ

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