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APPROACH OF JUDICIARY IN EDUCATIONAL MATTERS

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For past few decades, there has been a large increase in litigation of educational matters due to growth in colleges, students, faculty and most importantly due to commercialization of education and its consequent maladministration has resulted into various academic and administrative litigation. This article attempts to clear the judicial interference by Courts in education matters and differentiate between academic and administrative matters for better appreciation to justify the approach of Court's interference.

Education was originally in the state list which later shifted to 25th subject concurrent list after the 42nd Amendment of 1976 which reads as "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour[1]."

Post independence, the first policy framework in the education area was the The National Policy on Education (NPE), 1968 which was replaced by the NPE, 1986. In regard to higher education, the NPE, 1986 postulated that 'in view of the need to effect an all round improvement, in the near future, the main emphasise will be on consolidation, and expansion of facilities, in existing institutions', and that 'urgent steps would be taken to prevent the degradation of the system"[2]. The NPE, 1986 which put much emphasize on technical and management education established Central statutory authorities like All India Council of Technical Education (AICTE) which has an overriding effect for approval of new institutions, courses and setting up standards of facilities and faculties.

Today, many policies are made by the Legislature after interpretation of statutes and

1. 7th Schedule, List I of Constitution of India.

2. National Policy on Education, 1986 report at http://Mhrd.gov.in/rites/upload files/mhrd/files/upload document/npe.pdf

judicial review of legislative and executive action by Supreme Court under Article 13(2) of the Constitution and by High Court under Article 226 of the Constitution.

In 1992, in *Mohini Jain, Miss v. State of Karnataka and others*, AIR 1992 SC 1858, the Supreme Court declared the whole of education to be a Fundamental Right. The Court discovered this right in the penumbra of Article 21 of the Constitution which lays down the right to life. It held that the State was under an obligation to establish educational institutions to enable the citizens to enjoy the right to education. The State may discharge this obligation either by setting up its own institutions or through the instrumentality of private institutions. By granting recognition to private educational institutions the State government created an agency to fulfil its obligation under the Constitution.

In 1993, in the landmark *Unni Krishnan v. Andhra Pradesh*, 1993 AIR 2178, the Court reviewed the state's right to interfere in the admission policy and the fee structure of private professional institutions. It held that education, being a fundamental right, could not be the object of profit-seeking activity. The Supreme Court laid down that all private colleges would be subject to the constraint that education cannot be the object of "profiteering" and the fee structure should be compatible with the principles of "merit and social justice alike." Although, the clearance of the UGC and AICTE/ MCI would have to be obtained in any case.

The University freedom and academic discretion in regulating their affairs are two concepts that are recognized in the context of higher education as fundamental right to freedom of speech and expression. In *Sweezy's* case, 354 US 234 (1957), before the U.S. Supreme Court, Justice *Frankfurter* has held that the academic autonomy of the University about what to teach, how to teach and who to admit for teaching as part of the first amendment: the right to freedom of speech and expression. Thus, in the western countries, the universities are enabled to decide their own academic matters without any interference from the state.

The same principle has been enshrined in *T.M.A. Pai* case, AIR 2003 SC 355, where the 11 Constitutional Judge Bench quoted "…Institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their population and supply them with the weapons they need. We must resist, in the interests of our own democracy, the trend towards the governmental domination of the educational process."

What we can see that in purely academic decisions, the Courts are reluctant to interfere which can be seen in these decisions also-

In *University of Mysore and others v. Gopala Gowda and another*, AIR 1965 SC 1932, "The Academic Council is invested with the power of controlling and generally regulating teaching courses of thereof, and for those purposes the Academic Council is competent to make regulations, amongst others, relating to the courses, schemes of examination and conditions on which students shall be admitted to the examinations, degrees, diplomas, certificates and other academic distinctions. The Academic Council is thereby invested with power to control the entire academic life of the student from the stage of admission to a course or branch of study depending upon possession of the minimum qualifications prescribed".

Supreme Court held in *Principal, Patna College and others v. Kalyan Srenivas Raman*, AIR 1966 SC 707, that where the question involved was one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of *certiorari* where

it is plain that the regulation in question is capable of two constructions. It is generally not expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by such authorities on the relevant Regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept.

In *Varanaseya Sanskrit Viswavidayalaya and another v. Dr. Raj Kishor Tripathi and another*, (1977) 1 SCC 279, dealing with the emergency power of the Vice-Chancellor provided in the University Act held that in a matter touching either the discipline or administration of the internal affairs of a University, Courts should be most reluctant to interfere.

Bhushan Uttam Khare v. Dean, B.J. Medical College and others, (1992) 1 SCC 220, the apex Court found that in deciding matters relating to orders passed by educational authorities, the Court should normally be very slow to pass orders in its jurisdiction because those matters should be left to discretion of those educational authorities and the Court should interfere only in the interest of justice.

In *State of Punjab and others v. Renuka Singla and others*, (1994) 1 SCC 175, the question arose whether the Court can direct creation of additional seat contrary to the statutory provisions in order to accommodate the litigating candidate. Replying in the negative the Supreme Court held": "The High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of institution and number of admissions, on compassionate grounds".

While considering the role of the national statutory bodies governing professional and technical education in their respective field it was held that in *Union of India and others v. Shah Goverdhan L. Kahra Teachers College*, (2002) 8 SCC 228, the N.C.T.E. is an expert body created under the provisions of the National Council for Teachers Education Act, 1993. The conclusion of an expert body should not be lightly tinkered with by a Court of law without giving due weightage to the conclusion arrived at by such expert body.

Thus, these decisions demonstrate that in the academic matters the Court's non-interference is the rule and its interference in an exception.eglancing through the above and other reported decisions of the Supreme Court on the subject of academic matters, one would find that judicial non-interference in academic matters is the rule and interference is the exception, provided the decision under challenge is of purely academic nature. Generally Courts refuse to scan through the academic decisions and to probe into their legitimacy, particularly when the decision is taken by academic experts. But Court does interfere when the impugned decision is *prima facie* illegal and irregular being violative of the provisions of the University Act, Statute or Regulations or is shockingly arbitrary and manifestly unreasonable or unjust or is visibly *mala fide*. Being public bodies, universities, their affiliated colleges and other academic bodies have not been left totally free by the Courts from the constitutional accountability of judicial review.

Adopting a pro-active role the Court had interfered in purely academic matters as well, apparently justifying its interference on the basis of the relevant facts of the case, where it could not be avoided in defense of

constitutional principles or in the interest of justice. It could be seen that the interference has even affected purely academic decisions as that of selection of books for the course, grants of marks for interview for admission, prescription of syllabus, medium of instruction, selection of faculty and such other matters which, in the normal course, squarely come within the concept of purely academic decision. Thus when constrained to interfere in a purely academic matter as to the selection of books for educational institutions, where some of the members of the committee or sub-committee set up for selecting the books are themselves authors, whose books are also to be considered for selection, it was held" *J. Mohapatra and Co. and another v. State of Orissa and another*, (1984) 4 SCC 103, that possibility of bias cannot be ruled out. Justice can never be seen to be done if a man acts as Judge in his own cause or is himself interested in its outcome. It is held that the principle '*nemo judex in causa*' that is, no man shall Judge his own cause, is firmly established and is applicable to not only to judicial proceedings but also to quasi-judicial and administrative proceedings.

In context of administrative matters relating to Policy decision is one area where Court has consistently been reluctant to interfere with. It is so even in respect of policy decisions of the executive or the Legislature. This judicial policy has also excluded the educational or academic policy decisions from its consideration with greater reverence. Occasional interference was called for only when the policy itself was illegal having opposed to the Constitution or any statutory provision.

Hon'ble Supreme Court in *State of Himachal Pradesh and others v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597, held that "The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, *etc.* No demand, employability potential, availability of infrastructure, *etc.* No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State.

In *"Joya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department* and connected cases", (2000) 5 SCC 23, the appellant Trust submitted an application to the University of Kerala and to the All India Council for Technical Education (A.I.C.T.E.) for approval of their self-financing Engineering College. By a communication, A.I.C.T.E. informed the appellant that they are granting conditional approval to the college subject to the fulfillment of certain conditions specified therein. The appellant under an impression that State Governments' permission was also required to be taken, wrote to the State Government for their approval. Meanwhile, the university included the appellant's college in their approved list of the colleges and courses for affiliation forwarded to the Government. Thereafter, the State Government issued a letter to the Trust rejecting permission for the college. The Trust filed a writ petition challenging the Government decision, which was allowed and the Government was directed to re-consider its decision. It was held that the so-called 'policy' of the State was not a ground for refusing approval to the college. The State could not have any policy outside the A.I.C.T.E. Act and if it had a policy, it should have placed the same before the A.I.C.T.E. before the latter granted permission. It was therefore held that the

University ought to have granted affiliation to the appellants' college without waiting for any approval from the State Government and should have acted on the basis of the permission granted by the A.I.C.T.E. and other relevant factors in the University Act or Statutes.

In *Ms. Aruna Roy and others v. Union of India*, (2002) 7 SCC 368, in a public interest litigation raising the scope of judicial review of the National Education Policy, it was held that it was for the Parliament to take a decision on the National Education Policy one way or the other and that Court could not take a decision on the good or bad points of an educational policy.

Hon'ble Supreme Court in *Parshvanath Charitable Trust v. All India Council for Technical Education*, (2013) 3 SCC 385 at Para No.28, held as follows-

> ……..“We have already noticed that the compliance with the conditions for approval as well as regulations and provisions of the AICTE Act is an unexceptionable condition. Clause 9.22 of the Handbook of Approval Process issued by AICTE provides a complete procedure for change of location, station and the same is permissible subject to compliance with the procedure. It contemplates obtaining of “no-objection certificate” from the State Government or UT Administration and affiliation body concerned. The same clause also requires submission of the land documents in original and clearly provides that the same may be registered sale deed, irrevocable Government lease for a minimum period of 30 years, *etc*., by the authority concerned of the Government. Further, it provides that site plan, building plan for new site should be prepared by a registered architect and should be approved by the competent plan sanctioning authority designated by the State”……..

In the same matter, it goes on to say that-

> ..... “Thus, the view of the High Court that the College had failed to comply with the requirements for grant of approval and had shifted to the new site without approval of AICTE and other authorities concerned cannot be faulted with. There being no compliance with the legal requirements and binding conditions of recognition, the withdrawal of approval by AICTE can also be not interfered with. Shifting of students is a consequential order and is in the interest of the students. Both grant/refusal of approval and admission schedule, as aforestated, shall be strictly adhered to by all the authorities concerned including AICTE, the University, the State Government and any other authority directly or indirectly connected with the grant of approval and admission3”.

Hon'ble Supreme Court in *Krishnasamy Reddiar Educational Trust v. Member Secretary, National Council for Teacher Education and another*, (2005) 4 SCC 89, held as follows :

> ..... “In our view, the respondents are right in submitting that there was delay on the part of the appellants. In all the three cases, applications were submitted without NOC from the State Government. It has come on record that NOC was applied for belatedly. The State Government could not be blamed for not taking a decision on the applications of the appellants as under Regulation 6 as amended in 2003, it was required to dispose of such applications within six months of the last date of receipt of applications. Even prior to the amended Regulation 6, it was expected to take decision within “reasonable time” (four months) as held in St. Johns Teachers Training Institute. As the appellants applied for NOC in the last week of October 2003, they cannot make complaint that

3. (2013) 3 SCC 385 at Para No.46.1

the State Government delayed the matter. Admittedly, NOCs were submitted to the respondent after the last date of application. If in the above facts and circumstances, recognition has been granted by the respondent on 28.10.2004 by imposing a condition that it would be operative from academic year 2005-2006, it cannot be said that the respondent had acted illegally, arbitrarily or otherwise unreasonably".....

Hon'ble Supreme Court in *Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India and another*, (2013) 15 SCC 516 at Para No.38 held as follows-

..... "Mushrooming of large number of medical, engineering, nursing and pharmaceutical colleges, which has definitely affected the quality of education in this country, especially in the medical field calls for serious introspection. Private medical educational institutions are always demanding more number of seats in their colleges even though many of them have no sufficient infrastructural facilities, clinical materials, faculty members, *etc.* Reports appear in every now and then that many of the private institutions which are conducting medical colleges are demanding lakhs and sometimes crores of rupees for MBBS and for postgraduate admission in their respective colleges. Recently, it is reported that few MBBS seats were sold in private colleges of Chennai. We cannot lose sight of the fact that these things are happening in our country irrespective of the constitutional pronouncements by this Court in *T.M.A. Pai Foundation's* case (supra), that there shall not be any profiteering or acceptance of capitation fee, *etc.* The Central Government, Ministry of Health and Family Welfare, Central Bureau of Investigation or the Intelligence Wing have to take effective steps to undo such unethical practices or else self-financing institutions will turn to be student financing institutions.

Hon'ble Supreme Court in *State of Himachal Pradesh and others v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597, reported at Para No.21 held as follows-

"..... The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, *etc*. No demand, employability potential, availability of infrastructure, *etc.* No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The Courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the Court must refuse to sit as appellate authority or super Legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution. ....."

Hon'ble Bombay High Court in *Parshvanath Charitable Trust v. All India Council for Technical Education*, (2012) SCC Bom. 1228, reported at Para Nos.19 & 20 (Affirmed in *Parshvanath Charitable Trust v. All India Council for Technical Education*), (2013) 13 SCC 385, held as follows :

……..“The Regulations which have been prescribed by the AICTE are made with a purpose in view. If an institution seeks to be relocated at an alternative site, AICTE has to be satisfied that the interest of the students will not be jeopardized as a result of a dispute with regard to ownership or title. In the present case, as the facts before the Court would reveal, the First petitioner has until date not been able to secure a valid title to the land on which the engineering college is situate. That apart, unless an occupancy certificate is issued, the First petitioner would not be entitled in law to utilize the building for the purposes of an engineering college. By the interim orders of this Court dated 25th July 2012 and 8th August 2012, an opportunity was granted to the petitioners to comply with the requisitions of the Municipal Corporation so that the grant of Occupancy Certificate could be considered in accordance with law. In our order dated 8th August 2012, we had observed as follows:

> “Obviously, before the petitioners can assert an entitlement to conduct courses from the buildings constructed for the purpose, it is necessary to obtain an occupation certificate. In the absence of an occupation certificate, the premises cannot lawfully be occupied or used. The Court under Article 226 of the Constitution of India cannot issue a direction which would permit an institution to breach municipal regulations. Learned Counsel for the petitioners states that the petitioners would pursue the grant of an occupation certificate by the Municipal Corporation.
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> ..... “In the exercise of the jurisdiction under Article 226 of the Constitution of India it would not be permissible for this Court to direct AICTE to grant its approval for conducting the engineering college at the new location particularly in view of the fact that no Occupation Certificate has been granted; the petitioners have not established a clear title to or ownership of land and they have not obtained the NOCs of the State Government or of the University of Mumbai.....”

Hon’ble Delhi High Court in *ACN College of Pharmacy v. All India Council for Technical Education*, (2016) SCC Del. 76, reported at Para No.8 held as follows :

> .....“The law is also well settled that grant of recognition is neither a matter of course nor is it is a formality. The conditions of recognition and duly notified directions controlling the admission process are to be construed and applied *strict sensu*. Therefore, though it is open to the appellant to place reliance upon the findings of SAC of AICTE while making a fresh application for the Academic Year 2016-17, in our considered opinion, no *mandamus* can be issued by this Court for grant of approval for the Academic Year 2015-16”.....

The Hon’ble Supreme Court in *State of Maharashtra v. Sant Dryaneshwar Shikshan Shastra Mahavidyala,* (2006) 9 SCC 1, reported in at Para 37(8) held as follows :

> .....“Institutions should be allowed to come into existence only if the sponsors are able to ensure that they have adequate material manpower resources in terms, for instance, of qualified teachers and other staff, adequate buildings and other infrastructure (laboratory, library, *etc.*), a reserve fund and operating funds to meet the day-to-day requirements of the institutions, including payment of salaries, provision of equipment, *etc.* Laboratories, teaching science methodologies and practicals should have adequate gas plants, proper fittings and regular supply of water, electricity, *etc.* They should also have adequate arrangements. Capabilities of the institution for fulfilling norms prepared by NCTE may be kept in view.

The Hon'ble Supreme Court in *National Council for Teacher Education and others v. Shri Shyam Shiksha Prashikshan Sansthan and others,* (2011) 3 SCC 238, (Para 41) held as follows:

> ..... "In the light of the above discussion, we hold that the cut-off dates specified in clauses (4) and (5) of Regulations 5 of the 2007 Regulations as also the amendment made in Regulation 5(5) *vide* Notification dated 1.7.2008 are not violative of Article 14 of the Constitution and the learned Single Judge and the Division Bench of the High Court were not right in recording a contrary finding *qua* the date specified in Notification dated 1.7.2008. We further hold that the provision contained in Section 14 and the Regulations framed for grant of recognition including the requirement of recommendation of the State Government/Union Territory Administration are mandatory and an institution is not entitled to recognition unless it fulfills the conditions specified in various clauses of the Regulations. The Council is directed to ensure that in future no institution is granted recognition unless it fulfills the conditions laid down in the Act and the Regulations and the time schedule fixed for processing the application by the Regional Committees and communication of the decision on the issue of recognition is strictly adhered to".....

The Hon'ble Supreme Court in *Visveswaraiah Technological University and another v. Krishnendu Halder and others*, (2011) 4 SCC 606, (Para 16) held as follows :

> ..... "The proliferating unaided private colleges, may need a full complement of students for their comfortable sustenance (meeting the cost of running the college and paying the staff, *etc.*) But that cannot be at the risk of quality of education. To give an example, if 35% is the minimum passing marks in a qualifying examination, can it be argued by the colleges that the minimum passing marks in the qualifying examination should be reduced to only 25 or 20 instead of 35 on the ground that the number of students/candidates who pass the examination are not sufficient to fill their seats? Reducing the standards to "fill the seats" will be a dangerous trend which will destroy the quality of education. If there are large number of vacancies, the remedy lies in (a) not permitting new colleges; (b) reducing the intake in existing colleges; (c) improving the infrastructure and quality of the institution to attract more students. Be that as it may. The need to fill the seats cannot be permitted to override the need to maintain quality of education. Creeping commercialization of education in the last few years should be a matter of concern for the central bodies, States and universities.
>
> (Para 17)....."No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, inspite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any fixed by the central body under a Central enactment, The order of the Division Bench is therefore unsustainable....."

The Hon'ble Supreme Court in *State of Tamil Nadu and another v. S.V. Bratheep (Minor) and others*, (2004) 4 SCC 513, reported at (Para 16) (3 Judges) held as follows:

> ....."The High Court considered the case of the students in these colleges who

did not appear in the common entrance test but appeared for the private entrance tests conducted by the respective engineering colleges and they could be admitted to the engineering colleges on the basis of their performance in such private entrance tests. The mere fact that Anna University allowed all the engineering colleges to conduct entrance test but the colleges concerned cannot militate against the prescription of standards of excellence in education both by AICTE and Department of Higher Education. The High Court rejected the same on the basis that AICTE had already formulated the policy and that policy had to be strictly followed by the colleges concerned as long as students who had not fulfilled those minimum qualification prescribed by AICTE but only passed in a private entrance test would not be qualified for admission to the engineering colleges, is perfectly in order and does not call for interference.

The Hon'ble Supreme Court in *Dr. Preeti Srivastava and another v. State of M.P. and others*, (1999) 7 SCC 120, reported at (Constitution Bench) Para 35, 36 and 37 held as follows:

..... "In view of Entry 25 of List III of the Seventh Schedule to the Constitution both the Union as well as the States have the power to legislate on education including medical education, subject, *inter alia*, to Entry 66 of List I which deals with lying down standards in institutions for high education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education, because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for high education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, from 1977, education, including, *inter alia*, medical and university education, is not in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

....."It would not be correct to say that the norms for admission have no connection with the standards of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors ....."

....."While considering the standards of education in any college or institution, the caliber of students who are admitted to that institution or college cannot be ignored. Further, education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the caliber of the students as on the caliber of the

teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses.

The Hon'ble Supreme Court in *Priyadarshini Dental College and Hospital v. Union of India and others*, (2011) 4 SCC 623, reported at (Para 12) held as follows:

.....“A stipulation by an authority entrusted with the power to consider and grant permissions/recognitions, while granting such permission/recognition, that the application should seek and obtain an order from a Court, approving the grant of such permission/recognition, as a condition precedent to give effect to such grant, would be improper and irregular. It amounts to failure to take responsibility or shirking the responsibility in exercising the power in accordance with the Act and the Regulations. Further, such a requirement by the executive, amounts to attempting to make the judiciary a part of the decision – making process by the executive. Judiciary has no role to play under the Act or the Rules in granting permission or renewal of permission. The power of judicial review is not intended to be exercised to grant “advance rulings of administrative approvals” to validate executive orders. Neither the Central Government, nor DCI, can shift the onus of decision – making to the Courts, blurring and obliterating the line of separation between the executive and the judiciary. Any attempt by the executive authority to provide itself a protective cover against challenges or criticism to its action, by “passing the buck” to the judiciary in regard to final decision, should be resisted and avoided. The orders of the Central Government granting or refusing permission are subject to judicial review at the instance of any affected party, and the same cannot be pre-empted by making the Supreme Court a party to the decision – making process of the executive. We are therefore of the view that it was not proper for the Ministry of Health and Family Welfare (Dental Education Section), Government of India (for short “the Ministry”) to stipulate a condition while granting renewal of permission for the BDS Course, that the “order is subject to the condition that the institute obtains the orders of the Supreme Court to the effect that such permission would not violate the earlier order of the Hon'ble Supreme Court to the effect that 15th July would be the last date for grant of such permission in the relevant academic year”. Such a condition requiring approval of this Court is liable to be quashed.

The Hon'ble Supreme Court in *Maa Vaishno Devi Mahila Mahavidyalaya v. State of Uttar Pradesh and others,* (2013) 2 SCC 617, reported at (Para 88 and 89) held as follows:

..... “In all the appeals and petitions the basic issue is whether the University and the State Government were justified in rejecting the application for affiliation on the ground that there was a cut-off date and/or the conditions of recommendation/affiliation had not been satisfied. In some cases, serious disputes have been raised with regard to the fulfillment of the conditions of recognition and/or affiliation. The authorities have rightly acted in declining to entertain and/or refusing affiliation to the institutions being beyond the cut-off date for the current academic year *i.e.*, 10th of May. Adherence to the schedule was the obligation of the authorities and the institutions cannot raise any grievance in

that regard. The said time schedule must become operative in all respects and nobody should be permitted to carve out exceptions to this mandatory direction of the Supreme Court....."

..... "It is not for the Supreme Court to examine the compliance or breach of conditions of affiliation and their extent in the special leave petitions or writ petitions, as the case may be. One of the examples relates to the matter where the State/affiliating body has found that even the building's boundary wall was not complete and the fire equipments have not been installed as prescribed. However, these were specifically disputed by the appellant-petitioners who contended that all conditions had been satisfied. Thus, these are disputes of very serious nature. They will squarely fall beyond the ambit of appellate or writ jurisdiction by the Supreme Court. This is for the specialized bodies to examine the matters upon physical verification and to proceed with the application of the institute in accordance with law....."

The Hon'ble Supreme Court in *Manohar Lal Sharma v. Medical Council of India and others,* (2013) 10 SCC 60, reported at (Para Nos.23, 24 and 26) held as follows:

....."We have also gone through the report of the surprise inspection team dated 6.7.2013 submitted by Dr. *Mukesh Kalra* and Dr. *Ajay Agarwal.* MCI has got the power to conduct a surprise inspection to find out whether the deficiencies pointed out by MCI have been rectified or not, especially when the college submits a compliance report. Surprise inspection naturally contemplates no notice, if the notice is given in advance, it would not be a surprise inspection and will give room for the College to hoodwink the assessors by springing a surprise, by making perfect what was imperfect....."

..... "Surprise inspection, in this case, was conducted to ascertain whether compliance report could be accepted and to ascertain whether the deficiencies pointed out in the regular inspection were rectified or not. By pointing out the deficiencies, MCI is giving an opportunity to the College to rectify the deficiencies, if any noticed by the inspection team. It is the duty of the College to submit the compliance report, after rectifying the deficiencies. MCI can conduct a surprise inspection to ascertain whether the deficiencies had been rectified and the compliance report be accepted or not ....."

....."We have already dealt with, in extensor, the deficiencies pointed out by the MCI team in its report dated 6.7.2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of the student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum if MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty – bound to cancel the request if fundamental and minimum requirements are not satisfied or else the College will be producing half-baked and poor quality doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the inspection team are serious deficiencies and the Board of Governors of MCI rightly not granted approval for renewal of permission for the third batch of 150 MBBS students for the academic year 2013-14.

The Hon'ble Supreme Court in *Department of Ayush and others v. Acharya Gyan Ayurveda College, Talawali,* (2012) 5 SCC 608, reported at (Para 1, 2 and 3) held as follows:

..... "Leave granted. This appeal is directed against the judgment and order

of the High Court of Delhi at New Delhi dated 20.12.2010 in *Acharya Gyan Ayurved College v. Deptt. of Ayush*. While disposing of the appeal, the Division Bench of the Delhi High Court has observed as under:

"The inspecting team shall intimate the appellant College the date of inspection one week in advance so that they will be in readiness to demonstrate that the college is ready from all aspects. The report shall be forwarded within two weeks from the date of inspection."

..... "We have heard the learned Counsel for the parties. In our considered view, in the facts and circumstances that was decided by the High Court, the aforesaid observation was wholly unnecessary in the facts and circumstances of the case. In that view of the matter, while allowing this appeal partly, we set aside the aforesaid direction issued by the High Court....."

The Hon'ble Supreme Court in *Shri Morvis Sarvajanik Kelavni Mandal Sanchalit Mskm Bed College v. National Council for the Teachers Education and others*, (2012) 2 SCC 16, held as follows:

..... "Education and Universities – National Council for Teacher Education Act, 1993 – Section 17 – Withdrawal of recognition under – When valid – Inspecting teams finding several statutory deficiencies like inadequacy of space, under – qualified teachers and institution not having its own land and building – Regional Committee withdrawing recognition under Section 17, held, valid – Affiliation/Recognition – Withdrawal of When warranted....."

The Hon'ble High Court of Madras in *Archana Institute of Technology v. All India Council for Technical Education and others*, MANU/TN/2476/2015 = (2015) 6 MLJ 348 held that-

..... "Education – Extension of approval – Declining thereof – Regulation 5.1 of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012 and Article 21 of Constitution of India, 1950 – Present appeal filed against order withdrawing extension of approval granted to appellant Institute for academic year on account of submission of bogus building plan – Whether impugned order was vitiated on ground that appellant was not given sufficient opportunity to produce documents – Held, grievance of appellant regarding proper opportunity of hearing was rejected – Appellant was given ample opportunity to produce all documents – No error in Standing Appellate Committee's finding that appellant failed to produce required documents to establish its ownership and title – Unacceptable plea of appellant that it had lost opportunity of appeal – Regulation 5.1 provides for filing of appeal before Appellate Authority against decision of executive committee, not of Standing Complaint Committee – Further, unsustainable plea of violation of constitutional provision as enshrined under Article 21 of Constitution – No infirmity in impugned order – Appeal dismissed.

A Division Bench of High Court of Hyderabad in *Joseph Sriharsha* and Mary Indraja Educational Society, rep. by its Hon. Chairman and Correspondents in *Dr. Rev. K.V.K. Rao and others v. UOI, Ministry of Human Resource Development, New Delhi*, 2017 (3) ALT 224, reported that-

(1) AICTE prescription – What is prescribed by AICTE is bare minimum that every institution is supposed to fulfill.

(2) No right to exist – If they cannot fulfill the same on account of financial incapacity, those institutions have no right to exist.

(3) Fixation of Student – teacher ratio – The fixation of student – teacher ratio and the prescription of faculty cadre ratio are all matters of policy determined by experts in the field of education.

(4) Determination of norms and standards – The determination of such norms and standards by an expert body cannot be interfered with by this Court, merely on the ground that such strict norms will lead to the financial bankruptcy of some institutions.....

A Division Bench of High Court of Hyderabad in *Federation of Social Responsibility Professional Institutions, Hyderabad represented by its National Chairman, Dr. Rev. K.V.K. Rao and others v. UOI, Ministry of Human Resource Development, New Delhi rep. by its Secretary and others*, 2017 (3) ALT 224, reported that-

(1) Statutory Regulations – No statutory Regulations can be challenged merely on the ground that there is possibility of misuse.

(2) Greater responsibility, accountability and obligation – if, by a statutory Regulation, a Regulatory Body imposes a greater responsibility, accountability and obligation upon an institution, the same cannot be faulted by suspecting the credentials of all the educational institutions.

In conclusion, we can say from the above judgments and case law that in both the academic administrative matters of education, non-interference is almost the rule. Thus, even if there is second view possible or the decisions of Government are not agreeable by Court, Court should be reluctant to interfere. A Court should not substitute its decision of an executive policy decision and disturb the findings of the academic and executive bodies.

AN OVERVIEW OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

By

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Objects and Reasons for passing the Act:

Narasimham Committee I and II and Andhyarjina Committee constituted by the Government of India for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respect of these areas. These *inter alia*, have suggested enactment of a new legislation for securitization and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court. Acting on these suggestions the Government of India made the Act.

Need of the Act:

The financial sector is one of the key drivers in India's efforts to achieve success in rapidly developing it's economy. While the banking sector in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing