

(2005) 12 DEL CK 0011
In the Delhi High Court
Case No : LPA 559 of 2004

All India Council for Technical Education	APPELLANT
Vs	
Ombir Kaushik and Others	RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Citation : (2006) 87 DRJ 54

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : C.B.N. Babu, for the Appellant; Aly Mirza, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment of the learned Single Judge dated 24.02.2004

2. Heard counsel for the parties and perused the record.

3. The facts have been mentioned in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The respondent No. 4 in the writ petition, YMCA Institute of Engineering, was offering 4 year Post Diploma Courses in various disciplines including Mechanical Engineering, Electronics Engineering, Computer Engineering etc. The writ petitioners completed their respective engineering courses in Post Diploma and Advance Diploma in Engineering.

5. For the Academic year 1997-98, a Common Engineering Entrance Test was conducted by the Regional Engineering College for admission to 4-year Degree Course in Engineering Colleges in the State of Haryana and for admission to 4-year Advance Diploma Course offered by the Respondent No. 4. During the said process, the respondent No. 3, Director, Technical Education, Haryana, recommended to the YMCA Institute of Engineering to upgrade the existing 4-year Advance Diploma Course to B.Tech programme.

6. Consequent to the said upgradation, those who had done 4-year Post Diploma/ Advance Diploma Courses at YMCA Institute, represented that there should be a bridge course so as to enable them to obtain B.E./B.Tech degree. Accordingly, the Director, Technical Education, Haryana, conveyed to the All India Council for Technical Education (AICTE) on 19.05.1999 that a bridge course be approved, but the AICTE declined to grant its approval and hence some of the ex-students of the Advance Diploma Course held in 1995-96 and 1996-97, and those undergoing the course filed a Civil Writ Petition No. 7364/99 which was allowed by the learned Single Judge of this court on 20.09.2000.

7. Pursuant to the said direction of the learned Single Judge, a bridge course was conducted for two years, i.e., 2001-02 and 2002-03. The number of applicants for the bridge course were far in excess of the seats available. Hence a number of petitions were filed by those who were denied admission. This court by its order dated 30.10.2000 in CWP No.6184/01, directed the respondent to admit all eligible candidate who had completed Post/Advance Diploma from the Institute in accordance with the merits of the applicants. Those who were left out in the year 2001-02 would be considered for the 2002-03.

8. Since the number of applicants for the bridge course were far in excess of seats available, petitioners could not be admitted for the year 2001-02. For the subsequent course 2002-03, the Institute stated that those who were left out for the year 2001-02 can be admitted but those applying for the first time in 2002-03 were not eligible for admission. This was challenged in CWP No. 5781/2002, in which this Court vide order dated 10.10.2002 rejected the contention and directed that all applicants for the bridge course be considered in accordance with their respective merits. This Order was upheld by the Division bench in LPA No. 855/2002 on 07.03.2003.

9. The petitioners have sought admission to bridge courses for the year 2003-04 and they made a representation in this connection dated 29.08.2003, Annexure P8 to the writ petition. They stated that could not get admission to the 2001-02 course for various reasons beyond their control. The respondent after conducting the bridge course for two years are not pursuing the matter any further. Hence a mandamus was sought directing the respondent No. 2 and 3 to grant approval for the bridge course for the petitioners.

10. A counter-affidavit was filed by the AICTE. In para 7 of the same, it is alleged that the AICTE vide letter dated 09.07.1999 declined to grant approval to the proposal to have a bridge course on the ground that there is no such provision in the AICTE Act, and the regulations framed there under.

11. In Paragraph 9, it is stated that in compliance with the High Court order in WP No. 7364/1999 and WP No. 2861/01, the AICTE accorded approval to the YMCA Institute for conducting one year bridge course for the academic year 2001-02. In view of the direction of the Bench of Punjab and Haryana High Court at Chandigarh in CWP 16323/01 and CWP 16649/2001, the AICTE accorded

extension of approval for one more year for the bridge course, i.e., 2002-03.

12. In paragraph 22 of the counter affidavit, it is stated that the bridge course was initially held in compliance with the High Court order only for one academic year, but later on it was extended for one more year in view of another order of the High Court. The AICTE cannot continue to extend approval to the bridge course.

13. In our opinion, this writ appeal has to be allowed. Whether to conduct a bridge course or not is entirely for the authorities concerned to decide. It is highly improper for the judiciary to encroach into the domain of the Executive authorities.

14. This court must maintain judicial restraint and not take over the functions of the legislature or executive which it has wrongly done by issuing repeated orders for creating a bridge course.

15. The function of the court is to adjudicate a dispute and not to legislate vide Union of India and another Vs. Deoki Nandan Aggarwal, and Union of India (UOI) Vs. Association for Democratic Reforms and Another, . Creating a bridge course by a judicial order is really legislation or performance of an executive function. Hence such an order should not be passed by the Court.

16. With due respect to the learned Single Judges who passed the orders in earlier cases directing that a bridge course be created for allowing Post/Advance Diploma Holders to get B.E./B.Tech degree we are of the opinion that they have transgressed their jurisdiction. In our opinion, there must be judicial restraint in such matters. The court should not interfere in administrative matters, since the administrative authorities are specialists relating to such matters. The court does not have expertise in such matters, and at any event it is not proper for it to exceed its limits.

17. Whether there should be a bridge course or not is entirely for the authorities concerned to decide. We fail to understand how the learned Single Judges have been directing that a bridge course be established. With profound respect to them, this was surely not within their domain, but it was under the domain of the executive or legislature. The AICTE had declined to approve grant of the bridge course and it was not for this court to sit in appeal over its decision. In this connection, we may refer to the letter of the All India Council for Technical Education dated 1.7.2003 to the Commissioner and Secretary Technical Education, Government of Haryana which reads as follows:

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

(A STATUTORY BODY OF THE GOVT. OF INDIA)

Prof. R. S. Gaud F.No.765-62-218(E)/97

Advisor (UG) Date: 1.07.2003

To,

The Commissioner and Secretary Technical Edn.

Govt. of Haryana,

Secretariat, Chandigarh 160 001.

Sub : Withdrawal of approval Bridge Course of YMCA-from the session 2003-2004

Sir,

As you are aware that initially AICTE had some reservations to grant approval to the Bridge Course based on the representation of the passed out students of the advance diploma course (1995-96, 1996-97) and the request of the State Govt. letter dt.19.05.1999. After considering the matter in detail, vide letter dated 09.07.1999, the Council declined to grant approval to the proposal of Bridge course. Subsequently the Council vide letter dt.11.11.1999 the council expressed its regret to grant approval to the proposal of Bridge course. The above communications dt.09.07.1999 were challenged by the students in the High Court of Delhi in a Writ Petition which was allowed with the direction to the AICTE to accord approval for the one year full time Bridge Course.

As per the directions of the High Court of Delhi, Bridge Course as designed was approved by the AICTE only for one year. However, vide Lr. 765-62-218 (E)/97, dt.27.08.2002 the extension of approval was further granted by the Council as per the directions of the Hon'ble High Court of Punjab and Haryana. In the meantime a number of Writ Petitions were filed by the passed out students of Advance/Post Diploma Course in the High Court of Delhi and High Court of Punjab and Haryana wherein Post/Advance Diploma students with entry qualification of 10+1 were allowed to join in the Bridge Course contrary to the Scheme. Against some of the orders in the Writ Petitions LPAs were file in both the High Courts. Against the judgments of Division Bench of High Court of Delhi and High Court of Punjab and Haryana, Special Leave Petitions were pending in the Hon ble Supreme Court.

As you are aware that the Bridge Course was approved by the Council, to the passed out students of Post/Advance Diploma qualification with an entry level qualification of 10+2 with physics, Mathematics and Chemistry to enable the meritorious student to upgrade their qualification equivalent to B.tech/B.E. Degree course. The said course was approved by the Council as per the directions of the Hon ble High Court of Delhi under the peculiar facts and exceptional circumstances of the case. Initially the idea was to accommodate meritorious students among 300 passed out students of Advance Diploma Course. But later on Post Diploma students were also allowed by the High Court for the Bridge Course. Thus, the number of aspirants seeking admission in Bridge Course has considerably increased, compelling to grant extension of approval for one more year.

The matter has, now, been considered by the competent Authority in the Council at great length and it was felt that due to the continued extension of approval to the Bridge course, the regular programmes in BE/B.Tech courses are adversely affected and such extension of approval continuously is not in the interest of Technical Education in the country and is prejudicial to the regular courses. Therefore, the Competent Authority in the Council has decided to withdraw the approval granted to the YMCA Institute, Faridabad for conducting the Bridge course from the academic year 2003-04.

Accordingly I am directed to inform you by the Competent Authority that the Council has withdrawn the approval of Bridge course from the academic year 2003- 04 and you are directed not to initiate/start any process of admissions for the Bridge Course hereafter.

Thus, the AICTE vide its letter dated 1.7.2003 stated that it has withdrawn the approval of bridge course of YMCA for the academic year 2003-04. The AICTE has been constituted under the All India Council for Technical Education Act, 1987. Its powers and functions include laying down norms and standards for courses and to grant approval for starting new technical institutions.

Section 10(i) of the Act states that:-

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

Section 10(k) of the Act states that:-

grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. It is not necessary to refer to the other powers of the AICTE. Section 10 of the Act states that it is a duty of the council to take all steps as it may think for ensuring coordinated and integrated development of technical education and maintenance of standards. The AICTE consists of experts referred to in Section 12 of the Act. Thus, it is the AICTE that has to decide whether the bridge course should be permitted or not. It is not for this Court to direct that a bridge course should be permitted as that the function of the AICTE. The High Court cannot legislate vide *Union of India v. D.N.Agarwal* AIR 1992 S.C. 96

18. In *Tata Cellular Vs. Union of India*, the Supreme Court observed:- (1) The modern trend points to judicial restraint in administrative action. (2) The Court does not sit as a Court of appeal over administrative decisions but merely reviews the manner in which the decision was made. (3) The Court does not have the expertise to correct an administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. 19. In the same decision the Supreme Court observed that judicial review is concerned with reviewing not the merits of the decisions but the decision making process (the

Wednesbury principle). The same view was taken in *Promod Kumar Misra v. Indian Oil Corporation* 2002 (4) All WC 3221 : 2003 AIHC 202, *State of Kerala Vs. Joseph Antony*, , etc.

20. As Lord Denning observed:-

This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the Courts and the Government and the authorities, which would be most undesirable. The Courts must act very warily in this matter. (See *Judging the World* by Garry Sturgess and Philip Chubb).

21. In our opinion Judges must maintain judicial self-restraint while exercising the power of judicial review of administrative or legislative decisions.

22. In view of the complexities of modern society , wrote Justice Frankfurter, while Professor of Law at Harvard University, and the restricted scope of any man s experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language: It is a misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong.(See *Frankfurter s Mr. Justice Holmes and the Supreme Court*).

23. In our opinion the administrative authorities must be given freedom to do experimentations in exercising powers, provided of course they do not transgress the legal limits or act arbitrarily.

24. The function of a Judge has been described thus by Lawton, LJ: A Judge acts as a referee who can blow his judicial whistle when the ball goes out of play, but when the game restarts he must neither take part in it nor tell the players how to play: vide *Laker Airways Ltd. v. Department of Trade* (1977) QB643 (724).

25. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote: It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the State. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism by his disbelief in ultimate answers to social question. Thereby he exhibited the judicial

function at its purest. (See Essays on Legal History in Honour of Felix Frankfurter Edited by Morris D. Forkosch).

26. In the process of judging constitutional cases, Justice Frankfurter wrote: The core of the difficulty is that there is hardly a question of any real difficulty before the Court that does not entail more than one so-called principle. Anybody can decide an question is only a single principle is in controversy partisans and advocates often cast a question in that form, but the form is deceptive. In a famous passage Mr. Justice Holmes has exposed this misconception: All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached.

27. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the judges preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the words of Chief Justice Neely: I have very few illusions about my own limitations as a Judge, I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judge intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

28. In administrative matters the Court should Therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary.

29. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in The public and its Government With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of Government. The great Judges are those to whom the Constitution is not primarily a text for interpretation but the mean of ordering the life of a progressive people. In the same book Justice Frankfurter also wrote In simple truth, the difficulties that government encounters from law do not inhere in the Constitution. They are due to the Judges who interpret it. That document has ample resources for imaginative statesmanship, if Judges have imagination for statesmanship.

30. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , Khanna, J. observed:-

In exercising the power of Judicial review, the Courts cannot be oblivious of the practical needs of the government. The door has to be left open for trial and error.

31. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, the Supreme Court observed that there are three grounds on which administrative action is subject to control by judicial review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Services* (1984) 3 All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the *Wednesbury* case, is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

32. Lord Diplock explained irrationality as follows:

By irrationality I mean what can be now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

33. For the reasons above, we set aside the impugned judgment of the learned Single Judge.

34. Before parting with this case we would like to briefly comment on the subject of judicial restraint while reviewing statutes or administrative decisions. We feel justified in making these comments because the times which this country is passing through requires clarification of the role of the judiciary vis- -vis the executive and the legislature.

35. Under our Constitution the Judiciary, the Legislature and the Executive have their own broad spheres of operation. It is important that these organs do not encroach on each other's proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must Therefore be exercised by the judiciary with the utmost humility and self-restraint.

36. The judiciary must Therefore, exercise self-restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over the decisions of the administrative authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a decision clearly violates some provision of the law or Constitution or is shockingly arbitrary in the *Wednesbury* sense, it can be struck down, but otherwise it is not for this Court to sit in appeal over the wisdom of the legislature or the executive.

37. The Court may feel that a better decision could have been taken or some other course of action could have been adopted by the legislature or executive, but on this ground it cannot strike down the law or the administrative decision.

The legislature and the executive authorities in their wisdom are free to choose different methods of solving a problem and the Court cannot say that this or that method should have been adopted. As Mr. Justice Cardozo of the U.S. Supreme Court observed in *Anderson v. Wilson* (1932) 289 US 20: We do not pause to consider whether a statute differently conceived and framed would yield more consonant with fairness and reason. We take this statute as we find it.

38. In our opinion the same principle will apply to administrative decisions also.

39. It must never be forgotten that administrative authorities have wide experience in administrative matters. No Court should Therefore, strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on administrative matters, because he can never be justifiably certain that he is right. Judicial humility should Therefore, prevail over judicial activism in this respect.

40. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other co-equal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of inter-branch equality.

41. Second, judicial restraint tends to protect the independence of the judiciary. When Courts encroach into the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If Judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This would be counter-productive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

42. The constitutional trade-off for independence is that Judges must restrain themselves from the areas reserved to the other separate branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

43. The Court should always hesitate to declare statutes or administrative decisions as unconstitutional, unless it finds it clearly so. As observed by the Supreme Court in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , the Court must presume that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm

and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best judge of what is good for the community on whose suffrage it came into existence. In our opinion the same principle will also apply to administrative decisions.

44. In *Lochner v. New York* (1904) 198 US 45, Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a liberty of contract theory, thereby enforcing its particular laissez-faire economic philosophy. Similarly, In his dissenting judgment in *Griswold v. Connecticut* 381 US 479, Mr. Justice Hugo Black warned that unbounded judicial creativity would make this Court a day-to-day Constitutional Convention . In *The Nature of the Judicial Process* , Justice Cardozo remarked: The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness . Justice Frankfurter has pointed out that great Judges have constantly admonished men (sic) of the need for discipline in observing their limitations (see Frankfurter s *Some Reflections on the Reading of Statutes*).

45. In this connection we may usefully refer to the well-known episode in the history of the US Supreme Court when it dealt with the New Deal Legislation of President Franklin Roosevelt. When President Roosevelt took office in January 1933 the country was passing through a terrible economic crises the Great Depression. To overcome this, President Roosevelt initiated a series of legislation called the New Deal, which were mainly economic regulatory measures. When these were challenged in the US Supreme Court the Court began striking them down on the ground that they violated the due process clause in the US Constitution. As a reaction, President Roosevelt proposed to reconstitute the Court with six more Judges to be nominated by him. This threat was enough and it was not necessary to carry it out. The Court in 1937 suddenly changed its approach and began upholding the laws. Economic due process met with a sudden demise.

46. The moral of this story is that if the judiciary does not exercise restraint and overstretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should Therefore, confine itself to its proper sphere, realizing that in a democracy many matters and controversies are best resolved in a non-judicial setting.

47. We hasten to add that it is not out opinion that Judges should never be activist . Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the US Supreme Court, vide *Brown v. Board of Education* (1954) 347 US 483, *Miranda v. Arizona* (1966) 384 US 436, *Roe v. Wade* 410 US 113, etc. or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This,

however, should be resorted to in exceptional circumstances when the situation forcefully demands it in the interest of the nation, but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary.

48. In view of the above facts, the appeal is allowed. Chief Justice Madan B. Lokur, J December 22 ,2005 dr