
(2009) 02 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No's. 4349, 4357, 4358, 4368, 4369, 4370, 4390 and 4409 of 2004

All India Council for Technical Education

APPELLANT

Vs

Surinder Kumar Dhawan and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10

Citation : AIR 2009 SC 2322 : (2010) 3 ALT 1 : (2009) 5 JT 216 : (2010) 1 LW 962 : (2009) 4 MLJ 148 : (2009) 11 SCC 726 : (2009) 3 SCR 859 : (2009) 4 SLR 520

Hon'ble Judges : R. V. Raveendran, J;G. S. Singhvi, J

Bench : Division Bench

Advocate : S. Chandra Shekhar and Sanjeev Sachdeva, for the Appellant; Rajiv Mishra, for Parekh and Co., R.C. Kaushik, Amit Kumar, Rameshwar Prasad Goal and S. Srinivasan, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran J.

1. The seventh respondent - YMCA Institute of Engineering, Faridabad (for short the 'Institute'), affiliated to the State Board of Technical Education, Haryana, was conducting Post Diploma Courses of four years duration in various engineering disciplines for several years, with entry level qualification of 10+1. The respondents are post diploma holders from the said Institute who had the entry qualification of 10+1 when they joined the said course.

2. The Institute sought the permission of All India Council for Technical Education - the Appellant herein ('AICTE' for short) to convert the aforesaid four year Post Diploma Programme into an 'Advance Diploma Programme' also of four years duration. AICTE granted approval for such conversion, by its letter dated 26.10.1995, subject to the following conditions:

- (i) The entry level to the course should be raised from 11th (10+1) to 12th (10+2) standard.
- (ii) The duration of the course shall be 4 years after 10+2.
- (iii) The course content should be modified as suggested by AICTE in Annexure-I to the said letter of approval.

As a consequence, the four year Post Diploma Course of the Institute was converted to a four year Advance Diploma Course from 1995.

3. On the request of the Institute, the Director, Technical Education, Haryana and AICTE granted approval in the year 1997, for upgradation of the four year Advance Diploma Course to a five year Engineering Degree Programme (B.Tech degree). As a consequence, the Institute started B. Tech programme from the academic year 1997-98 with the permission of the affiliating university and AICTE. From that year, the Institute discontinued admissions to the four year Advance Diploma Course.

4. In order to enable its students who had successfully completed the Four Year Post/Advance Diploma Course, to acquire degrees in engineering, the Institute wanted to commence a one year bridge course. On its application, the Government of Haryana approved a one year bridge course with two extended semesters of 22 weeks each, for diploma holders from the Institute to cover the remaining portion of the degree course, and acquire B.Tech degree. The Director of Technical Education, State of Haryana, addressed a letter dated 19.5.1999 to AICTE, recommending the grant of approval for starting the said bridge course by the Institute, for the benefit of its students who had passed the post/advance diploma courses during the sessions 1992-96, 1993-97 and 1994-98. It was stated that such admission facility to be made available to the diploma holders will be in force only for the next two years.

5. The appellant rejected the request by letter dated 9.7.1999 by giving the following reasons for the refusal of permission:

- (i) There was no provision in the AICTE Rules to approve a bridge course for diploma holders.
- (ii) Approving any bridge course would involve a major policy shift on the part of AICTE. It will also affect the technical education all over the country.
- (iii) If diplomas were to be permitted to be converted into degrees through bridge courses, the very purpose of diploma level education would be defeated.
- (iv) There was already an existing provision enabling diploma holders to get admitted to the second year of the engineering programme.

6. The Director of Technical Education, State of Haryana, reiterated the recommendation for approval, giving reasons in support of its recommendation. The Institute and the students of the Advance Diploma Course also submitted

representations to AICTE and the Ministry for Human Resources Development requesting reconsideration its decision. AICTE therefore reconsidered and rejected the request at its meeting held on 15.9.1999, and communicated the rejection by letter dated 11.11.1999.

7. Feeling aggrieved, 102 students of the Institute who had joined the Advance Diploma Course in Engineering, approached the Delhi High Court in December, 1999 by filing CWP No. 7364/1999 seeking the following reliefs : (i) for quashing the communications dated 9.7.1999 and 11.11.1999 of AICTE; and (ii) for a direction to the Union of India and AICTE to accord approval for the upgradation of the four year Advance Diploma course in Engineering, to a B.Tech programme, with the one year bridge course. A learned Single Judge of the Delhi High Court allowed the said writ petition by order dated 20.9.2000, quashed the rejection letters dated 9.7.1999 and 11.11.1999 of the AICTE and directed AICTE to accord approval to the Institute to have a bridge course for its students who had studied and who were studying in the Advance Diploma Course.

8. Thereafter some students who had passed the erstwhile Post Diploma Course, approached the Delhi High Court in 2001, seeking relief similar to what was granted to students of four years Advance Diploma course. Those petitions were allowed on 28.5.2001 and 30.10.2001 and affirmed in a Letters Patent Appeal on 21.12.2001. These subsequent orders extended the benefit of the bridge course to even Post Diploma holders, provided they had passed 10+2 examination (with the subjects Physics, Chemistry and Mathematics) and successfully completed the four year diploma course.

9. Thereafter, other post diploma holders, who entered the course only with a qualification of 10+1, approached the Punjab and Haryana High Court in CWP No. 16232/2001. A learned Single Judge of the High Court allowed the said petition by order dated 15.3.2002 holding that the criterion relevant for admission to the bridge course was possessing a four year post or advance diploma, and the fact that some of them had passed 10+2 examinations, while others had passed 10+1 examinations, before joining the post/advance diploma should not affect their eligibility to be admitted to the bridge course. He held that there cannot be discrimination between Post Diploma holders and Advance Diploma holders, with reference to their entry qualification for diploma course, that is, passing either 10+2 or 10+1 examination.

10. The respondents herein who were also post diploma holders but who had passed entry level examination of 10+1 (and not 10+2 examination) approached the Punjab and Haryana High Court. By the impugned orders dated 28.11.2002, their writ petitions were allowed following its earlier decision dated 15.3.2002 in CWP No. 16232/2001. The said orders are challenged in these appeals by special leave.

11. AICTE's objection is to the permission given by the High Court to the post diploma holders with 10+1 entry level qualification to take the bridge course.

AICTE had refused to give permission for the bridge course itself, as such a course enabling diploma holders to secure a B.Tech degree amounted to a major policy shift and also defeated the very purpose of diploma level education and diluted the efficacy of the degree course. But when the Delhi High Court directed it to approve the bridge course on 20.9.2000, it did not contest the order, as it was intended to be a one time measure in regard to candidates, who had done the four year advance diploma course and whose entry level examination was the same as the entry level examination for the engineering degree course namely 10+2. It also accepted the subsequent decisions of Delhi High Court extending the benefit to four year post diploma holders, having regard to the fact that the relief was restricted to only those whose entry level qualification was 10+2. It is contended when the norms and conditions were sought to be diluted further, by permitting four year post diploma holders with 10+1 entry level qualification, to take the bridge course, it decided to challenge the decision to resist any further erosion. It is submitted that if the decision is allowed to stand, it would permit candidates who did not possess the entry level qualification for admission to engineering degree course, to secure the engineering degree without having the entry level qualification, by a back door entry. It is submitted that extending the benefit of the bridge course to Post Diploma holders with entry level qualification 10+1, and equating a 10+1 plus four year Post Diploma, to a 10+2 plus four year Advance Diploma, would be detrimental to academic standards, and jeopardize the entire technical education system as it may lead to similar demands for equivalence, lateral entry and lowering of entry qualifications from other institutions or universities, thereby leading to a nationwide erosion of the quality of the engineering degree courses. It is submitted that the objection of AICTE is to the entire process of bridge courses for diploma holders, in particular to any attempt to lower the standards.

12. There is considerable force in the submission of the appellant. Having regard to Clauses (i) and (k) of Section 10 of the All India Council for Technical Education Act, 1987 ['Act' for short], it is the function of the AICTE to consider and grant approval for introduction of any new course or programme in consultation with the agencies concerned, and to lay down the norms and standards for any course including curricula, instructions, assessment and examinations. The decision whether a bridge course should be permitted as a programme for enabling diploma holders to secure engineering degree, and if permitted, what should be the norms and standards in regard to entry qualification, content of course instructions and manner of assessing the performance by examinations, are all decisions in academic matters of technical nature. AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start

entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realizing the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

13. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, this Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, his Court reiterated:

..the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.

14. The Act has entrusted AICTE with the powers and functions relating to (i) proper planning and co-ordinated development of the technical education system throughout the country; (ii) promotion of qualitative improvement of technical education in relation of planned quantitative growth, and (iii) regulation of the system and proper maintenance of norms and standards. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , this Court examined the provisions of the Act and explained the scope of the duties and responsibilities of AICTE under the Act thus:

The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system.

..This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all

parts of the country uniformly; that there will be a co-ordination in the technical education and the education imparted in various parts of the country and will be capable of being integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country are in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute....

In Govt. of A.P. and Another Vs. J.B. Educational Society and Another etc., , this Court reiterated:

AICTE Act was enacted with the object of regulating and coordinating the development of technical education throughout the country and also for establishment of proper and uniform norms and standard of technical education in India.

15. The decision of AICTE not to permit bridge courses for diploma holders and its decision not to permit those who have passed 10+1 examinations (instead of 10+2 examination) to take the bridge course, relate to technical education policy which fall within their exclusive jurisdiction. Courts will not interfere in matters of policy. This Court in Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, pointed out:

Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

The above observations will apply with added vigour to the field of education.

16. The respondents submitted that the appellant had accepted the decisions of the Delhi High Court directing permission for bridge course and therefore, it is estopped from challenging the impugned order which merely follows the decision of Delhi High Court with a slight modification. The fact that the decisions of the Delhi High Court were not challenged and was given effect earlier, will not come

in the way of the present challenge. It is possible that AICTE did not contest the earlier decision because it was thought to be a one time measure or because it would be applied only to a small section with reference to a single institution, or because it would benefit only those who had passed the entry level examination for engineering degree, that is, 10+2 with physics, chemistry and mathematics. It is also possible that AICTE did not assess or realize the effect or impact of such a decision or the likelihood of gradual dilution. The question whether the government or a statutory body which accepted and implemented earlier decision of a court, can challenge subsequent decisions of the court following the such earlier decision, with reference to different but similarly placed aggrieved persons, was considered by this Court in *State of Maharashtra Vs. Digambar, and Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others*, . This Court held that neither the principle of *res judicata* nor the principle of *estoppel*, nor the principle of legitimate expectation, nor the principle of fairness in action was attracted and there was no bar to such challenge. The principle is stated thus in *B.K. Akkara*:

A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives.

The observations with reference to financial implications, will equally apply in other situations also, as in this case which involve serious implications/repercussions in the field of education leading to deterioration of educational standards. Therefore, the fact that the earlier directions of the High Court to permit the bridge course for diploma holders from the Institute, had been complied with, and that those decisions attained finality will not come in the way of AICTE challenge any subsequent decision relating to other similarly placed candidates/students. It cannot however take away the benefit extended to the petitioners in those cases, where the decision had attained finality, on the ground that subsequently the court has taken a different view.

17. It was next contended by the respondents that AICTE should not distinguish between those who underwent 10+2 course and those who underwent 10+1 course, as once they were admitted and successfully completed the post diploma or advance diploma course, they all became equal and the bridge course should be available to all four year diploma holders. AICTE countered by contending that it complied with the direction of the Delhi High Court to permit one year bridge

course as it was intended to be a one time measure available only for those candidates who possessed entry level qualifications of 10+2 physics, chemistry and mathematics and a four year post/advance diploma. The High Court was in error in assuming that the entry level qualification was not relevant once a candidate secured the post/advance diploma. The issue had to be examined with reference to admissions to a program which was not a separate course, but a special bridge course which led to an engineering degree for which the entry level qualification was 10+2. AICTE was of the opinion that the norms/standards by way of minimum qualifications for Engineering degree course should not be diluted by permitting a lesser entry qualification of 10+1. It was of the view that persons not possessing the entry level qualification prescribed for admission to engineering degree course, cannot be permitted to secure the engineering degree by a round about backdoor route by undergoing a four year post/advance diploma course and one year bridge course. These being educational issues, they cannot be interfered, merely because the court thought otherwise. If the AICTE was of the view that only those diploma holders with 10+2 (with PCM subjects) should be permitted to upgrade their qualification by an ad hoc bridge course or that such bridge course should not be a regular or permanent feature, there is no reason to interfere with such a decision. The courts cannot by their orders create courses, nor permit continuance of courses which were not created in accordance with law, or lower the minimum qualifications prescribed for admissions. The High Court's decision to permit candidates who have completed 10+1 plus four years post diploma course to take the bridge course, cannot be sustained.

18. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four year Advance Diploma holders who had passed the entry level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one time measure was extended for several years and was also extended to Post Diploma holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education.

18. In view of the above, we allow these appeals, set aside the orders of the High Court and dismiss the writ petitions. We however make it clear that our order will not apply, nor come in the way of any candidate (whether a post or advance diploma holder from the Institute, with whatever entry level

qualification,) who has already been admitted to the bridge course and completed the bridge course, in pursuance of the impugned orders of the High Court, from either taking the examination or obtaining the B.Tech degree.