

(2002) 03 AP CK 0032
In the Andhra Pradesh High Court
Case No : WA No. 1429 of 1997

All India Council for Technical Education, New Delhi	APPELLANT
Vs	
Jesus and Mary Educational Society and Others	RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 12(1)

Citation : (2002) 3 ALD 283

Hon'ble Judges : S.R.K. Prasad, J; S.R. Nayak, J

Bench : Division Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; Sri Ram, for Ramesh Ranganadham, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This case has a chequered career. Initially, the 1st respondent herein, with an intention to establish a college to impart education leading to MBA course, made an application to the All India Council for Technical Education (for short, the Council), the appellant herein. Though approval was granted by the Council by its proceeding dated 26-12-1995, the Osmania University, refused to grant affiliation. The refusal to grant affiliation was not assailed by the 1st respondent. When the matter stood thus, the 1st respondent submitted an application on 20-6-1996 seeking permission of the Council for conversion of MBA course into PGDM course. That application was rejected by the Council by proceeding dated 16-8-1996. Again, the 1st respondent made an application on 27-8-1996 seeking permission of the Council to start PGDM course. On 27-2-1997, the Council again rejected that application in view of the policy decision taken by the Executive Committee of the Council on 7-11-1996 not to grant approval for starting new PGDM course in future. That led to the 1st respondent filing WP No. 6971 of 1997 questioning the orders of the Council dated 16-8-1996 and 27-2-1997. That writ petition was disposed of by this Court on 13-4-1997 with a direction to the Council to reconsider the applications of the

1st respondent. The applications of the 1st respondent were again considered and rejected by the Council by order dated 19-6-1997. Being aggrieved by the said order the Council, the 1st respondent filed WP No. 13124 of 1997, out of which the present writ appeal arises. The learned single Judge by order dated 16-10-1997 allowed the writ petition and issued the following direction:

"The respondent No. 1 Council shall accord approval to the petitioner to have PGDM course retrospectively from 1995-1996 onwards or from the date of commencement of the course whichever is later within ten days from the date of communication of copy of this order and report compliance to this Court within one week thereafter positively. No costs."

Hence this writ appeal by the Council.

2. Mr. M. V.S. Suresh Kumar, learned Standing Counsel for the Council, would contend that the learned single Judge has exceeded his jurisdiction in directing the Council to accord permission to the 1st respondent to start PGDM course retrospectively from the year 1995-96 and such a direction ought not to have been issued by this Court in the light of the policy decision taken by the Council on 7-11-1996. The learned Standing Counsel would also contend that even assuming that the applications of the 1st respondent were not properly considered by the Council, at the most, the Court could have directed the Council to reconsider the applications, and there is no justification for the Court to direct the Council to accord approval to the 1st respondent to have PGDM course, that too, with retrospective effect, and that in issuing such a direction, the learned single Judge has undoubtedly exceeded jurisdiction vested in this Court under Article 226, of the Constitution. The learned Standing Counsel would also maintain that the rejection of the application of the 1st respondent-society in the light of the policy decision taken by the Council is fully justified and no exception can be taken to the same.

3. Mr. Sri Ram, learned Counsel appearing for the learned Counsel for the 1st respondent/writ petitioner would contend that the policy decision taken by the Council on 7-11-1996 is *ex facie* arbitrary and unreasonable and cannot be sustained on the touch-stone of Article 14 of the Constitution. The learned Counsel would also contend that the Council is guilty of practising invidious discrimination in the matter of according permission to start PGDM course. On the basis of certain instructions received by him, the learned Counsel would contend that even after the so-called policy decision taken on 7-11-1996, there were instances where the Council accorded permission to certain societies to start PGDM course. However, this factual assertion made by the learned Counsel at the time of hearing is hotly contested by the learned Standing Counsel for the Council. We do not think it necessary to go into this factual controversy. Suffice it to state that even assuming that despite the policy decision taken by the Council on 7-11-1996, in breach of that policy, the Council has accorded permission to certain institutions to start PGDM courses, that circumstance itself would not justify this Court to issue a direction to the Council to repeat the same illegality,

because it is well settled in law by the decisions of the Supreme Court in *State of Orissa Vs. Durga Charan Das*, *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, *Chandigarh Administration and another Vs. Jagjit Singh and another*, and *Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others*, that if an authority makes an order in violation of the rule and confers a right on an ineligible person, that would not justify a claim by another ineligible person.

4. Although a doubt was raised at the time of argument regarding the existence of the policy decision taken by the Executive Committee of the Council on 7-11-1996 as recommended by the All India Board of Management not to permit new institutions to start PGDM course, on perusal of the records, as a matter of fact, we find that the policy decision was taken in the year 1996 itself not to permit the societies and the institutions to commence PGDM courses. Sub-section (1) of Section 12 of the All India Council for Technical Education Act, 1987 (for short, the Act), empowers the Council to constitute a committee called the "Executive Committee" to discharge such functions as may be assigned to it by the Council. A copy of the proceedings of the first meeting of the Council dated 6-7-1988 held in New Delhi produced at page Nos. 92 to 98 of the material papers clearly shows that the Executive Committee is specifically assigned the power of granting approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Further, the minutes of the 19th meeting of the Executive Committee of the Council held on 7-11-1996 in New Delhi also shows that in the said meeting, a policy decision not to grant fresh PGDM course or programme from the academic year 1995-96 onwards, was taken. According to the learned Standing Counsel, this policy decision taken by the Executive Committee of the Council was subsequently ratified by the Council and in fact, such a ground was raised as ground No. 4 in the memorandum of grounds of appeal. The respondents have not contested the correctness of the above statement and we have no good reason to doubt the integrity of the statement made by a statutory body like the Council. The resultant position is that the appropriate statutory authority, which is entrusted with the power of superintendence and guidance over the professional/technical institutions, in appreciation of the need of the community and prevailing situation in the employment market, has taken a policy decision not to accord approval to start new programmes in PGDM course, and such a policy decision cannot lightly be interfered with by the Court in exercise of the power under Article 226 of the Constitution unless it is shown in a given case that the policy decision taken by it is apparently unsustainable being violative of Article 14 postulates. Nothing is shown in that direction to condemn the policy. Be that as it may, the policy as such is also not assailed in the writ petition and, therefore, there is no necessity for this Court to go into the validity of the policy decision taken by the Council on 7-11-1996. The policy exists, is a fact.

5. If the policy exists, no exception can be taken to the action of the Council in

rejecting the application of the 1st respondent. However, the learned single Judge, in the order under appeal, found flaw in the policy merely on the ground that in the order rejecting the application of the 1st respondent, no reasons are assigned as to why such a policy decision was taken. With great respect and humility, we are of the considered opinion that the reason assigned by the learned single Judge could be a valid reason to allow the writ petition and grant the relief. If anybody were to challenge the validity of the policy, the reasons or the justification for formulating the policy would have been disclosed by the Council in discharge of its obligation to the Court. Since the policy as such was not challenged in the writ petition, we do not think that it was necessary for the Council to disclose reasons for formulating the policy in its order rejecting the application of the petitioner. Even otherwise, as noticed above, the policy is neither arbitrary nor unreasonable.

6. In the result and for the foregoing reasons, we allow the writ appeal and set aside the order of the learned single Judge dated 16-10-1997 made in WP No. 13124 of 1997 and dismiss the writ petition with no order as to costs. However, we make it clear that this order shall not preclude the 1st respondent/writ petitioner from making fresh application for starting PGDM course, and if such an application is made, the Council shall consider the same on merits and pass appropriate order expeditiously without being influenced by any of the observations made by this Court in the orders handed down in the earlier writ proceedings. No costs.