

**(2003) 07 JH CK 0094**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (C) No. 6650 of 2002**

Arun Kumar and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 18-07-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 3 JCR 413

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Advocate :** M.M. Banerjee, M.S. Anwar, S. Jha and A.K. Jha, for the Appellant;

**Final Decision :** Allowed

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## Judgement

M.Y. Eqbal, J.—Heard Mr. M.M. Banerjee, learned counsel appearing for the petitioner, Mr. M.S. Anwar, learned counsel appearing for the University and Mrs. S. Jha and Mr. Manjul Prasad, learned counsel appearing for the respondent No. 5 and the State.

2. The petitioners who are the students of Bokaro Institute of Technology filed this writ application seeking issuance of a writ of mandamus directing the respondents to hold 1st year examination in BSE engineering course or adjust the petitioners to some other recognized engineering institute in the State of Jharkhand and also for payment of compensation for the loss sustained by the petitioners.

3. The petitioners appeared in the Entrance examination conducted by the respondents for 1997-98 and 1998-99 batches and upon their success they were admitted in the said institute in Computer, Electronic, and Electrical branches. The petitioners case is that respondents No. 3 and 4 namely Vinoba Bhave University (in Short-University) and All India Council for Technical Education (in short-AICTE) granted temporary affiliation and recognition to the said college for the batches from 1993-94 to 1998-99. In 1994 the expert committee constituted

by AICTE recommended permanent approval to the said college. It is contended that the University is bound to hold 1st year examination.

4. Mr. M.M. Banerjee, learned counsel appearing on behalf of the petitioner drawn my attention to the counter affidavit filed by respondent No. 5 AICTE and submitted that it is the admitted case of AICTE that it accorded conditional approval to the college for the academic session 1993-94 and 1994-95 subject to certain specific and general conditions and thereby granted legitimacy to the batch admitted in 1992. The approval was granted by AICTE on the basis of report submitted by inspecting team. It is further contended that the respondent-University affiliated the institute from 1993 to 1998 by granting temporary affiliation. Learned counsel further submitted that the Supreme Court has not restrained the University from holding examination. On the other hand Mrs. S. Jha, learned counsel appearing for AICTE submitted the AICTE has no objection for holding examination of the students admitted for the batch 1992-93.

5. Mr. M.S. Anwar, learned counsel appearing for the University has vehemently argued that the earlier report of the Committee of AICTE on the basis of which temporary affiliation was granted, was not correct. Learned counsel submitted that since University never granted affiliation to the said college the question of holding examination does not arise. Learned counsel drawn my attention to the orders passed by the Supreme Court in Civil Appeal No. 7291/2001 arising out of CWJC No. 4025/ 96(R).

6. It appears that the earlier writ petition being CWJC No. 4025/96(R) was filed before this Court for a direction to the University to grant affiliation to the college and to conduct examination of students already admitted in the institute as the conditional approval was granted by AICTE. In the said writ petition prayer was also made for quashing the letter dated 20.6.1995 issued by the State Government refusing to grant "No objection" certificate to the institute for running and establishing the said institute and for imparting technical education. The said writ petition was finally allowed in terms of judgment dated 24th October, 1997 and the impugned letter issued by the Government refusing to grant no objection was quashed. It was held that AICTE shall proceed for grant of permanent approval without waiting for no objection certificate and the University was also directed to grant affiliation to the institute and to conduct examination of the students already admitted in the said institute. The operative portion of the judgment is quoted hereinbelow :--

"Having regard to the facts and circumstances of the case and the discussions made above, this writ petition is allowed and the impugned order dated 30.6.1995 issued by the Secretary, Department of Science and Technology, Government of Bihar, refusing to grant. No Objection is quashed and held it as redundant. It is further held that respondent No. 1-AICTE shall proceed for grant of permanent approval without waiting for any "No Objection" certificate from the State Government. Respondent No. 4 is directed to take all necessary steps for grant of affiliation to the Institute and to conduct examination of the students

already admitted in the said Institute on the basis of the conditional approval granted by the council. Such grant of affiliation by the University shall be taken as expeditiously as possible and within a period of two months from today keeping in mind that the delay in affiliation will jeopardize the career of the students. Respondent-State is consequently directed to allocate/nominate the students from amongst the students appearing in the combined Engineering Entrance Examination for taking admission in different disciplines of engineering in the Institute for the respective session. In the facts and circumstances of the case, there shall be no order as to costs."

7. The University preferred Letters Patent Appeal against the judgment and order being LPA No. 124/98. The said appeal was dismissed and the judgment passed by the learned Single Judge was affirmed by the Division Bench of this Court. The University thereafter filed SLP before the Supreme Court being SLP No. 2296/2000 (Civil Appeal No. 7291/01). The Supreme Court by judgment and order dated 16.10.2001 set aside the judgment of the learned Single Judge and of the Division Bench and further clarified that whenever institute complies with the norms prescribed by AICTE, it would be open for the institute to apply for affiliation before AICTE, concerned University and the State Government. I would like to quote hereinafter the relevant orders passed by the Supreme Court in the aforesaid Civil Appeal.

8. in SLP No. 2296/2000, the Supreme Court passed the following order on 2.5.2000.

Upon hearing counsel the Court made the following

#### ORDER

In this matter there is substantial variance between the Vinoba Bhave University on the one hand and the college authorities on the other hand as to whether the conditions prescribed by the All India Council for Technical Education in its order of conditional approval have been complied with by the College or not.

We therefore request the Director, Indian Institute of Technology, Kharagpur to personally visit the institution and verify whether the college in question satisfies the various conditions prescribed in the order of approval granted by the AICTE and also as to whether college conforms to the standard prescribed by the AICTE and its Regulations, Rules and Notifications. The inspection will be conducted in the presence of the Registrar of the University or other Officer nominated by the Vice Chancellor, the Principal of Institution and the Regional Officer, Northern Regional Office. AICTE Kharagpur or other officer who may fix a date convenient to the University as well as convenient to other persons mentioned above. We request the Director Indian Institute of Technology Kharagpur to submit his report within a period of three weeks from today. This order will be communicated to the Director I.I.T. Kharagpur and to the above said Officers by the Registry. Expenditure in this behalf will be reimbursed to the Director, I.I.T. Kharagpur by the institution.

If the report is favourable to the Institution learned counsel for the University says that they will grant affiliation forthwith. The matter will be listed after summer vacation.

A copy of the report will be given to the College. The Regional Officer and to the University.

9. On 14.9.2000, the Supreme Court passed the following order.

Upon hearing counsel the Court made the following

#### ORDER

Learned counsel appearing on behalf of the 1st respondent-College want to place additional material by way of an affidavit in this regard to the facts on the basis of which the AICTE granted permission.

Learned counsel appearing on behalf of the AICTE points out that permission was granted on 31st March, 1994 on the recommendation made by the AICTE Task force for Eastern Region. The Report and the recommendation of the Task Force will be placed before the Court by way of an affidavit. Copy of the same may be served on the counsel for the petitioner. Earlier inspection, Notes by the AICTE, if any, may also be produced.

Prima facie, it appears to us that in the Report submitted by the director of the IIT, Kharagpur there are deficiencies in regard to the institution. It becomes necessary to find out in what manner the inspection was done by the AICTE or its Task Force and whether the deficiencies noticed by the Director. IIT Kharagpur were noticed by them or not.

The respondents-institution is restrained from making any fresh admissions into the institutions.

Copy of this order may be given to the counsel appearing in this matter.

Counsel appearing for the University also seeks time to file additional affidavit bringing further facts in reply to the counter filed by institutions.

10. Finally the Supreme Court disposed off the Civil Appeal 7291/01 (SLP No. 2296/01) on 16.10.2001. The order of 16.10.2001 is quoted hereinbelow :

#### ORDER

Leave granted.

Heard learned counsel appearing for the parties.

In our order dated 26th April, 2001, we have observed and directed as under.

".... During that time the learned counsel for the respondent No. 1 and 2 states that management of the College will take steps for removing all the deficiencies pointed out in the report dated 4.7.2000 given by Director IIT Kharagpur.

Thereafter, Director, IIT, Kharagpur and Chairman of AICTE would be requested to inspect the College premises again on or before that date and submit a report stating whether the norms prescribed by AICTE respondent No. 3 are complied with or no....."

By letter dated 10th August, 2001, original report of Joint Expert Committee in respect of visit of Bokaro Institute of Technology, Bokaro was submitted before this Court. As per the said report, even at present the Institute is not complying with the norms prescribed by AICTE.

In this view of the matter, the impugned order passed by the High Court cannot be maintained and is required to be set aside. In the result, the appeal is allowed, the impugned order passed by the learned Single Judge which is conformed by the Division Bench is set aside. However, we make it clear that whenever the Institute complies with the norms prescribed by the AICTE, it would be open for the Institute to apply for affiliation before the AICTE, University and State Government.

The Civil Appeal is allowed accordingly

I. As are rejected.

11. It is therefore, clear from the Supreme Court order that the Supreme Court set aside the judgment of the learned Single Judge holding that the earlier temporary affiliation was wrongly granted by AICTE. In the judgment passed by the Single Judge the respondents were allowed to hold examination of the students who were admitted during the relevant session. That part of the judgment has also been set aside by the Supreme Court. Besides the above the State Government has granted "No Objection" Certificate only for the session 2002-03.

12. Taking into consideration all these facts and particularly the judgment and order passed by the Supreme Court this Court cannot grant relief to the petitioner by directing the respondents to hold examination of the petitioners. As noticed above it was found that the report of AICTE on the basis of which provisional affiliation was granted was not correct. In the eye of law, therefore, there was no affiliation in accordance with law. In such circumstances it is not permissible to direct the respondents to hold examination of the students including the petitioners. In this connection reference may be made to the decision of the Supreme Court in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, and C.B.S.E. and Another Vs. P. Sunil Kumar and Others, .

13. Having regard to the facts and law discussed hereinabove I do not find any merit in this writ application which is accordingly dismissed.