
(2021) 10 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2210 Of 2020

BFIT Technical Campus

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 467, 468, 471

All India Council For Technical Education Act, 1987 — Section 10, 10(k)

Citation : (2021) 10 UK CK 0024

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ravindra Maithani, J

1. Petitioner is an institution, which conducts various technical courses. It is under a society namely Kentan Educational and Cultural society. (hereinafter referred to as the petitioner college) college seeks quashing of an order dated 13.11.2020 passed by the State of Uttarakhand, by which, no objections certificate was denied for the affiliation of the petitioner college with Veer Madho Singh Bhandari Uttarakahnd Technical University ('the University'). Petitioner college also seeks direction so that it be granted affiliation with the university.

2. It is the case of the petitioner college that it sought approval of All India Council for Technical Education (for short 'AICTE') for upgrading the courses from diploma to engineering. After considering all the factors, AICTE accorded approval. In fact, it is extension of the approval for the academic year 2020-21. The petitioner college was required to be affiliated with the University. Upon application having been made, the respondent no.1 the State of Uttarakhand on 20.01.2020 required the university to submit a proposal. The university, in turn, submitted a proposal on 07.02.2020 to the respondent no. 1 recommending for grant of no objection certificate ('NOC'), but, by the impugned order dated 13.11.2013, the State of Uttarakhand declined to accord NOC on the ground that

an FIR under section 420, 409, 467, 468 and 471 IPC has been lodged against the petitioner college, which is related to scholarship scam. This order is impugned.

3. The State has filed its counter affidavit. In paragraph 6 of the counter affidavit, it is averred that the State Government has right to grant or deny the NOC and the State Government has rightly declined the NOC.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner college would submit that the State has no role in the matter of affiliation of the petitioner college with the university. It is submitted that once AICTE has approved the courses, State has no role to decline the affiliation with the university. Reference has been made to section 10 of the All India Council for Technical Education Act, 1987 (for short 'the Act').

6. During the course of argument, it is also submitted that, in fact, AICTE has further extended the approval for the academic year 2021-22 on 25.06.2021. Therefore, it is submitted that the order declining the NOC for affiliation with the university has no force in the eye of law. Hence, it deserves to be quashed.

7. In support of his contention, learned counsel for the petitioner college has also placed reliance on the principles of law, as laid down in the case of *Jaya Gokul Educational Trust Vs. Commissioner and Secretary to Government, Higher Education Department, Thiruvananthapuram, Kerala State and another*, (2000) 5 SCC 231. In fact, in the case of *Jaya Gokul* (supra), the Hon'ble Supreme Court posed two questions for consideration in paragraph 8 of the judgment, which is as hereunder;

"8. The following points arise for consideration :

(1) Whether in view of the judgment of this Court in *State of Tamil Nadu & Another v. Adhiyaman Educational & Research Institute & Others*, [1995] 4 SCC 104, the provisions of the AICTE Act, 1987 occupied the field and it was not necessary to obtain the further approval of the Government or other authority? Whether any statute in the State of Kerala if it required such approval, would be void?

(2) Whether the orders of rejection passed by the State Government were valid on merits and whether the University should have granted further orders to continue the affiliation solely on the basis of the AICTE permission?"

8. Having discussed the provisions of the Act and regulation dated 31.10.1994, framed by the AICTE, the Hon'ble Supreme Court observed that there is no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the Act. In paragraph 23 of the judgment, the Hon'ble Court has given the findings, which is as hereunder;

"23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it

would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Point 1 is decided accordingly."

9. On the other hand, learned State Counsel would submit that a criminal case was lodged against the petitioner college, therefore, after considering all the relevant factors, the NOC has rightly been declined.

10. Learned counsel for the respondent no. 3, the University would submit that, in fact, the final authority is the AICTE in the matters and in case of any difference, it is the AICTE, which has to take final decision.

11. This Court, during the course of hearing, has posed two questions to the State Government, which are incorporated in order dated 30.09.2021. It is as hereunder;

"(i) Whether the State of Uttarakhand has denied NOC/affiliation to such other colleges/institutions, which were involved in scholarship scam? And/or,

(ii) Whether the State of Uttarakhand has revoked the NOC/affiliation of such colleges, which were involved in scholarship scam?"

12. Today, when the Court requested learned State Counsel to reveal as to what is the stand of the Government on those two posed questions, learned State Counsel would submit that (i) the State Government does not maintain list of the institutes which were given NOC and (ii) even the State Government does not know as to against which of the colleges, FIR has been lodged in the scholarship scam.

13. While replying the queries, learned State Counsel also started reading the impugned order, paragraph 3 particularly, which incidentally records that the name of the petitioner college finds mention in the list of the colleges involved in the scholarship scam. It impliedly means that the State Government has the list of the colleges involved in the scholarship scam. The questions posed by the Court has not been responded by the learned State Counsel. The Court leaves it at it.

14. Learned State Counsel referred to the Uttarakhand Technical University regulations, 2018 to refer that NOC from the State is required before affiliation with the University.

15. Approval to run technical courses is granted by the AICTE under the Act. Section 10(k) of the Act makes provisions with regard to approval, which is as hereunder;

"10. Functions of the Council.-It shall be the duty of the Council to take all such steps as it may think for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of

performing its functions under this Act, the Council may-

.....
.....
(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

.....
....."

16. Sub-section (k) of the above reveals that the approval may be granted by the AICTE in consultation with the agencies concerned.

17. In fact, in the case of *Jaya Gokul* (supra), the Hon'ble Supreme Court interpreted the provision of regulations framed on 30.10.1994 by the AICTE and in paragraphs 13 and 14 extensively discussed those regulations. Today, the regulations, which are enforced, are the regulations notified on 04.02.2020, it is admitted by the learned counsel appearing for the parties. Apart from it, the provisions which governs the grant of approval, etc. has been incorporated in approval process handbook, 2020-21. In the regulations of 2020 at serial number 4.9 A and D it is recorded that the procedure as specified in the approval process handbook shall be applicable.

18. Learned counsel for AICTE would submit that the views of State Government are obtained in view of the clause 1.4.7 of the approval process handbook, 2020-21. It is as hereunder;

"1.4.7 Views of State Government/ UT and affiliating University/Board

a. The State Government/ UT and the Affiliating University/ Board shall forward their views on the application received by them to the concerned Regional Office of AICTE NOT later than one week from the last date specified for submission of application as per the Public Notice /AICTE Web portal.

b. Based on the views (if any) of the State Government/ UT and the affiliating University/ Board for setting up of new Technical Institution, the Regional Committee shall take a decision about the processing of application or to reject the same. If the application is not processed further, the TER Charges after a deduction of 0.5 Lakh (Rupees Fifty thousand only) shall be refunded to the Applicant.

c. In the absence of the receipt of views from the State Government/ UT/ affiliating University/ Board on the application within the stipulated time, the Council shall proceed for further processing."

19. Two questions fall for consideration. They are as to whether the AICTE had obtained the views of the State Government before extension of approval for the academic year 2020-21 and academic year 2021-22 and

(ii) as to whether the State Government had conveyed its view to the AICTE.

20. Learned State Counsel has no reply as to whether views were obtained by the AICTE; learned counsel for the petitioner college would submit that they could not have been privy to such communication therefore, he is not in a position to state about it. Learned counsel for the AICTE also expressed his ignorance on this subject.

21. This Court may like to quote from the judgment in the case of *Jaya Gokul* (supra), where, in paragraph 22, the Hon'ble Supreme Court observed 'as pointed out in *T.N.* case there were enough provisions in the Central Act for consultation by the Council of AICTE with various agencies, including the State Governments and the universities is concerned.' It means that the agencies as mentioned under Section 10(k) of the Act also includes the State Government. The views of the State Government has to be obtained by the AICTE before considering the application for approval. In view of the *Jaya Gokul*'s case (supra), the Act being Central Act has preference over any requirement of State Act. The decision on this issue of the AICTE would be final. Since, there is no material before the Court as to whether the view of the State has been conveyed to the AICTE or not, this Court is of the view that the impugned order may be considered by the AICTE as the view expressed by the State Government and thereafter, the AICTE may take a decision with regard to approval for the courses, as applied by the petitioner college.

22. Learned counsel for the AICTE would submit that such decision would be taken within a period of fifteen days.

23. Needless to say, in view of the principles of law, as laid down in the case of *Jaya Gokul* (supra) once the AICTE accords approval, the University would not require NOC from the State Government for the purposes of affiliation.

24. In view of the above, the writ petition is disposed of with the following directions;

(i) The respondent no.4 the AICTE through its Chairman shall take a fresh decision on the application of the petitioner college for approval of course, in view of the views of the State of Uttarakhand as contained in the impugned order dated 13.11.2020 (annexure-3 to the writ petition). The decision shall be taken within 15 days.

(ii) In case, the AICTE after examining all the relevant material including the views of the State Government again accords approval and the petitioner college thereafter again approaches the University for affiliation, the university shall consider the application in view of the observation made in paragraph 23 of this judgment.