

(2007) 05 DEL CK 0299

In the Delhi High Court

Case No : CM No. 7602 of 2007 in WP (C) No. 4037 of 2007

CFA Institute and Another

APPELLANT

Vs

All India Institute of Technical Education

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 2
Constitution of India, 1950 — Article 226(1), 226(2)
Income Tax Act, 1961 — Section 2(15)

Citation : (2007) 05 DEL CK 0299

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Shanti Bhushan and Valmiki Mehta and Manu Nair, Rajendra Kumar, Latha R. Nair and Mark D'Souza, Parag Tripathi, Mukul Rohatgi, Neeraj Kishan Kaul and Rajiv Nayar and Darpan Wadhwa, Suchit Mohanty, Rishad Medore, Sonia Dube, Charu Narula and Swati Grover, for the Appellant;

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The petitioner No. 1 (CFA Institute) is a non-stock corporation incorporated under the laws of Virginia (USA) and has its office at 560, Ray C. Hunt Drive, P.O. Box 3668, Charlottesville, VA-22903-0668, USA. The petitioner No. 1 claims to be a global professional association comprised of more than 89,000 individual members and 134 member societies across the world. Individual members either hold the Chartered Financial Analyst (CFA) Designation or are active in the investment business. For the purpose of becoming members or being awarded the CFA Designation, individuals must have at least four years of professional work experience in the investment profession. As per the petitioners, the CFA Designation was first awarded in 1963 and is a designation of professional excellence in the global investment community. According to the petitioners, employers and investors throughout the world consider the CFA designation awarded by the petitioner No. 1 as the definitive standard for measuring investment analysis competence and integrity.

2. The attainment of the CFA Designation requires the passing of three levels of tests all conducted by the petitioner No. 1. As stated in the petition, the petitioner No. 1 provides testing on one day in June for all three levels and in December of each year for the first level alone. These tests are conducted in rented quarters using local proctors and support with the attendance of one of the petitioner No. 1's employees to monitor the quality. It is stated that the petitioner No. 1 is a testing and certifying organisation conducting a self-study course with tests for its candidates on only two days a year in India. It is categorically stated that there are no ongoing educational activities requiring a local collaborating partner.

3. It is further stated on behalf of the petitioners that the course of study for each of the three levels is suggested and a body of knowledge from which the testing is drawn is provided. Each person enrolling for the examination, however, is left to determine his own method of preparation. No instructional programmes are offered by the petitioner No. 1. After the passing of the three levels of tests / examinations, an individual aspiring to attain the CFA Designation must further prove his or her professional experience in the financial field and provide professional references which are closely examined by the petitioner No. 1. The individual must submit to ethical rules of the petitioner No. 1 and pay professional dues to retain the CFA Designation. According to the petitioners, passing of the examination alone is not sufficient for the award of the CFA Designation. For it may be revoked for failure to pay the required membership dues or for ethical violations.

4. The petitioner No. 2 is a candidate for the CFA Charter / Certification and is a citizen of India. He is planning to take the level three examination on 03.06.2007 from the Delhi Centre. Both the petitioners are aggrieved by the order dated 18.05.2007 passed by the All India Institute of Technical Education (AICTE). The said order dated 18.05.2007 passed by the AICTE reads as under:

I am directed to refer to the show cause notice issued by this Council vide letter No. 37-3/Legal/AICTE/2005 dated 22.03.2007 as to why action should not be taken against your institution for violation of AICTE regulations dated 16th May 2005 for entry and operation of foreign university/institution imparting Technical Education in India. Your responses dated 02.04.2007, 09.04.2007 and 10.04.2007 received in reply to the show cause notice that the CFA programme conducted by CFA Institute do not come under the purview of AICTE have been considered by the Council and found not acceptable since Technical Education programmer/courses at all levels including certificate, diploma, post diploma, degree, post graduate and research of any duration if they are conducting directly or in collaboration with a foreign university / institution require AICTE approval. All such foreign universities / institutions must obtain AICTE approval as per the regulations notified.

Since your institution has failed to obtain mandatory approval from AICTE under the Regulations notified by the council vide notification No. 37-3/Legal/2005

dated 16.05.2005, the Council has no option but to initiate necessary action against your institution.

You are Therefore advised to cease the operation of your institution in respect of conduct of CFA programme in India with immediate effect. The concerned authorities including State Govt./UT are being advised to take appropriate measures to shut down / close down operation of your institution by invoking appropriate provisions of civil and criminal laws applicable in such cases.

5. In effect, the impugned order dated 18.05.2007 stipulates that the petitioner No. 1 shall cease all operations in respect of the conduct of the CFA Programme in India with immediate effect. Directions have been issued to all the concerned authorities, including State Governments and Union Territories to take appropriate measures to shut down / close down operations of the petitioner No. 1 by invoking appropriate provisions of civil and criminal laws applicable in such cases. The reason given for this order is that the petitioner No. 1 failed to obtain mandatory approval from AICTE under the regulations notified by the council vide Notification 37-3/Legal/2005 dated 16.05.2005.

6. Mr Shanti Bhushan, the learned senior counsel who appeared on behalf of the petitioners, submitted that the examination to be conducted on 03.06.2007 is a global examination across a large number of countries. The centres in India are at Delhi, Kolkata, Chennai and Mumbai and approximately 7,000 students are to appear for the said examination in India alone. He submits that the impugned order has resulted in stultifying the entire process and these 7,000 students would not be permitted to take the examination if the impugned order is allowed to operate. He submitted that the impugned order is wholly without jurisdiction and beyond the scope and ambit of the powers of the AICTE. He drew my attention to Section 2(g) and Section 2(h) of The All India Council for Technical Education Act, 1987 (hereinafter referred to as "the said Act") which define "technical education and "technical institution". The said provisions read as under:

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) xxxx xxxx xxxx xxxx (b) xxxx xxxx xxxx xxxx (c) xxxx xxxx xxxx xxxx (d) xxxx xxxx xxxx xxxx (e) xxxx xxxx xxxx xxxx (f) xxxx xxxx xxxx xxxx (g) "Technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;

(h) "Technical institution" means an institution, not being a University, which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(i) xxxx xxxx xxxx xxxx

7. Mr Shanti Bhushan contended that the petitioner No. 1 is not conducting any programme of education, research and training in India. The petitioner No. 1 is not concerned with engineering, technology, architecture, town planning, management, pharmacy and applied arts and crafts. The petitioner No. 1 is an organisation of professionals who give a designation of CFA to deserving and meritorious individuals based on the system indicated above. It does not have a programme of education, research or training. It merely conducts tests as a part of its designation process. He further submitted that the CFA programme does not mean a programme of education, research and training in any of the fields specified in Section 2(g) of the Act.

8. Mr Shanti Bhushan also submitted that the petitioner No. 1 has no presence in India whatsoever and cannot fall within the definition of technical institution. In fact, it is not an institution at all in India. It is definitely not a university nor does it offer courses or programmes of technical education. Nor has it otherwise been notified by the Central Government in the official gazette. The sum and substance of Mr Shanti Bhushan's submissions is that the petitioner No. 1 is neither a technical institution nor does it impart technical education and, Therefore, it is wholly beyond the scope of the said Act which, as the preamble itself suggests, is an Act to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and coordinated development of technical education system throughout the country, the promotion of qualification improvements of such education in relation to planned qualitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

9. Mr Amarendra Sharan, the learned ASG who appeared on behalf of the AICTE, submitted that the petitioner was clearly within the purview of the said Act and had to comply with the requirements there under. He referred to the AICTE regulations for entry and operations of Foreign Universities in India imparting technical education, 2005. Objectives "b" and "d" of the said regulations read as under:

b. To systematize the operation of Foreign Universities / Institutions already providing training and other educational services including that of coaching of students, in India leading to award of degree and diploma in technical education, either on their own or in collaboration with an Indian educational institution, under any mode of delivery system such as conventional / formal, non-formal and distance mode.

d. To enforce accountability for all such educational activities by Foreign Universities / Institutions in India.

10. Mr Sharan laid particular emphasis on the last phrase in objective "b" to the effect- "any mode of delivery system such as conventional / formal, non-formal and distance mode". He submitted that even distance learning through the

Internet or otherwise was covered by the regulations and it did not matter that the petitioner No. 1 was not located in India. He referred to objective "d" mentioned above to emphasise that the enforcement of accountability in respect of all educational activities by Foreign Universities / Institutions in India were entirely covered within the ambit of the said regulations.

11. Mr Sharan referred to the various documents which he had culled out from the Internet with regard to the prospectus of the CFA. He referred to them to indicate that they were definitely involved in an educational activity as they were offering programmes and the CFA Programme was referred to as the curriculum and examination programme. He also referred to the Chairman's letter which describes the CFA Programme by referring to it as "our flagship educational programme, the CFA Programme is recognised for its practical, global curriculum and its high standard of practice". He submitted that while the petitioners stated that they do not provide any study material, the CFA website with reference to the curriculum reveals that a committee of practicing CFA Charter-holders, in conjunction with CFA Institute staff, designs the curriculum to deliver the Candidate Body of Knowledge. The curriculum is delivered in a candidate friendly, integrated form at each level of the exam program. He referred to similar other statements contained in the website to indicate that the petitioner No. 1 has a regular curriculum and, Therefore, according to him, it will definitely fall within the programme of education as appearing in Section 2(g) of the said Act. He also submitted the topics mentioned u/s 2(g) included "management" which would cover the field of activity of the petitioner No. 1. Therefore, it was contended by Mr Sharan that prima facie the activities of the petitioner No. 1 fall within the said Regulations of 2005 and, consequently, within the scope and ambit of the said Act. He submitted that, at this stage, taking a prima facie view, the impugned order dated 18.05.2007 cannot be faulted.

12. The rejoinder on behalf of the petitioners was submitted by Mr Valmiki Mehta, senior advocate (in the absence of Mr Shanti Bhushan on 30.5.2007). He submitted that for 20 years, i.e., from 1987, the examinations have been held each year in India as well as all over the world. He submitted that the Act and the regulations do not contemplate a body such as the petitioner No. 1 to be within the purview of the AICTE. He referred to the Application Form which is required to be submitted by Foreign Universities / Foreign Institutions imparting technical education in India under the said Regulations of 2005. Part I of the Application Form deals with the details of Foreign Universities / Foreign Institutions. Part II pertains to information about the facilities for the proposed programme. This part is applicable to the Foreign Universities / Institutions wishing to start their own campus in India directly. Part III of the Application Form pertains to information about the collaborating partner in India. This part is clearly and admittedly inapplicable and, Therefore, need not be referred to. According to the AICTE, the petitioner No. 1 ought to have applied under the Regulations of 2005 and Part II of the Application Form would be relevant for its purposes. Referring to Part II of the Application Form, Mr Mehta submitted that it

related to a Foreign University / Institution wishing to start its own campus in India directly by itself. He submitted that this indicated that "a brick and mortar" institution in India was contemplated. The petitioner No. 1 has no such "brick and mortar" campus in India either by itself or through any collaborating partner. He referred to paragraph 3 of Part III of the Application Form which pertains to details of the applicant society / trust. He submitted that the petitioner No. 1 is neither a society under the Societies Registration Act nor is it a registered trust.

13. He then referred to paragraph 5 of Part II of the Application Form which requires the applicant to provide the name and address of the proposed institution at the "permanent site with pin code". The applicant is also required to state clearly whether the proposed site falls within the the corporation limits of Metropolitan City / State Capital / District Headquarters / Rural Area. He submits that the petitioner No. 1 does not have any permanent site in India and, Therefore, would not fall within the category of institutions contemplated by the regulation. Mr Mehta also referred to paragraph 7 of Part II of the Application Form which relates to details of the land which is to be utilised for the exclusive use of the proposed institution at the permanent site. He submits that the petitioner No. 1 does not have any land in India nor does it propose to have any land. There are other references also, such as paragraph 10 (which relates to building) which include laboratories, class rooms, drawing halls, workshops, library, administrative block, hostel etc. He submits that the Application Form itself indicates that the Foreign Institution must exist in India, having land and buildings in India and imparting regular education, research and training. The regulations have been issued for regulating entry and operation of the Foreign Universities / Institutions for imparting technical education in India. The petitioner No. 1 does not impart any technical education in India. It does not have any physical address in India. Nor does it have any land or buildings or class rooms or campus. Therefore, even as per the Regulations, an institution such as the petitioner No. 1 is not at all contemplated and is, Therefore, beyond the provisions and scope of the said Regulations and, consequently, of the said Act. He further submitted that as per the AICTE Hand Book for Approval Process for Establishment of New Technical Institutions and Introduction of Additional Course(s) / Increase in Intake / Extension of Approval in Existing Institutions, there are only three types of management courses. They are -- (1) Post Graduate Diploma in Management (PGDM), (2) Post Graduate Diploma in Business Management (PGDBM) and (3) Master in Business Administration (MBA). Mr Mehta submitted that the CFA Programme does not fall under any of these categories and, Therefore, even the argument of Mr Sharan that CFA falls within the category of "Management" cannot be sustained.

14. Mr Mehta also referred to the Supreme Court decision in the case of The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, to submit that the word "education" as used in Section 2(15) of the Income Tax Act, 1961 was held to connote "the process of training and developing the knowledge, skill mind and character of students by formal schooling". He

submitted that the CFA Programme does not involve any process of training or formal schooling. It merely tests the aptitude and proficiency of the applicants and thereafter considers them to be eligible for being designated as CFAs. He reiterated that the CFA Programme involves a self-study course with suggested material.

15. Considering the arguments advanced by the counsel for the parties, at this prima facie stage, it does appear to me that the petitioner No. 1 has a good case. To my mind, the petitioner No. 1 does not fall within the expression "technical institution" as contemplated in Section 2(h) of the said Act. Nor do I feel, at this stage, that the petitioner is imparting "technical education" as contemplated u/s 2(g) of the said Act. Even the application prescribed under the 2005 Regulations indicates that the type of institution which was in contemplation was one where a campus was sought to be set up in India having, to borrow Mr Mehta's expression, "a brick and mortar" existence in India. Therefore, I am of the view that the petitioner No. 1 has been able to establish a good prima facie case. As regards the balance of convenience, I find that that is also in favor of the petitioners. For over 20 years, the examination has been conducted in India and globally. The order dated 18.05.2007 will, if permitted to operate, stultify the process for the examinations to be held on 03.06.2007. The applicants who have laboured and studied hard for the said examinations would be "shot down" in mid-flight, as it were. Seven thousand applicants are to take their examinations on 03.06.2007. If the order impugned herein is permitted to operate, they will not be able to take the examinations. On the other hand no prejudice would be caused to AICTE or ICFAI. No campus has been set up. No classrooms have been set up. No instruction or training has been provided. The applicants have already paid their fees, and have already gone through the self-study stage, perhaps, utilising the suggested body of material. The only other step is for them to take the examinations. Therefore, the balance of convenience is definitely in favor of permitting the petitioners to take the examinations. It may be noted that the petitioner No. 1 as well as the petitioner No. 2 are not concerned with whether AICTE recognises the CFA Designation or not.

16. In case the petitioner No. 1 is not permitted to conduct the examination and the petitioner No. 2 is not permitted to take the examination, irreparable damage would have been caused to them if, ultimately, they succeed in this petition. On the other hand, no prejudice would be caused to the Respondent (AICTE) if the examination is held. Therefore, in my view, the operation of the impugned order ought to be stayed till the writ petition is decided to the extent that the petitioner No. 1 is permitted to go ahead with the examination in India on 03.06.2007.

17. But the matter does not rest here. This case has a chequered history. The petitioner No. 1 offered the Chartered Financial Analyst Designation for the first time in 1963. In India, it became known around 1985-89, through a licensee. The first set of examinations, as stated above, were conducted in India in 1987 and the first CFA designation awarded to Indian applicants was in 1989.

Sometime in 1997, the petitioner No.1's erstwhile licensee and the petitioner No. 1 parted ways. The erstwhile licensee started calling itself under the name and style of ICFAI (Institute of Chartered Financial Analysts of India). In 2004, a suit being CS(OS) No. 210/2004 was filed. The petitioner herein was the plaintiff No. 2 in that suit and the ICFAI (Institute of Chartered Financial Analyst of India) was the defendant No. 1. The suit was pertaining to trademarks. By a detailed order dated 04.08.2006 passed in is No. 11547/2004, a learned single Judge of this Court granted an interim injunction in favor of the petitioner No. 1 restraining ICFAI as well as the Council of Chartered Financial Analysts from using the petitioner No. 1's trademarks.

18. In January-February, 2007, the ICFAI Tripura University was instituted through a State Legislation. The said University was sponsored by the ICFAI. In March, 2007, the ICFAI University filed a writ petition before the High Court of Gauhati (Agartala Bench) being WP(C) 73/2007 against, inter alia, the petitioner No. 1 and the respondent (AICTE). The ICFAI University, inter alia, sought a mandamus against the AICTE to conduct an inquiry into the affairs and operations of the petitioner No. 1 and to take immediate suitable and appropriate action thereon. Essentially, it was a petition seeking directions to the AICTE to stop the activities of the petitioner No. 1 in India. By an order dated 12.03.2007, the Gauhati High Court directed the AICTE to examine the allegations against the petitioner No. 1 and to take necessary action. Thereafter, a show cause notice was issued by the AICTE to the petitioner No. 1. They filed a reply which culminated in the final order dated 18.05.2007, which is impugned herein. In the meanwhile, the matter had come up before the Gauhati High Court on 30.04.2007 when it was renotified to be listed on 28.05.2007.

19. After the receipt of the order dated 18.05.2007, the present writ petition was filed challenging the same before this Court on 24.05.2007. On 25.05.2007, the matter came up for admission before this Court and part arguments were heard and it was renotified for further arguments on 29.05.2007. However, before further arguments could be heard on 29.05.2007, the Gauhati High Court, in the said writ petition, passed a detailed order. The relevant portion of which reads as under:

(5) It appears that the aforesaid order dated 18.05.2007 was passed in furtherance of the orders dated 12.3.2007 and 30.4.2007 passed by this Court. It has been brought to the notice of this Court that despite the order dated 18.5.2007, the respondent No. 10 & 11 have been carrying out their programme and have been issuing advertisements and encouraging students for admission which are in derogation to the order passed on 18.5.2007 by the respondent No. 9. Some other activities have also been reported to have taken place on the part of the respondent No. 10 and 11 which may also be treated to be in derogation and in defiance to the order dated 18.5.2007. It has been submitted that the order dated 18.05.2007 is challenged by way of writ petition in Delhi High Court, where no order has been passed as yet. In view of the facts and circumstances,

and taking into consideration the clear and specific order dated 18.5.2007 having been passed by the AICTE, the respondents No. 9 herein, in reference to the orders dated 12.3.2007 and 30.4.2007, it is hereby directed that the respondent Nos 10 and 11 shall abstain from carrying out any programme relating to the aforesaid C.F.A. Course in India, and/or also restrained to carry out any other activities whatsoever relatable to the C.F.A. course.

(6) The parties are at liberty to bring to the notice of this Court about any defiance of the order dated 18.5.2007 for seeking any direction by this Court. However, AICTE Respondent No. 9 is itself empowered for taking any action as available under the Head of Punitive measures and conditions for withdrawal as provided under All India Council for Technical Education Notification dated 16th May, 2005 (Annexure P-11) to the supplementary affidavit. Henceforth, the respondent Nos. 10 & 11 are hereby restrained not to indulge in any such activities which may go or treated to be contrary to the provisions of law. After passing order dated 18.5.2007 all admissions, registrations and other activities including examination being conducted by respondent Nos. 10 & 11 shall have no value and force in the eyes of law.

(7) Parties are at liberty to file additional affidavits also.

(8) Liberty is given to the parties for seeking further direction, clarification or modification from this Court, if so advised.

List this matter on 23.7.2007.

20. When the matter came up for further arguments before this Court on 29.05.2007, it was contended on behalf of the counsel for the respondent and the ICFAI that the Gauhati High Court has already given its seal of approval to the order dated 18.05.2007 and that, Therefore, this Court should hold its hand and not pass any order which would be contrary to what the Gauhati High Court has passed.

21. It was contended on behalf of the petitioners that the order dated 18.05.2007 was passed in Delhi by the respondent / AICTE which is a statutory body located in Delhi and, Therefore, any challenge to the same would lie only before the Delhi High Court, both on account of the location of AICTE against whom the writ is sought as well as on account of the cause of action having arisen in Delhi. It was submitted that, Therefore, the Delhi High Court was the appropriate court having territorial jurisdiction insofar as the challenge to the impugned order dated 18.05.2007 was concerned, in respect of both Sub-articles (1) and (2) of Article 226 of the Constitution of India. On behalf of the respondents, it was contended that while this Court admittedly has territorial jurisdiction to entertain a petition challenging the order dated 18.05.2007 passed by the AICTE, the issue with regard to whether the petitioner No. 1 fell within the scope and ambit of the AICTE Act and the 2005 Regulations was under consideration of the Gauhati High Court (Agartala Bench). Since that writ petition was prior in time, this Court ought not to pass any order which would be in the

teeth of the order passed by that High Court on 28.05.2007.

22. The Supreme Court decision in the case of Hiraji Tolaji Bagwan (since deceased by L.R''s) Vs. Shakuntala, was also referred to by counsel on both sides with regard to the principle of comity of courts in a federal structure. The passage which was referred to was contained in paragraph 113 thereof which reads as under:

113. Before we conclude, we must note that good deal of argument was adduced that these applications in different High Courts in civil suits were not genuine and properly motivated, but were mala fide. Even though these might not have been to feed fat an innocent object, it was apparent that it was to feed fat a grudge in respect of a competitive project by a competitor. Anyway, in the view we have taken, it is not necessary to decide the bona fides or mala fides of the applicants. Shri Nariman, when he moved the application initially, had suggested that we should lay down certain norms as to how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country. Except that before the courts grant any injunction, they should have regard to the principles of comity of courts in a federal structure and have regard to self-restraint and circumspection, we do not at this stage lay down any more definite norms. We may also perhaps add that it may be impossible to lay down hard and fast rules of general application because of the diverse situations which give rise to problems of this nature. Each case has its own special facts and complications and it will be a disadvantage, rather than an advantage, to attempt and apply any stereotyped formula to all cases. Perhaps in this sphere, the High Courts themselves might be able to introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts. Such an exercise will be useful contribution in evolving good conventions in the federal judicial system.

23. The above observations of the Supreme Court clearly indicate that they refrained from laying down any definite norms apart from suggesting that before courts grant any injunction, they should have regard to principles of comity of courts in a federal structure and should have regard to self-restraint and circumspection. However, they qualified this by saying that it would be impossible to lay down hard and fast rules of general application because of the diverse situations which give rise to problems of this nature. Each case has its own special facts and complications and in this context, the Supreme Court observed that "it will be a disadvantage rather than an advantage to attempt and apply any stereotyped formula to all cases". The Supreme Court left it to the High Courts to introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which may have repercussions or effect beyond the jurisdiction of the particular courts.

24. There was some degree of debate amongst the counsel with regard to territorial jurisdiction of the Gauhati High Court in passing the order dated 28.05.2007. According to the petitioners, the impugned order dated 18.05.2007 could only be challenged before the Delhi High Court and the Gauhati High Court had no jurisdiction with regard to the same. On behalf of the petitioners, the Supreme Court decision in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, was referred to in support of the contention of that the High Court at Gauhati did not have territorial jurisdiction. The petitioners also relied upon the decision in the case of *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.*, to contend that an order passed by a court without jurisdiction over the subject matter would be *coram non iudice*. The said decision referred to a decree being passed by a court without jurisdiction. The Supreme Court observed that a decree passed by such court would be a nullity and would be *non est* and that its invalidity can be set up whenever it is sought to be enforced or it is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. On behalf of the petitioners, the submission went on to the extent of saying that the order dated 28.05.2007 was one such order and since it is being set up as a foundation by the respondent the same can certainly be agitated before this Court at this stage. A reference was also made to *Board of Trustees for the Port of Calcutta and another Vs. Bombay Flour Mills Pvt. Ltd. and another*, to indicate that an order without jurisdiction would be a nullity.

25. On behalf of the respondents, Mr Sharan submitted that the AICTE acted on the interim directions given by the Gauhati High Court and passed the impugned order dated 18.05.2007. The issue whether the petitioner fell within the AICTE regime was a question before the Gauhati High Court. The same issue is being raised here. He contended that the petitioner was a party to the proceedings before the Gauhati High Court and acquiesced to its jurisdiction, Therefore, it cannot challenge the territorial jurisdiction of the Gauhati High Court and that to before this Court. He submitted that the orders dated 12.03.2007, 30.04.2007 and 28.05.2007 passed by the Gauhati High Court were after the counsel for the parties had been heard. Since the petitioners had failed to get a favorable order, they have approached the Delhi High Court. In this context, he submitted that there was no infirmity with the Gauhati High Court in passing the order dated 28.05.2007.

26. Mr Parag Tripathi, who was permitted to make his submissions on behalf of the ICFAI which has moved an application for intervention, only made submissions with regard to the propriety of this Court passing an order which might contradict the order passed by the Gauhati High Court. A reference was made to the observations of Lord Diplock in the decision of the case known as *The "Abidin Daver"* 1984 Vol.1 Lloyd's Law Reports 339 (House of Lords) to the following effect:

Since the District Court of Sprayer would be recognized by the English High Court

as a Court of competent jurisdiction, any judgment given by it against the Cuban owners would be enforceable in England by action; so an unseemly race to be the first to obtain judgment in the jurisdictions in which the Turkish owners and the Cuban owners respectively are plaintiffs might well ensue; and novel problems relating to estoppel per rem judicator and issue estoppel, which have not hitherto been examined by any English Court, might also arise. Comity demands that such a situation should not be permitted to occur as between Courts of two civilized and friendly states. It is a recipe for confusion and injustice.

27. Essentially, what Mr Tripathi submitted is that the "unseemly race to be the first to obtain judgment" should be avoided and that comity demanded that such a situation should not be permitted to occur as between courts of two different States under the federal structure. He also referred to a decision of the Supreme Court in the case of *Om Prakash Srivastava Vs. Union of India (UOI) and Another*, .

28. Therefore, I am faced with this dilemma. On the other hand, the Delhi High Court has territorial jurisdiction to entertain this writ petition which challenges the impugned order dated 18.05.2007. It has jurisdiction to pass orders in exercise of its powers under Article 226 of the Constitution in respect of the said challenge. On the other hand, the Gauhati High Court has passed an order dated 28.05.2007 which has seemingly granted its imprimatur to the impugned order dated 18.05.2007. As regards the question of whether the Gauhati High Court had territorial jurisdiction or not in passing the said order, it would not be proper for this Court to go into this question at all. The only issue before this Court is whether the present writ petition falls within the territorial jurisdiction of this Court. High Courts can rule on their own jurisdiction and it would not be proper for them to rule on the jurisdiction of other High Courts. Insofar as the present subject matter is concerned, the admitted position as well as the position in law is that this Court has jurisdiction to entertain the challenge against the order dated 18.05.2007 passed by the AICTE.

29. The only question is whether any order can be passed which is contradictory to what the Gauhati High Court has directed by virtue of its order dated 28.05.2007. I would also like to refer to two decisions of the US Supreme Court on the question of comity of courts. In *Hartford Fire Ins. Co. v. Cal.* 509 U.S. 764, it was observed that the comity of courts refers to a situation where judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere. In *Parsi v. Davidson* 405 U.S. 34, it was observed that under accepted principles of comity, a court should stay its hand only if the relief the petitioner seeks would also be available to him with reasonable promptness and certainty through the alternative machinery. These principles ought to be kept in mind and would apply with equal vigour in the situation which has arisen in the present case. Can it be said that this Court should decline to exercise jurisdiction in respect of the subject matter of this petition because it can be more

appropriately be adjudged at Gauhati? Two circumstances come to mind. The first is that the petition filed before the Gauhati High Court is not by the present petitioners. The petitioner No. 1 herein is a respondent in that petition. And, the petitioner No. 2 is not a party in those proceedings. Secondly, the order dated 18.05.2007 is not the subject matter of challenge before the Gauhati High Court. The petitioners have challenged that order before this Court.

30. In any event, the entire discussion with regard to comity is based on the assumption that if an order permitting the holding of examinations on 03.06.2007 is passed by this Court, it would be contradictory to the order dated 28.05.2007 passed by the Gauhati High Court. If one carefully examines the order passed by the Gauhati High Court, one would be impressed by the fact that the order has been passed with due regard to the principle of comity of courts. This is easily demonstrated by reference to the following passage occurring in the said order:

It has been submitted that the order dated 18.05.2007 is challenged by way of writ petition in Delhi High Court, where no order has been passed as yet.... In view of the facts and circumstances,....

The Gauhati High Court was mindful of the fact that this Court was seized of the writ petition which challenged the order dated 18.05.2007 and the directions that it did issue by virtue of the order dated 28.05.2007 are to be circumscribed by the words "no order has been passed as yet". It is clear that if an order had been passed, then, perhaps, the order dated 28.05.2007 may not have been issued in the form it exists today. In any event, the directions given are based on the order dated 18.05.2007 treating the same to be valid as the same was not the subject matter of challenge before the court and the court has appropriately directed compliance with the same. I would read the said order as being operational till the impugned order dated 18.05.2007 remains unchallenged.

31. This being the position, I see no reason to see any conflict over orders of two High Courts or violation of the principles of comity if this Court went ahead and issued an order permitting the examination to take place on 03.06.2007.

32. Accordingly, the operation of the impugned order dated 18.05.2007 is stayed till the writ petition is disposed of to the extent that the petitioner No. 1 is permitted to go ahead with the examination in India on 03.06.2007.

A copy of this order be given dusty under the signature of the Court Master.