
(2008) 10 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (C) No's. 12528, 13375 and 13399 of 2008

Gandhi Engineering College and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1), 30
Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 3

Citation : (2008) 10 OHC CK 0008

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Bijan Ray, C. Choudhury, B. Mohanty, D. Chhotray, S. Mohanty, D.R. Das and B. Moharana and Ors, for the Appellant; R.K Dash, P.K. Tripathy, S. Patnaik and Ors. for O.Ps. 3 and 5 Y. Mohanty and Ors. for O.P. No. 4, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—Since common questions of law and facts arise in the aforesaid three writ petitions, the same were heard analogously and are disposed of by this common judgment. Since counter affidavit and rejoinder affidavit have been filed in W.P. (C) No. 12528 of 2008, it is felt appropriate to deal with the said case in detail so that the decision arrived at will also cover the other two cases. However, as the facts of the above cases differ being related to different institutions, they are dealt with separately.

2. In W.P. (C) No. 12528/2008. The Petitioner is an institute established by a Trust, named as Biswa Bharati Foundation Trust, which came into existence in November, 2005. The institute was established by the said Trust in June, 2006. The All India Council for Technical Education on or about 29.6.2006 on due consideration of all norms, standards and procedures as prescribed under the All India Council for Technical Education Act and the Regulations framed there under, approved the Petitioner-college and conveyed the intake strength in four different

disciplines, namely, Computer Science and Engineering (CSE), Electronics and Communication Engineering (ECE), Electronics Electrical Engineering (EEE) and Information Technology (IT) comprising 60 seats in each of the above disciplines thereby making the total intake capacity of the college as 240 seats. It has been averred in the writ petition that college-college has since been functioning with all the four disciplines on due affiliation of the college by the Biju Patnaik University of Technology (in short, the B.P.U.T."). In June, 2007, the AICTE on due consideration of the status of college-college with regard to faculty and infrastructure allowed a revised intake of 120 seats with CSE in place of 60 seats there by increasing the total capacity to 300 seats. Thereafter, on 2.5.2008, the AICTE extended the approval of the said 300 seats. In June, 2008, the AICTE permitted increase of intake strength of the College from 300 to 360 seats by permitting an intake strength of 60 seats in respect of the discipline and Ors. (MCA). The above approval letters of the AICTE have been annexed to the writ petition as Annexures-1 to 4.

3. The Apex Committee of the J.E.E., 2008 in its website and the counselling brochure permitted the Petitioner - college to admit students for the 360 seats for five disciplines. According to the Petitioner - institute, there was some delay on the part of the AICTE to communicate the revised intake in respect of the discipline of ECE and only after commencement of the J.E.E., 2008 counselling, the approval of revised intake of 120 seats in ECE thereby increasing the total intake capacity to 420 seats, was granted under Annexure-5 to the writ petition. Thus, the Petitioner - college has approval of the AICTE to admit students in the five disciplines with intake strength as indicated hereunder:

i)

Computer Science & Engineering (CSE)

120

ii)

Electronics & Communication Engineering (ECE)

120

iii)

Electronics & Electrical Engineering (EEE)

60

iv)

Information Technology (IT)

60

v)

MCA

60

Total :

420

The Petitioner - college has alleged that both, the authorities of B.P.D.T. and J.E.E., 2008 are aware and cognizant of the fact about the approved strength in respect of five disciplines stated above and the proficiency of the Petitioner - college to impart courses in the said five disciplines to a total number of 420 students per annum. The Petitioner - college accordingly intimated the J.E.E. 2008 Committee requesting to invite and allow students to take admission to such revised intake strength and, accordingly, concluded the counselling. The grievance of the Petitioner - college is that in spite of such communication and repeated requests to the authority of the B.P.U.T. and the J.E.E., 2008, they refused to notify the revised intake strength of the Petitioner - college in respect of the ECE. Being aggrieved by the action of the J.E.E., 2008 Committee and the B.P.U.T. in not notifying the extra intake of 60 seats in ECE for counselling, which has been duly approved by the AICTE, the Petitioner - college has preferred this writ petition, i.e., W.P. (C) No. 12528 of 2008 for appropriate relief.

4. A detailed counter affidavit has been filed by the B.P.U.T. - opp. party No. 3. The stand of the University in the counter affidavit has been enumerated in paragraph-3 thereof. It appears that the University has defended its case in not permitting the Petitioner college to take part in the J.E.E. Counselling in respect of the increase intake seats in ECE discipline on various grounds, such as:

(i) Centralized counselling of Engineering programme in respect of Government and Private Colleges have been completed by 2.9.2008 and classes have already been started from 28.8.2008 as per the notice issued by the B.P.U.T.;

(ii) The approved additional intake by the AICTE is subject to getting affiliation from the University and fulfilling State Government's requirements before admission and no affiliation has been applied for the above additional intake nor it has been accorded by the University;

(iii) Centralized J.E.E., 2008 counselling for admission into different professional degree programmes in all categories for out-side State candidates (NRO) candidates have been completed on 2.9.2008;

(iv) Total seats available for engineering stream were 20,691 out of which, 17,745 seats for both Government and Private institutions of the State were available to be filled up by central counselling in order of merit;

(v) The merit list for State and out-side State candidates of all categories have been fully exhausted and no candidates are left with J.E.E. to publish further merit list for engineering programme;

(vi) The seat matrix as per the availability of seats discipline wise in all Government and Private Colleges and also the new intake as communicated in respect of new professional Colleges by 30.6.2008 and additional intake for existing institutions by 10.7.2008 have been taken into consideration;

(vii) Although the AICTE gives approval round the year in respect of additional intake in the existing institutions and new intake in respect of new institutions, but the AICTE has given a cut-off date, i.e., 30th June of the year as a policy decision, i.e., "letter of approval issued after 30th June shall not be valid for the current academic year, but shall be valid only for next two academic years";

(viii) The Policy Planning Body (in short, "the PPB") which is a statutory body resolved in its meeting on 26.8.2008 that if vacant seats after centralized counselling for any programme exceeds 5%, then second J.E.E. will be preferred. But since for the year 2008, all seats in respect of engineering programme have been filled up during centralized counselling, the question of second counselling does not arise; and (ix) Any further cause serious counselling may dislocation of the students since the classes have already been begun from 28.8.2008.

5. Mr. R.K. Dash, learned Counsel appearing for the B.P.U.T. and the J.E.E. Committee vehemently argued that under the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fees) Act, 2007, it has been provided in Section 3 thereof that subject to the provisions of the said Act, admission of students in all private professional educational institution, Government institution and sponsored institution to all seats including lateral entry seats, shall be made through J.E.E. conducted by the Policy Planning Body followed by Centralized counselling in order of merit, in accordance with such procedure as per the recommendation of the said body and approved by the Government. In consonance with the aforesaid provision, the J.E.E., 2008 was conducted after the Information Brochure was approved by the State Government. The Brochure provides that the intake capacity of the College based on approval of the AICTE as on 30.6.2008 along with grant of affiliation from the B.P.U.T. as on 10th July, 2008 shall be considered for counselling.

6. Mr. Dash relying upon the decision in the case of P.A. Inamdar and Others Vs. State of Maharashtra and Others, submitted further that the Supreme Court in the aforesaid case having held considering the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal practices, it would be permissible to regulate admission by providing Centralized and single window procedure. Such procedure to a large extent can secure grant of merit based admissions on a transparent basis. Till Regulations are framed, the admission committee can oversee admissions so as to ensure that merit is not the casualty. Relying upon the aforesaid observation of the Supreme Court, Mr. Dash submitted that in accordance with the provisions of Section 3 of the Act, 2007, the seats matrix were exhibited before the Centralized Counselling and admissions were given to the candidates commensurating to their merit rank in the merit list and, therefore, the seat matrix being sacrosanct, the same cannot

be deviated and if done, the law laid down by the Supreme Court in the case of P.A. Inamdar (*supra*) as well as the objective of the Act, 2007 will be defeated. He further submitted that for the year 2008, a merit list of 38,996 and 13,984 of State and out-side State candidates respectively, totaling to 52,980 in all categories for engineering programme was prepared and both the merit lists have been exhausted by the candidates exercising their option to take admission in different disciplines in respect of the total seat of 17,745 for both Government and Private Colleges in the State. Thus, all seats, as per the seat matrix, have been filled up. It has been, however, stated in the counter affidavit that the total merit rank holders although were shown in the merit list, but out of them, interested candidates, who reported at the venue of counselling and exercised their option for admission, were allotted the seats in respect of the disciplines available commensurating to the merit rank and by this process, the total merit list has been exhausted. With regard to the question that a subsequent J.E.E. counselling was held in the year 2007, it has been stated in the counter affidavit that since last year, the merit list was not fully exhausted and Act, 2007 was enacted in the month of April, 2007 after commencement of the process of J.E.E., 2007 and the Information Brochure also made provision for different contingencies, this Court passed orders for holding a subsequent counselling. The said direction cannot be issued in the present case in view of the change made in the Information Brochure and coming into force of the Act, 2007. According to Mr. Dash, since in the case of the Petitioner - college, approval of the AICTE has been given after 30.6.2008, i.e., beyond the cut-off date, the said increase intake capacity of the Petitioner - college can only be given effect to in the subsequent two year, but not in 2008.

7. A further affidavit has been filed by the Petitioner college clarifying that the AICTE approved the additional intake of 60 seats on 21.8.2008. The application of the Petitioner - college to the AICTE seeking additional intake was made on 25.12.2007.

8. In view of the above pleadings, the moot question, which arises for determination in the present writ petition (W.P.(C) No. 12528 of 2008) is as to whether the approval of the AICTE increasing the intake capacity of the Petitioner - college can be considered for the academic year 2008-09 and, if so, whether the bar or the cut-off date of 30.6.2008 will stand as a bar for the J.E.E. Committee to allow filling up of the increased intake capacity approved by the AICTE, the said approval having admittedly been accorded beyond 30.6.2008.

9. Mr. Ray, learned Counsel for the Petitioner drew the attention of the Court to Clause-6.2.10 of the AICTE guidelines, which is as follows:

6.2.10. The decision on grant of approval or otherwise shall be communicated to the Applicant Society/Trust Institutions throughout the year. However, the applicants whose applications received at the Council on or before 31st December 2007 shall be eligible for starting of new programmes/increase/variation in intake for the academic year 2008-09. All other Letters of Approval

issued for the applications received after 31 st December, 2007 shall be eligible for starting of new programmes/increase/variation in intake from the next academic year, i.e. 2009-10 or beyond. It shall be the responsibility of the applicants so as to obtain necessary affiliation / permission from the concerned affiliating University/State Govt. etc. as per the prescribed schedule of the University/Admission Authority etc. Thereafter, the Applicant Society/Trusts shall furnish information about commencement of programme within 30 days to AICTE for updating its database....

Basing on the above clause, he contended that in the instant case, the application for increasing the intake capacity having been made prior to 31.12.2007 in accordance with the above clause of the Regulation, the increase intake approved by the AICTE is for the academic year 2008-09 and the opp. parties cannot deny the Petitioner - college from filling up of the vacant seats on the ground that no admission is permissible after 30.6.2008. He further submitted that the contention made on behalf of the B.P.U.T. as well as the J.E.E. Committee, that the Policy Planning Body which is a statutory body has resolved in its meeting dated 26.8.2008 that only if the vacant seats after centralized counselling in any programme exceeds 5% of the total seats then only a second J.E.E. will be preferred, has no relevancy in the facts of the present case, as question of holding a Second J.E.E. does not arise.

10. In the present, we are not concerned about holding of second J.E.E. The question is whether the Petitioner - college should be permitted to fill up the increase intake as approved by the AICTE for the session 2008-09 by taking candidates, who were ranked in the J.E.E. 2008. Mr. Ray also submitted that the above guidelines in Clause 6.2.10 of the AICTE cannot be violated by either the B.P.D.T. or the J.E.E. 2008 Committee and the Petitioner - college is a recognized institution by the B.P.U.T. and, hence, the J.E.E. - 2008 Committee cannot deny students to be admitted to the increased seats which have been approved by the AICTE. He further contended that the contention of the opp. parties that further counselling may cause serious dislocation of the students and will also violate the merit based counselling cannot be accepted in view of the admission in the counter affidavit that in the J.E.E. 2008, a merit list of 38,996 and 13, 984 of State and Out-side State candidates respectively, totaling to 52,980 in all categories for Engineering Programme, was prepared and both the merit lists were exhausted by the candidates exercising their option to take admission in different disciplines in respect of total seats of 17,745 for both Government and Private institutions of the State, itself shows that more than 35,000 candidates could not take admission due to lack of availability of seats and, therefore, there would be no prejudice caused if such candidates, who have not taken admission in any seat in any of the institutions of the State are given opportunity to take part in the counselling for filling up of the increased intake capacity of the Petitioner - college. In this process, according to him, there will be no violation of the principles laid down in the case of P.A. Inamdar (supra). However, Mr. R.K. Dash, learned Counsel, on the contrary, contended that Section 3 of the Act,

2007 has specifically provided that all seats are to be filled up through J.E.E. conducted by the Policy Planning Body followed by the centralized counselling in order of merit in accordance with such procedure as recommended by the Policy Planning Body and approved by the Government. In accordance with the decision of the Government, Information Brochure was prepared and approved, stipulating that the intake capacity of the college based on approval of the AICTE as on 30.6.2008 along with grant of affiliation from the B.P.U.T. as on 10.7.2008 shall be considered for counselling. In view of the above, it was contended by Mr. Dash that under no circumstances, the Petitioner's case can be considered.

11. In Clause 6.2.3. of the AICTE Regulation, it has been provided that on receiving an application for increase in the intake capacity of the existing courses, in AICTE approved technical institution, the application shall be forwarded by the Regional Office to the AICTE Headquarters within 15 days from the date of receipt of such proposal. Copies of such applications are required to be forwarded to the affiliating University and the State Government under Clause 6.2.1. The Clause - 6.2.1 also prescribes as follows:

6.2.1. Stage-I Submission of Proposals.

One copy each of the application shall be submitted directly to the affiliating University and the State Govt./U.T. either in person or through speed post/registered post. Two copies of the application shall be submitted to the concerned Regional Office of AICTE along with the proof of having submitted a copy of the application each to the affiliating University and the State Govt.

The AICTE approved technical Institutions may submit "any time" round the year, a proposal in the prescribed format (two copies) along with proof of submitting a copy each to State Govt./UT and Affiliating University and the following documents to the concerned Regional Office of the Council for grant of approval for introduction of new courses or programmes and/or increase in intake and/or variation in the intake capacity. However, applicants received up to 31st December shall be considered for grant of approval for the following academic year. Applications received after 31 st December shall be considered for the next academic year.

A copy of Compliance Report and Mandatory Disclosures submitted to the Council.

Detailed Project Report along with the documents notified in Approval Process Handbook.

Processing Fee of Rs. 40,000/- (Rupees Forty thousand only) by means of a Demand Draft drawn on a nationalized bank in favour of The Member Secretary, AICTE, New Delhi payable at New Delhi.

After sending the copy of the application within 15 days by the Regional Office to the Headquarters of the AICTE, it is further provided in Clause 6.2.3 that the State Government/U.T. and the Affiliating University shall forward its views within 30 days from the date of receipt of the proposal from the applicant. The State

Government/ Affiliating University shall provide reasons and justification to substantiate the stand. The view of the concerned State Government/Universities shall be taken into consideration while processing the proposal for grant of approval for introduction of new courses or programmes and/or increase/variation in the intake capacity. Accordingly, no separate "No Objection Certificate" (NOC) from the concerned State Government/University is required to be submitted to the AICTE by the applicant.

12. A bare reading of Clause 6.2.1 quoted above goes to show that applications received up to 31st December shall be considered for grant of approval for the following academic year and applications received thereafter shall be considered for the next academic year.

13. The facts of the present case disclose that the application was made prior to 31.12.2007 by the Petitioner - college, but due to laches of the Regional Office, the matter was delayed. It also shows that neither B.P.U.T. (the University) nor the State Government has sent anything to the AICTE expressing their views against grant of approval. It is, therefore, clear that after approval of the AICTE, applying Clause - 6.2.1., the increase in intake capacity of the Petitioner - college can be considered for the current year, i.e., 2008 09.

14. It is no doubt true that a deadline has been fixed as 30.6.2008 by both the State Government as well as the AICTE for completing admission to Professional Engineering Colleges. But then, since there is no laches found on the part of the Petitioner - college and since the application for increase of intake capacity was made prior to 31.12.2007 and the said increase in intake capacity has been approved by the AICTE, it can be considered to be valid for the academic year 2008-09.

15. As a similar question, with regard to affiliation of the University and the State arose in W.P.(C) No. 10697 and 10698 of 2008, this Court, in its judgment dated 21.8.2008 rendered in the said cases considering Clause - 6.2.3 of the Regulation and the other relevant clauses and further relying upon the decision in the case of Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Deptt. Thiruvananthapuram and Anr. AIR 2000 SC 1614, which was relied upon in the decision in the case of Bharathidasan University and Anr. v. All India Council for Technical Education and Ors. AIR 2001 SC 2861, came to the conclusion that if a technical institution has obtained approval of the AICTE, the Court can issue a direction to the University to affiliate the said institution under the University. It further held that the University cannot shirk from its responsibility by taking the ground that the Petitioner - institute has not fulfilled the conditions as per the Statute of the University. As has been held by the Supreme Court in the case of Jaya Gakul Educational Trust (supra), once an institute has obtained the approval of the AICTE, the AICTE can only require calling for the comments/recommendations of the State Government and of the University. In case of any difference between the State Government, University or the Regional Committee, the Central Task

Force of the AICTE was to make a final recommendation under Regulation 8(4) and, therefore, It is clear that the University, after the institution obtained approval of the AICTE, had no authority to withhold affiliation to the Petitioner - institute therein. Applying the ratio of the above decisions, it is seen that neither the B.P.U.T. nor the State Government can take a plea that college-college has not obtained the affiliation of the University/State Government in view of the fact that no objection was received from the University/State Government by the AICTE before approval of the increase in M.TceH. capacity of the Petitioner - college.

16. Coming to the decision in the case of P.A. Inamdar (supra), it would be relevant to state that The Supreme Court after taking into consideration the decision of the Constitution Bench in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, came to the conclusion that the scheme evolved of setting up the two committees for regulating admissions and determining fees structure by the judgment in Islamic Academy of Education and Another Vs. State of Karnataka and Others, cannot be faulted with either on the ground of alleged infringement of Article 19(1)(g) in case of unaided professional educational institutions of both categories and 19(1)(g) read with Article 30 in the case of unaided professional institutions of minorities. In the said judgment, no doubt, as quoted in the counter affidavit filed by the opp. party No. 3, the Supreme Court has observed that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb mal-practices, it would be permissible to regulate admissions by providing a centralized and single window procedure. Such a procedure to a large extent can secure grant of merit based admissions on a transparent basis.

17. This Court is of the considered opinion that there is absolutely no quarrel with the principles laid down by the Supreme Court in the case of P.A. Inamdar (supra) and, as a matter of fact, the observations as quoted in the counter affidavit, have been followed by the State by providing admission through a single widow system on conducting J.E.E.; 2008. The opp. parties, therefore, cannot draw any benefit from the said decision to support their contention that the increase intake of seats as approved by the AICTE in case of the Petitioner - college cannot be filled up for the session 2008-09.

18. This Court in its orders passed in W.P. (C) No. 9351 of 2008 and W.P. (C) Nos. 13787 and 14174 of 2008 has already held that the seats in professional colleges, if allowed to remain vacant, will enure to the benefit of none when the students are available to take admission to such seats and has directed the J.E.E. 2008 Committee to fill up the vacant seats by conducting counselling under the supervision of the J.E.E. Committee constituted by the Policy Planning Body latest by 31.10.2008

19. Since in the present case, from the Regulations of the AICTE, as discussed earlier, it is seen that the increase in intake capacity in one of the disciplines in the Petitioner - college though approved by the AICTE after the cut-off date, i.e.,

30.6.2008, but the said increase is for the current academic year 2008-09, the said seats cannot be left unfilled. Since this Court has already directed in the aforesaid cases, i.e., W.P. (C) No. 9351 of 2008 and W.P. (C) Nos. 13787 and 14174 of 2008, to conduct counselling by calling upon the candidates who secured ranks in the J.E.E. 2008, but have not taken admission to any of the seats, then available, similar order has to be passed in the present case.

20. In WPC No. 13375/2008 This writ petition also involves similar questions as has been discussed above. Under similar circumstances, the increase in intake capacity in Chemical Engineering from 40 to 60 and Marine Engineering from 40 to 60 and in the course of MCA Full Time from 59 to 60 was approved by the AICTE. Considering the annexures to this writ petition, for the reasons as stated above, with regard to W.P. (C) No. 12528 of 2008, the Petitioner - college is also entitled to a similar order as in the said W.P. (C) No. 12528 of 2008.

21. In WPC No. 13399/2008 This writ petition also arises out of similar facts, where there has been increase in intake capacity from 456 seats to 576 seats. For the self-same reasons, as stated above, similar orders are to be passed in this writ petition.

22. In view of the discussions made above, the writ petitions are allowed and it is directed that the vacant seats, which are available in all the three Petitioner-colleges, shall be filled up in accordance with the merit from amongst the candidates, who appeared in the JEE, 2008 under the supervision of the Policy Planning Body incharge of JEE. The opp. parties in cooperation with the Petitioner colleges in all the three writ petitions shall take immediate steps to fill up the above vacant seats in colleges-colleges latest by 31.10.2008.

23. (SIC) In the result, all the three writ petitions are allowed, but in the circumstances, without any order as to costs.