

(2005) 11 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No's. 16315, 24301 and 24550 of 2005

Impact Polytechnic and Others

APPELLANT

Vs

All India Council for Technical Education and Others

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Grant of Approval for starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes Regulations, 1994 — Regulation 10
Indian Medical Council Act, 1956 — Section 10 A

Citation : (2006) ILR (Kar) 548 : (2006) 1 KarLJ 396 : (2006) 1 KCCR 54 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ajoy Kumar Patil, in W.P. No. 16315 of 2005 and Ujwala Walwadikar, in W.P. Nos. 24301 and 24550 of 2005, for the Appellant; N.B. Bhat, for Respondent-1 in W.P. No. 16315 of 2005 and for Respondent-3 in W.P. Nos. 24301 and 24550 of 2005, V.A. Mohan Rangam, for Respondent-1 in W.P. No. 24301 of 2005, Gajendra Vasu, for Respondent-1 in W.P. No. 24550 of 2005 and B. Manohar, A.G.A. for Respondents-2 and 3 in W.P. No. 16315 of 2005 and for Respondent-2 in W.P. Nos. 24301 and 24550 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In W.P. No. 16315 of 2005-1st petitioner is an educational institution by name "Impact Polytechnic" (for short "Institution"), imparting education in Diploma Courses. Petitioners 2 to 11 are the students admitted by the 1st petitioner for the study of Diploma Courses in Civil Engineering and Machine Tools Technology for the academic year 2005-2006. In W.P. No. 24301 of 2005 and W.P. No. 24550 of 2005 the petitioners are the students admitted by Institution for the aforesaid two courses for the academic year 2005-2006. Initially, the Institution had alone filed W.P. No. 16315 of 2005. Some of the students admitted by the Institution to the aforesaid two courses for the academic year 2005-2006 filed the other two writ petitions. Later on, the

students admitted by the Institution have been impleaded as petitioners 2 to 11 in W.P. No. 16315 of 2005.

2. In W.P. No. 16315 of 2005, it is contended that with effect from the academic year 1986-87 the Institution has been imparting education in 8 Diploma Courses including the aforesaid two Diploma Courses. For the academic year 2005-2006 the Institution had made an application to the 3rd respondent for renewal of permission to continue the existing courses. The 3rd respondent issued a show-cause notice on 10-3-2005 as per Annexure-B1 pointing out certain deficiencies. The Institution sent its reply on 18-3-2005 stating that the deficiencies have been complied with. Again, the 3rd respondent issued a notice on 12-4-2005 as per Annexure-C pointing out some other deficiencies and that the Institution has complied with the said deficiencies and a reply was sent as per Annexure-B4 on 19-4-2005. Despite, compliance of deficiencies, the 3rd respondent has recommended to the 1st respondent not to grant permission to conduct the Diploma Courses in Civil Engineering and Machine Tools Technology as per the Communication at Annexure-A, dated 2-5-2005. In terms of the recommendation of the 3rd respondent, the 1st respondent has issued an order dated 22-6-2005 rejecting permission to continue the aforesaid two courses. Therefore, petitioners have filed this writ petition challenging not only the recommendation of the 3rd respondent dated 2-5-2005 but also the order passed by the 1st respondent dated 22-6-2005.

3. In the two connected writ petitions, petitioners have sought for a writ of mandamus directing the respondents to hold that their admissions to the aforesaid two courses is legal and valid and permit them to appear in the ensuing First Semester Examination.

4. The 3rd respondent has filed its objections. It is contended that the Institution had made an application for grant of additional course in Civil Engineering and Machine Tools Technology during the academic year 1986-87. The State Government by its order dated 5-5-1986 had granted permission to the Institution to start the said two courses with a condition that they are not entitled for grant for the said two courses. Despite, the grant of aid to all the courses except three courses namely, Civil Engineering, Machine Tools Technology and Computer Science, the Institution has failed to provide adequate infrastructure. There are no permanent teachers to teach the said courses and all labs pertaining to Civil Engineering and Machine Tools Technology are poorly equipped. For the academic year 2005-2006 the college made an application for extension of approval. An Expert Committee was deputed to inspect the petitioner's Institution. The Expert Committee inspected the Institution and submitted a report to the State Level Committee pointing out certain deficiencies. On the basis of the said report, the 3rd respondent issued show-cause notice on 10-3-2005 pointing out the deficiencies. Instead of rectifying the deficiencies the Institution has sent a reply on 18-3-2005 contending that the State Government has not released the grant in respect of the aforesaid three

courses. The report of the Expert Committee as well as the reply of the College was placed before the State Level Committee. The State Level Committee once again directed for issuance of a notice to the Institution. Accordingly, a notice was issued on 13-4-2005. The College submitted its reply on 19-4-2005 contending that necessary steps have been taken to purchase the equipments. No materials evidencing compliance of the deficiencies have been produced. Therefore, the 3rd respondent has not recommended for continuation of the aforesaid two Diploma courses. Sri B. Manohar, learned Additional Government Advocate has made available the original records. Respondent 1 has also filed objection justifying its order dated 22-6-2005.

5. Sri Ajoy Kumar Patil, learned Counsel appearing for the petitioners contends that the College has sent a reply to the show-cause notice dated 10-3-2005 pointing out that the deficiencies have been complied with. One more notice was issued on 13-4-2005 raising certain other deficiencies. A reply was sent to the said course on 19-4-2005 stating that the deficiencies have been complied with. Despite the said reply, the 3rd respondent has recommended to discontinue the approval to admit students to the aforesaid two courses for the academic year 2005-2006. It is further argued that immediately after the declaration of result of the S.S.L.C. examination, the Institution has admitted 14 students for the study of aforesaid two Diploma Courses for the current academic year. The admission was made much before the recommendations of the 3rd respondent dated 2-5-2005 and the order of the 1st respondent dated 22-6-2005. It is further argued that with effect from the academic year 1986-87 the Institution has been imparting education in the aforesaid diploma courses without any blemish. Therefore, the Institution was of the view that the permission will be renewed for the current academic year also. Therefore, it made admissions of the students to the aforesaid two courses. Even for the previous years the Institution used to admit the students immediately after the declaration of results of S.S.L.C. examination and that the Institution used to receive the renewal of permission either in the month of May or June. Therefore, in anticipation of the renewal of permission, it has admitted the students. Sri Patil has relied on the decision of the Apex Court in the case of Al-Karim Educational Trust and another Vs. State of Bihar and others, .

6. Smt. Ujwala Walwadikar, learned Counsel appearing for the students in the connected writ petitions submitted that the petitioners are bona fide students. Their admission should be approved and they should be allowed to appear in the examination.

7. On the other hand, Sri N.B. Bhat, learned Counsel appearing for AICTE and Sri B. Manohar, learned Additional Government Advocate appearing for the State and Director of Technical Education would contend that the Institution is not justified in admitting the students without an order of the respondents renewing permission to admit the students to the aforesaid two courses. It is further contended that on 10-3-2005, a show-cause notice was issued to the Institution

pointing out certain deficiencies. Therefore, the Institution should not have admitted any students before renewal of permission. Despite the notice dated 10-3-2005, the Institution has not complied with the deficiencies. On the other hand, the Institution has taken up a contention that it has not received grant-in-aid to the three diploma courses. The matter was placed before the State Level Committee and as decided by the State Level Committee, once again, a show-cause notice was issued as per Annexure-C on 13-4-2005. Even thereafter, the Institution has not complied with the deficiencies. Therefore, the 3rd respondent has recommended to the AICTE not to renew permission insofar as the aforesaid two courses are concerned. Accordingly, AICTE has passed an order dated 22-6-2005. The State Government has considered all the aspects of the matter in its meetings held on 8th April, 2005 and 29th April, 2005 and has come to a conclusion that the permission cannot be renewed in respect of the aforesaid two courses. Since the Institution has admitted the students without the prior permission, the admission of those students cannot be approved and they cannot be allowed to take the examination. Reliance is placed on the decision of the Apex Court in the case of Medical Council of India Vs. Rajiv Gandhi University of Health Sciences and Others, .

8. I have carefully considered the arguments made at the Bar and perused the materials placed on record. It is not in dispute that the permission was granted to the Institution to conduct diploma courses in various disciplines from the academic year 1986-87. The Institution has been permitted to function on the basis of yearly permission granted by the AICTE as required under the All India Council for Technical Education Act, 1987 and the Grant of Approval for starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes Regulations, 1994 made thereunder. The Institution made an application for extension of approval to continue the courses for the academic year 2005-2006 within the period prescribed. The Expert Committee constituted under the AICTE Act was deputed to inspect the petitioner's Institution. The said Committee inspected the petitioner's Institution and submitted a report to the State Level Committee pointing out certain deficiencies. On the basis of the said report, the 3rd respondent issued a show-cause notice on 10-3-2005 as per Annexure-B1. The deficiencies pointed out in the show-cause notice are as follows:-

- (1) There are no regular staff for MTT and Civil Engineering Department;
- (2) Environmental lab is non-existing;
- (3) All labs pertaining to Civil Engineering Department are poorly equipped;
- (4) SQC and inspection lab and CNC lab are non-existing.

9. In the show-cause notice, the Institution was informed to furnish compliance report on or before 18-3-2005. The Institution has sent its reply on 18-3-2005 stating that since it did not receive the grant in respect of the aforesaid two courses, the staff did not receive the salaries from the Government. Therefore,

the Management had to resort to temporary appointments to tide over the difficulty. It was further stated that the Institution is taking necessary steps to improve the other infrastructure. The matter was placed before the State Level Committee in its meeting held on 8-4-2005. It was noticed by the State Level Committee that there are no regular staff for MTT and Civil Engineering Department. The Environmental lab is non-existing, all labs pertaining to Civil Engineering Department are poorly equipped. The SQC and Inspection lab and CNC lab are non-existing and hence, Civil Engineering and MTT Courses are recommended to be brought under "no admission category" for the year 2005-2006. However, before recommending to the AICTE, a further notice was issued on 13-4-2005 as per Annexure-C. The Institution has sent its reply on 19-4-2005 stating that the Institution has taken note of the observations made in the notice and that a new building is planned and the construction will be started after availing bank loan. A list of teachers was included in the reply. Insofar as SQC and Inspection lab is concerned, except production of purchase order and invoice, no material has been produced to show that the Institution has acquired the same.

10. After consideration of the said reply, the 3rd respondent has decided to recommend to the AICTE to place the Institution in "No Admission Category" for the year 2005-2006 in respect of the aforesaid two courses. Accordingly, a recommendation was sent by the 3rd respondent as per Annexure-A on 2-5-2005. Accepting the said recommendation the 1st respondent has passed the order on 22-6-2005. The reply is furnished by the Institution referred above cannot be considered as full compliance of the deficiencies. Therefore, the State Level Committee has decided to keep the Institution in "No Admission Category" in respect of the aforesaid two courses. Perusal of the records show that the State Level Committee has held deliberations on this issue and has taken the said decision. The decision taken by the Committee is on the basis of the materials on record and it cannot be treated as arbitrary exercise of power. In my view, the Committee rightly took a view that it would be injurious to academic interest to recommend admission to the aforesaid courses.

11. The Institution contends that it has admitted 14 students for the aforesaid two courses immediately after the declaration of results of S.S.L.C. examination. It is the common case of the parties that the results of the S.S.L.C. examination for the academic year 2004-2005 was declared on 26-4-2005. The show-cause notice was issued as per Annexure-B1 on 10-3-2005 i.e., much earlier to the declaration of the result of the S.S.L.C. examination. It is pointed out that the AICTE ought to have informed the Institution the orders impugned before 30-4-2005 as per Regulation 10 of Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes Regulations, 1994. It is no doubt true that the decision was communicated after 30-4-2005. However, the Institution could not have admitted any students without the prior permission of the Competent Authority to that effect. Fee receipts produced by the students

show that they were issued by the Institution in the month of July 2005 which establishes that the students have been admitted by the Institution only in the month of July. However, the Institution contends that the students have been admitted immediately after declaration of results in the S.S.L.C. examination. Be that as it may, the fact remains that the College was informed as early as 10-3-2005 and on 13-4-2005 that it does not possess necessary infrastructure for imparting education in the aforesaid two courses. Even otherwise, the College could not have admitted any students without prior permission from the AICTE to continue the courses.

12. At this stage, learned Counsel for the petitioners would argue that the Institution has been imparting education in the aforesaid two courses from the year 1986-87 onwards. The Institution has admitted students expecting grant of permission, hence the students should be allowed to appear in the examination. Reliance is placed on Al-Karim Educational Trust's case. In the said case, the Apex Court has observed that the affiliation is being withheld unreasonably or the decision is being prolonged for one reason or the other, the Court would be constrained to exercise its jurisdiction particularly when the deficiencies have been substantially complied with. In the present case, the Institution has not complied with the deficiencies. This is not a case where permission was withheld or prolonged unreasonably. Therefore, the above decision is not applicable to the facts of this case.

13. In a later decision of the Co-ordinate Bench in Medical Council of India's case, the Hon'ble Supreme Court was considering the validity of an interim order of this Court whereby the Institution concerned was allowed to admit the students to M.B.B.S. Course before the grant of renewal of permission from the Central Government. It is held that the High Court ought not to grant interim order for admission of students in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act, 1956. It has been held as follows:-

The High Court ought not to grant interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to serious jeopardy to the students admitted in these institutions.

Thus, an Institution cannot admit the students without the permission from the Competent Authorities in accordance with law. Therefore, the Institution was not justified in admitting the students to the courses in question without prior permission from the Competent Authorities.

14. Now, the question is what should happen to 14 students who have been admitted by the Institution to the aforesaid two courses for the academic year 2005-2006. The Institution has committed grave error while admitting the innocent students to the courses in question. The students future cannot be put

in jeopardy. Article 226 of the Constitution of India grants discretionary power to the Court to pass such order as public interest dictates and equity projects. The learned Counsel for the Institution submits that it has already made applications to the 3rd respondent for continuation of the permission to impart education in diploma courses for the academic year 2006-2007. I am of the view that in case the authorities grant permission to the Institution to conduct the aforesaid two Diploma courses for the next academic year, interest of justice will be met if the Institution is directed to readmit the 14 students to the aforesaid two courses in the next academic year. In case the Institution fails to secure necessary permission as above, the Institution is required to admit them to any other valid and available diploma course of the choice of the students. This will mitigate to some extent the hardship caused to the students by admitting them to invalid diploma courses. Students are also free to claim damages from the Institution for the loss of an academic year.

15. In the result, the writ petitions fail and they are accordingly dismissed. However, I direct the Institution to admit the 14 students who have been admitted by it to the diploma courses in Civil Engineering and Machine Tools Technology for the academic year 2005-2006, in the next academic year to the aforesaid two courses if it secures permission from the Competent Authorities. In case it fails to secure permission to the said courses, the Institution is directed to admit the said students to any other valid and available diploma course of their choice. Liberty is also reserved to the students to claim damages from the Institution for the loss of an academic year in accordance with law. No costs.