

(2013) 08 BOM CK 0208

In the Bombay High Court

Case No : Writ Petition No. 4999 of 2013

Khalapur Taluka Shikshan Prasarak and Another

APPELLANT

Vs

All India Council for Technical Education and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 5 ALLMR 750 : (2013) 6 MhLj 501

Hon'ble Judges : S.C. Gupte, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : V.M. Thorat and Ms. Pooja V. Thorat, for the Appellant; Ushajee Peri for Respondent Nos. 1 and 2, Mr. Mohammedali Chunawala and Mr. Ashok R. Varma, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The challenge in these proceedings is to a decision of the AICTE by which the Petitioner has been placed under the "No Admission" category for academic year 2013-14. The First Petitioner, which is a trust, has established the Second Petitioner, which is a polytechnic college, in 1983. The Petitioner conducts a total of ten diploma courses. Of these, four have a second shift. On 10 May 2012, the institution was granted an extension of approval for all its diploma courses for 2012-13. On 25 May 2012, a notice to Show Cause was issued to the Petitioners calling upon them to explain why action should not be initiated under the provisions of the All India Council for Technical Education Act, 1987. The notice was issued on the basis that a surprise visit had been conducted at the institution on 28 April 2012 which had brought out deficiencies in regard to the amenities and infrastructure. The Petitioners were called upon to appear before the Standing Complaint Committee. The Petitioners submitted a reply on 8 June 2012. An Expert Visiting Committee inspected the institution on 7 December 2012. On 4 February 2013, the Petitioners applied on line for extension of approval for 2013-14. On 9 April 2013, an order was passed by the

AICTE stating that the Expert Visiting Committee had reported several deficiencies including non availability of infrastructure and faculty. Resolving not to destabilise the ongoing academic year, which would have led to hardship for students, AICTE decided to implement the decision from academic year 2013-14. The decision which was indicated on 9 April 2013 was uploaded on the website of the AICTE on 10 April 2013. The Petitioners thereafter moved the Standing Appellate Committee. The Standing Appellate Committee resolved to depute another Expert Committee. The Expert Visiting Committee conducted its visit on 29 April 2013. The report of the Expert Visiting Committee was placed before the Standing Appellate Committee on 30 April 2013. The AICTE eventually communicated a decision of 30 April 2013 by which instead of declining the extension of approval for 2013-14, the institution had been placed under the "No Admission" category. In consequence, the institution would be at liberty to apply for extension of approval in the following academic year. On behalf of the Petitioners, it has been urged that AICTE framed regulations in 2010 which have been applied to polytechnics. The Petitioner institute has been set up in 1983 and hence, it has been urged that the regulations of 2010 cannot have retrospective application. We see no force in the contention. There is no dispute about the position that after 2010, AICTE has applied its regulations to polytechnics which conduct diploma courses, such as the Petitioner. An institution which seeks permission or approval from the AICTE or an extension of approval must comply with the standards which are specified by AICTE in the interests of technical education. Under the All India Council for Technical Education Act, 1987, which is a legislation enacted by Parliament, the AICTE has been established for coordinated and integrated development of the technical education system at all levels throughout the country. AICTE is enjoined to promote the qualitative improvement of such education in relation to planned quantitative growth. AICTE is required to regulate and ensure the proper maintenance of norms and standards in technical education. The Council has to evolve suitable performance appraisal systems for technical institutions and universities incorporating norms and mechanisms in enforcing their accountability. When the norms or standards laid down by AICTE are not adhered to, it has been vested with the power to take necessary action against defaulting institutions. These principles have been highlighted in a recent judgment of the Supreme Court in *Parshavanath Charitable Trust vs. All India Council for Technical Education* (Civil Appeal 9047/2012) decided on 13 December 2012 where the Supreme Court held as follows:

22. The provisions of the AICTE Act, including its preamble, make it abundantly clear that the AICTE has been established under the Act for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. The AICTE is to further evolve suitable performance appraisal

system for technical institutions and universities incorporating norms and mechanisms in enforcing their accountability. It is required to provide guidelines for admission of students and has the power to withhold or discontinue grants to such technical institutions where norms and standards laid down by it and directions given by it from time to time are not followed. The duty and responsibility cast on the AICTE implies that the norms and standards to be set should be such as would prevent isolated development of education in the country.

After reviewing the statutory powers of the AICTE, the Supreme Court made the following observations in paragraphs 25 and 28 of the judgment on the scope of judicial review of decisions taken by the AICTE:

25. From the above principles, it is clear that the AICTE has varied functions and powers under the AICTE Act. It is a specialized body constituted for the purpose of bringing uniformity in technical education all over the country and to ensure that the institutions which are recognised by the AICTE are possessed of complete infrastructure, staff and other facilities and are capable of maintaining education standards for imparting technical education.

28. It is also a settled principle that the regulations framed by the central authorities such as the AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act. In the case of *All India Council for Technical Education Vs. Surinder Kumar Dhawan and Others*, , this Court, while stating the principles that the courts may not substitute their opinion in place of opinion of the Council, held as under:

The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, this Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

2. When an institution applies to AICTE for approval or for extension of approval, as the case may be, obviously the decision on such an application has to be made with reference to the regulations which have been framed by the Council in the interests of technical education. It may be true that no transition provision was made in the regulations of 2010. But since the regulations of 2010, nearly three years have now elapsed and it is far too late in the day for the Petitioners

to assert that they are exempted from the need to comply with the regulations framed by the expert body. There is no retrospectivity involved in the application of the regulations merely because a particular institution was set up prior to their enforcement. If the submission of the Petitioners were to be stretched to a logical conclusion, it would lead to the absurd consequence that an institution which is set up prior to enactment of the Act in 1987 would be exempted from its provisions. It is impossible for the court to countenance such an interpretation of the law. The regulations which have been framed are to enure to the benefit of the students and to a structured development of technical education in the country. The regulations are not intended to subserve the private commercial interests of the managements. It is also a well settled principle of law that an Act or a regulation does not become retrospective merely because some part of the events on which it operates may have taken place in the past. Every technical institution which seeks to apply for approval or renewal, must abide by the regulations which have been framed by the AICTE in the interests of technical education.

3. During the course of the hearing, Counsel appearing on behalf of the AICTE has placed on the record a report of the Expert Visiting Committee. The Expert Visiting Committee has noted that in the present case:

- (i) The faculty to student ratio was inadequate;
- (ii) More than 40% of the faculty was on ad-hoc basis;
- (iii) The ad-hoc faculty was on a consolidated salary ranging from Rs. 9,000/- to Rs. 22,000/- per month.

The report also notes more than twelve labs, all workshops and six classrooms in "D" block have an area deficiency. The report of the Expert Visiting Committee contains a detailed reference to the deficiencies on account of staff and infrastructure.

4. During the course of the submissions, it has been sought to be urged on behalf of the Petitioners that the deficiencies in respect of the area of the classrooms is marginal. We do not consider it appropriate for the court in the exercise of its jurisdiction under Article 226 of the Constitution to second guess the AICTE, which is an expert body on such policy issues. Moreover, the deficiency in the area of the classrooms cannot be considered in isolation but cumulatively together with the other serious deficiencies of infrastructure. The test which should be applied to a petition questioning the decision of AICTE is as to whether the expert body has rendered a decision which is perverse or arbitrary or based on extraneous circumstances. What the Court has to determine is whether the decision is one, which no statutory body, acting as a reasonable body of experts, could possibly arrive at in exercise of its discretion. It is, in our view, no part of the jurisdiction of the court to look into the decision of the Expert Committee with a fine toothcomb and with a view to finding out hairsplitting objections or errors. An overview of the situation must be borne in

mind. We have in the present case considered the decision that has been arrived at by the expert body. The AICTE has applied its mind to relevant circumstances and to aspects which are germane to the exercise of its statutory powers. The AICTE has, after due application of mind, modified its earlier decision not to grant an extension of approval for 2013-14 which would have entailed future consequences to a decision to grant a "No Admission" status for the ensuing academic year.

5. We find no error in the order of the AICTE. The Petition is accordingly dismissed. There shall be no order as to costs.