

(2005) 10 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 20280 of 2005

Mahathma Gandhi Vidya Peetha Trust and Another	APPELLANT
Vs	
All India Council for Technical Education and Others	RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 117

Citation : AIR 2006 Kar 17 : (2005) ILR (Kar) 6073 : (2005) 6 KarLJ 346 : (2005) 4 KCCR 286 SN

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S. Vijayashankar for M.S. Rajendra Prasad, for the Appellant; N.B. Bhat, for Respondents-1 and 2, B. Manohar, A.G.A. for Respondents-3 and 4 and Basavaprabhu S. Patil, for Respondent-5, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The 1st petitioner is the Trust and the 2nd petitioner is an Engineering college run by the 1st petitioner. In this case the petitioners have called in question the order passed by the All India Council for Technical Education (for short, "AICTE"), the 1st respondent herein dated 4-8-2005 (Annexure-A) imposing penalty for the excess admission made by the college for the academic year 2003-2004 and for quashing of the communication dated 15-8-2005 (Annexure-Q), whereby the intake of the petitioner for the academic year 2005-2006 was reduced by 46 seats in the undergraduate level Degree Courses in Engineering.

2. The annual intake of the 2nd petitioner college was fixed by the AICTE at 730 in the undergraduate level courses for the academic year 1979-80 and onwards in various disciplines. By a communication dated 30-4-2003, AICTE reduced the annual intake of the college for the academic year 2003-2004 to 600. The college has sent a letter dated 23-5-2003 to the AICTE seeking restoration of the intake. Challenging the fixation of the intake, the petitioners filed a writ petition before

this Court in W.P. No. 25952 of 2003 for a mandamus, directing the AICTE to withdraw the said communication insofar as it sought to reduce the intake in the college and restore the existing annual intake. This Court granted an interim order of stay of the communication dated 30-4-2003. The writ petition was disposed of on 9-6-2003 by directing the AICTE to treat the communication of the college dated 23-5-2005 as an appeal and to dispose of the same in accordance with law. Until the appeal is disposed of the interim order granted earlier was maintained. The AICTE did not entertain the appeal of the college and the intake was maintained at 600 as per the communication dated 12-6-2003. The AICTE passed a revised order dated 12-6-2003 fixing the annual intake at 600 for the academic year 2003-2004. The petitioners challenged both the orders in W.P. No. 30900 of 2003. An interim order was passed in the writ petition on 6-8-2003. In a subsequent interim order dated 8-10-2003, this Court observed that the college is entitled to admit 730 students in various disciplines for the academic year 2001-2003. The AICTE by a communication dated 14-5-2005 restored the intake of the petitioners institution at 730 for the academic year 2004-2005. The petitioner withdrew the said writ petition on 18-1-2005 on the ground that the intake was restored to 730. However, it was made clear in the said order that for the year 2003-2004 the intake at 730 was not restored. The order in the said writ; petition is as follows.-

"The Counsel for the petitioner has filed memo stating that by a communication AICTE has restored the intake to the petitioner's institutions. Therefore, prayed for disposal of the writ petition as it is unnecessary.

2. Sri N.B. Bhut, learned Counsel appearing for respondents 1 to 2 also submits that, the AICTE has fixed the intake of the petitioner for the year 2004-2005 but not restored for the year 2003-04. Submission is placed on record.

3. In view of the said communication fixing the intake for the institution in question, it is unnecessary to decide the issue in this writ petition.

4. The writ petition is dismissed as prayed in the Memo".

3. As noticed above, the petitioner had made admission of 130 students in excess of the intake capacity for the academic year 2003-2004 which was in violation of the intake fixed by the AICTE. Therefore, AICTE by its communication dated 4-8-2005 (Annexure-A) informed the college that it had made excess admission of 130 for the academic year 2003-04. It gave an option to the college to pay a penalty of 20% of the total course fee per student multiplied by total number of excess admissions. This Court granted an interim order of stay of Annexure-A on 22-8-2005. The AICTE has sent a communication as per Annexure-Q on 15-8-2005 reducing the intake for the academic year 2005-2006 by 46 seats.

4. The AICTE has filed its objections. It is contended that the petitioners had made excess admission of 130 students for the academic year 2003-2004 in violation of the order of the AICTE. Since the petitioners have withdrawn the writ

petition in W.P. No. 30900 of 2003, the order dated 12-6-2003 fixing the intake at 600 stood undisturbed and excess admission of 130 students remains uncured/uncondoned. In the normal course, such an excess admissions made in violation of the AICTE's order would have entailed withdrawal of AICTE's approval of the institution. Instead of taking such a drastic step, as a gesture of sympathy for the students admitted in excess and also as a measure of indulgence to the institution concerned, AICTE will reduce the intake in the succeeding years in a phased manner, as a corrective measure. However, AICTE had given the institution an option to pay financial penalty for the excess admissions. Since the institution has not opted to pay the financial penalty, the AICTE has passed the order impugned reducing the intake by 46 seats for the academic year 2005-2006. It is further contended that the reduction of intake effected as per the order dated 15-8-2005 is not on the ground of deficiencies or lack of infrastructure, but as a corrective measure for having made excess admissions for the year 2003-2004. It is further averred that the accreditation was granted by the National Board for Accreditation to five programs offered by the college. The said accreditation does not imply accreditation to the petitioners institution as a whole. Accreditation status is granted on certain presumptions and subject to certain conditions. The accreditation status granted to the college as per the communication dated 14-9-2005 does not adversely impact AICTE's decision to reduce the annual intake of certain courses as a corrective measure for making excess admissions for the year 2003-2004.

5. I have heard Sri S. Vijayashankar, learned Senior Counsel and Sri M.S. Rajendra Prasad, learned Counsel for the petitioners, Sri N.B. Bhat, learned Counsel for the respondents 1 and 2, Sri B. Manohar, learned Additional Government Advocate for respondents 3 and 4 and Sri Niranjana, learned Counsel for the respondent 5.

6. Learned Counsel for the petitioner submits that the intake of the college was 730 in undergraduate level course right from 1979-80 and the intake was reduced for the academic year 2003-04 to 600. The said order was challenged by the petitioners in W.P. No. 25952 of 2003 and this Court by an order dated 8-10-2003 held that the college is entitled to admit 730 students in various disciplines as per the intake fixed by the AICTE for the academic years 2001-2003. It is argued that imposition of penalty as per Annexure-A by the AICTE is without authority of law. It is further argued that the intake was continued for the current year at 730. Therefore, the AICTE is not justified in reducing the intake for the academic year 2005-2006 by 46 seats. It is submitted that the AICTE is statutorily not authorised to reduce the intake. It is further argued the accreditation status was awarded to the college by the National Board of Accreditation, on the basis of the standards maintained by it. AICTE cannot reduce the intake particularly when accreditation status has been awarded.

7. On the other hand, learned Counsel for the AICTE would argue that the college had made excess admission of 130 students for the academic year 2003-2004 in

violation of intake fixed by it which remains undisturbed and remained uncured/uncondoned. In normal course, such a huge excess admission would have entailed withdrawal of AICTE's approval of the institution. Instead of taking such a drastic step, as a gesture of sympathy for the students admitted in excess the AICTE has reduced the intake in the succeeding years in a phased manner, as a corrective measure. It is further argued that AICTE has given the option to pay financial penalty for excess admission. Since the institution has not paid the penalty, AICTE has proceeded to reduce annual intake in the succeeding years in a phased manner. It is contended that the accreditation status granted to the college was on certain presumption and subject to certain conditions. The accreditation does not adversely impact AICTE's decision to reduce the annual intake. It is submitted by Sri N.B. Bhat, learned Counsel, that AICTE is not pressing for any financial penalty in view of its order at Annexure-Q reducing the intake in a phased manner. It is further argued that the power to reduce the intake in future for the excess admissions made earlier is incidental and ancillary to maintenance of standards.

8. Learned Additional Government Advocate as also learned Counsel for the University have supported the stand taken by the AICTE.

9. I have carefully considered the arguments of the learned Counsel made at the Bar.

10. It is not in dispute that the intake of the college from the academic year 1979-80 was 730 in undergraduate Level Degree Course in different disciplines. By an order dated 12-6-2003 the intake was reduced to 600 for the academic year 2003-2004. The said order was challenged before this Court in W.P. No. 30900 of 2003 and an interim order was passed on 8-10-2003 holding that the college is entitled to admit 730 students for the academic year 2001-2003 until further orders. The writ petition was withdrawn by the petitioner on the ground that AICTE has restored the intake of the institution. While disposing off the writ petition, it was made clear that intake was restored for the academic year 2004-05 and not for the year 2003-04. Thus, the excess admissions made by the college for the academic year 2003-04 remained uncondoned. The AICTE by a communication dated 4-8-2005 (Annexure-A) gave an option to the college to pay the penalty at 20% of the total course fee per student multiplied by total number of excess admission as a one time exception. The institution did not pay the penalty accordingly. On 15-4-2005 a further notice was issued reducing the intake by 46 students for the current academic year. Learned Counsel for the AICTE has made it clear that AICTE is not pressing for financial penalty having regard to the subsequent communication dated 15-4-2005 (Annexure-Q). Thus, the challenge to Annexure-A does not survive for consideration. However, the question for consideration is whether the AICTE is justified in reducing the intake in a phased manner from the academic year 2005-06 onwards for the excess admissions made for the academic year 2003-04.

11. The All India Council for Technical Education Act, 1987 ("AICTE Act" for

short) provides for establishment of All India Council for Technical Education, for the purpose of proper planning and co-operative development of technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in technical education and any matter connected therewith, Chapter III of the Act deals with the powers and functions of the Council. Section 10 of the Act states that it shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical and management education and maintenance of standards. It is evident that Section 10 of the Act gives the AICTE power in broad terms for maintenance of standards. The Apex Court in the case of *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, has held that the AICTE Act, been enacted to provide for establishment of an All India Council for Technical Education for proper planning and co-ordination of technical education system through out the cotmtry, for promotion of qualitative improvements of such education in relation to planned quantitative growth and regulation and proper maintenance of norms and standards in technical education system and for matters connected therewith. In *Khargram Panchayat Samiti and Another Vs. State of West Bengal and Others*, the Apex Court has held that exercise of incidental or consequential powers is not ultra vires. Conferment of general statutory power carries with the incidental or consequential powers. It has been held thus:

"The conferment of the power to grant a licence for the holding of a hat or fair u/s 117 of the Act includes the power to make incidental or consequential orders for specification of a day on which such hat or fair shall be held. The decision of the High Court runs counter to the well-accepted principles. It overlooks that the statutory bodies like the Panchayat Samiti enjoy a wide "incidental power" i.e., they may do everything which is "calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions" and the doctrine of ultra vires is not to be applied narrowly. It is well-accepted that the conferral of statutory powers on these local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself.

12. It is well-established that a statutory power will be construed as impliedly authorising everything which can fairly be regarded as incidental or consequential to the power itself and doctrine is not applied narrowly. In *Administrative Law* by Sir William Wade (7th Edition at page 246), it is observed as under:

"A statutory power will be construed as impliedly authorising everything which can fairly be regarded as incidental or consequential to the power itself; and this doctrine is not applied narrowly.... Statutory powers therefore have considerable latitude, and by reasonable construction the Courts can soften the rigour of the ultra vires principle. Although this book contains so many instances of that

principle being infringed, it must be remembered that the Courts intervene only where the thing done goes beyond what can fairly be treated as incidental or consequential".

13. The preamble to the statute is an admissible aid to construction. The preamble is expected to express the scope, object and purpose of the Act. The preamble to the Act read with Section 10 makes it clear that the Act has conferred broad powers on the Council to maintain standards in technical and management education. The Act empowers the Council to provide guidelines for admission of students to technical institutions and Universities imparting technical education and also to take all necessary steps to prevent, commercialisation of technical education. This Court is of the view that conferment of general statutory power carries with it the incidental and ancillary powers such as reduction of intake in future academic years to off-set the effect of excess admission made in the previous academic year.

14. The Apex Court in *Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others*, has held that if any private Medical college admits students excess in its Management Quota in excess of its prescribed quota, the admission in the next academic year can be reduced so as to set-off the effect of excess admission made in the Management Quota in the previous academic year. It has been held thus:

"If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set-off the effect or excess admission in the management quota in the previous academic year".

15. In the instant case, since the college has admitted excess of students for the academic year 2003-04 which stand uncured/uncondoned, the AICTE is justified in reducing the intake in a phased manner so as to off-set the effect of excess admissions made in the previous academic year. The decision in *Mridul Dhar's* case, though related to the admissions made in the management quota, is applicable to the facts of this case. This Court is also of the view that the accreditation status granted to the college will have no bearing on the incidental power of the AICTE to reduce the intake.

16. Therefore, the action of the AICTE cannot be found fault with by the petitioner. Accordingly, writ petition is dismissed.