

(2016) 07 MP CK 0059
In the Madhya Pradesh High Court
Case No : W.P. No. 12323 Of 2015

Mittal Institute of Technology	Vs	APPELLANT
State of Madhya Pradesh		RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Rajiv Gandhi Technical University Act, 1998 — Section 26(xxv)

Citation : (2017) 1 MPLJ 40

Hon'ble Judges : Shri S.K. Gangele and Shri Ashok Kumar Joshi, JJ.

Bench : Division Bench

Advocate : Shri M.K. Verma, Advocate, for the Respondent/University; Shri Deepak Awasthi, Government Advocate, for the State; Shri Siddharth Gupta, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

S.K. Gangele J. - The petitioner has filed this petition against the decision of the University, not to grant affiliation to the petitioner institution to conduct Post Graduate Courses.

2. The petitioner institution was granted approval for conducting different programmes under-graduate courses of B.E. and four different programmes of post graduate courses of M.Tech. The details of P.G. Courses M.Tech are as under:-

- "a. M.Tech. (Computer Integrated Manufacturing)- PG-18 seats.
- b. M.Tech. (Computer Science and Engineering)- PG-18 seats.
- c. M.Tech. (Power Electronics)- PG-18 seats.
- d. M.Tech. (Civil Engineering)- PG-18 seats."

3. The approval was granted by the NCTE on 03/09/2007, subsequently, the extension was also granted for the academic Session 2014-15 and thereafter

2015-16 vide letter dated 07/04/2015. As per the petitioner, the petitioner institution was also affiliated with the respondent no. 3 University. The respondent no. 3 University without any communication and giving opportunity of hearing to the petitioner withheld the affiliation for the academic sessions 2015-16 of post graduate courses to the petitioner institution. The University also uploaded the information in this regard on the website to the effect that the petitioner institution is not affiliated to conduct P.G. Courses for the academic year 2015-16. As per the petitioner the action of the respondent no. 3 is arbitrary and illegal.

4. The respondent no. 3 University in its reply pleaded that in accordance with the provisions of Rajiv Gandhi Technical University Act, 1998, the University is entitled to conduct the inspection in accordance with sub - section (XXV) of Section 26 of the Act. The standing committee of the University had taken a decision on 15/05/2013 to conduct surprise inspection of colleges to ascertain the fact that whether the colleges have fulfilled the criteria and parameters fixed by the AICTE. Then academic council had taken a decision for surprise inspection at its meeting held on 06/06/2015. The Executive Council had also taken a decision, thereafter a surprise inspection was carried out and as per the report of surprise inspection, in the petitioner college infirmity and deficiencies were found. Consequently, the University had taken a decision on 25/06/2015 not grant affiliation to the petitioner institution and 2015-16 is declared zero year of the petitioner college for post graduate courses. The information was sent to the Director, Technical Education. The minutes of the surprise inspection have filed. The University found following deficiencies during surprise inspection:-

"Electrical Department:- Three faculty were present. Two of them one M. Tech, one is B.E.

Computer Science:- Two faculty members are present. All are M.Tech.

Information Technology has two faculty members. Both are M.Tech.

Cent. Engg Department has six staff members. Two are M.Tech other four are B.E.

Maths Department has two staff members. Both are M.Sc. Maths. Pharmacy has 10 members in the staff. Director is Ph.D. Others are M. Pharmacy.

Basic Science has three members in the Deptt. One is TPO.

Mechanical Department has 09 members in the staff out of this five are M.Tech. Others are B.E. Separate list of PG faculty not given.

Attendance Register of P.G. Students was not produced. Information required in prescribed proforma by FGPU has not been made available by the Institution. No PG students were present."

5. Learned counsel for the petitioner has submitted that no opportunity of hearing was provided by the University to the petitioner before taking decision for not to grant affiliation. No notice was given by the University for surprise

inspection and the act of the University is without power and authority. Learned counsel for the petitioner heavily relied on the judgment of the Apex Court in the case of *Rungta Engineering College, Bhilai and another v. Chhattisgarh Swami Vivek Anand Technical University and another* reported in (2015) 11 SCC 291 and contended that the University has no such power and authority.

6. Learned counsel appearing on behalf of the University has submitted that the University has power to inspect the premises of the petitioner institution in accordance with the provisions of Rajiv Gandhi Technical University Act. The inspection was carried out to ascertain the facts that whether the affidavit submitted by the petitioner to the effect that it fulfilled the criteria fixed by the AICTE is correct or not.

7. The Apex Court in the case of *Rungta Engineering College, Bhilai and another v. Chhattisgarh Swami Vivek Anand Technical University and another* reported in (2015) 11 SCC 291 has held as under in regard to authority of the University to grant recognition or decline grant of affiliation in view of the provision of AICTE Act:-

"27. The question of the authority of a University to grant or decline affiliation squarely fell for consideration before this Court in *Bhartia Education Society v. State of H.P.*, (2011) 4 SCC 527. The case arose under the National Council for Teachers Education Act, 1993 (hereinafter referred to as "NCTE Act") the scheme of which is also identical to the AICTE Act. This Court held as follows:-

19. On the other hand, "recognition" is the licence to the institution to offer a course or training in teacher education. Prior to the NCTE Act, in the absence of an apex body to plan and coordinate maintenance of the norms and standards in the teacher education system, Government and universities/boards. After the enactment of the NCTE Act, the functions of NCTE as "recognising authority" and the examining bodies as "affiliating authorities" became crystallised, though their functions overlap on several issues. The NCTE Act recognises the role of examining bodies in their sphere of activity.

28. This Court examined the scope of Section 16 of the NCTE Act which prohibited the grant of affiliation by any "examining body" - (a University) to any institution conducting a course for training people for the occupation of teaching unless such institution obtained recognition from the competent authority under the NCTE Act. Though, this Court made it clear that the "examining body" (University) does not have any discretion to refuse affiliation with reference to any of the factors which ought to be considered by NCTE while granting recognition, recognised that the "examining body" has the authority to demand compliance with its norms in a limited area regarding the "eligibility of the candidates" and "manner of admission" of students etc. It was further held :-

"22. ? For example, NCTE is required to satisfy itself about the adequate financial resources, accommodation, library, qualified staff, and laboratory required for proper functioning of an institution for a course or training in teacher education.

Therefore, when recognition is granted by NCTE, it is implied that NCTE has satisfied itself on those aspects. Consequently, the examining body may not refuse affiliation on the ground that the institution does not have adequate financial resources, accommodation, library, qualified staff, or laboratory required for proper functioning of the institution. But this does not mean that the examining body cannot require compliance with its own requirements in regard to eligibility of candidates for admissions to courses or manner of admission of students or other areas falling within the sphere of the State Government and/or the examining body".

At para 24, this Court indicated the areas where the "examining body" can stipulate norms, the noncompliance with which norms authorise the examining body to cancel the affiliation.

"24. The examining body can therefore impose its own requirements in regard to eligibility of students for admission to a course in addition to those prescribed by NCTE. The State Government and the examining body may also regulate the manner of admissions. As a consequence, if there is any irregularity in admissions or violation of the eligibility criteria prescribed by the examining body or any irregularity with reference to any of the matters regulated and governed by the examining body, the examining body may cancel the affiliation irrespective of the fact that the institution continues to enjoy the recognition of NCTE. Sub-section (6) of Section 14 cannot be interpreted in a manner so as to make the process of affiliation, an automatic rubberstamping consequent upon recognition, without any kind of discretion in the examining body to examine whether the institution deserves affiliation or not, independent of the recognition."

29. Similarly, under the scheme of the 1987 Act, as noticed by this Court in para 30 of the Adhiyaman Educational & Research Institute case (supra), under Section 10 of the Central Act, the Council is entrusted with the power to lay down norms and standards for courses, curricula, staff pattern, staff qualification, assessment and examination, fixing norms and guidelines for charging tuition fees etc. and further held that in these matters the University will have no authority.

30. The respondents heavily relied upon the last sentence of para 24 of the decision in Bhartia Education Society (supra) (extracted earlier) to assert that the respondents still have the necessary authority to grant or decline affiliation. We are of the opinion that the respondents are reading that sentence out of the context. The judgment was very clear as to the areas which are exclusively within the jurisdiction of the NCTE whose satisfaction regarding the compliance with the standards prescribed by it in those areas is final and the areas where the "examining body" has authority to lay down its own norms (such as eligibility of the students for admission to a course and the manner of admission).

31. We apply the principles of law mentioned above to the facts of the present

case. The various objections which (according to the respondent) formed the basis for declining affiliation to the first petitioner institution are contained in the communication dated 26.4.2013 which was extracted in detail at para 26 (supra).

32. An examination of all the objections mentioned in the said communication would reveal that each one of those objections squarely fall within the sweep of one or the other areas which only the AICTE has the exclusive jurisdiction to deal with. None of them are demonstrated before us to be matters falling within the area legally falling within the domain of the respondents. AICTE, on inspection of the Ist petitioner college reported that the Ist petitioner college fulfils all the conditions prescribed by the norms and standards laid down by AICTE. The respondents did not make any specific assertion that such a report of the AICTE is factually incorrect. Assuming for the sake of argument that, in the opinion of the respondents, the petitioner college has not in fact fulfilled any one of the conditions required under the norms specified by the AICTE, the only course of action available for the respondents is to bring the shortcomings noticed by them to the notice of the AICTE and seek appropriate action against the petitioner college.

33. We are, therefore, of the opinion that the decision of the respondent not to grant the affiliation to the first petitioner college is wholly untenable and is required to be set aside. The same is accordingly set aside. Since the respondent did not decline the affiliation to the first petitioner college either on the ground that the petitioner college is admitting wholly ineligible students as per the norms stipulated by the respondent University or that the admission procedure prescribed by the respondents is not being complied with by the petitioners or on any other ground that the petitioners violated any one of the stipulations made by the University which the University is legally competent to make, we have no option but to direct the respondents to grant affiliation to the petitioner college. The operative portion of the judgment of this Court has already been pronounced on 01.9.2014. Therefore, we are not reiterating the same."

8. The Apex Court has specifically held after considering prior judgments of the court that the areas which are exclusively within the jurisdiction of NCTE whose satisfaction regarding the compliance with the standards prescribed by it is final and the University has no power and authority to enter into the aforesaid areas, however, the examining body has authority to lay down its own norms(such as eligibility of the students for admission to a course and the manner of admission).

9. From the perusal of the inspection report quoted above, it is clear that the University had entered into the area which is exclusively within the jurisdiction of NCTE, hence, the action of the University is contrary to law.

10. This court already granted interim order in favour of the petitioner institution and the students of petitioner institution were permitted to continue the courses. The deficiencies on which the University refused to grant affiliation are not related to the University, hence the action of the University is illegal,

consequently, the petition is allowed. The communication Annexure P/8 in regard to the petitioner institution issued by the University is hereby quashed. It is held that the petitioner institution had affiliation to conduct PG course for the academic session 2015-2016.

11. No order as to costs.