
(2016) 07 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No.3593 of 2016

Mukund Education Society	Vs	APPELLANT
Sant Gadge Baba Amravati University		RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012 — Clause 4.18
All India Council for Technical Education Act, 1987 — Section 10

Citation : (2016) 5 AIRBomR 173 : (2016) 5 BCR 213 : (2017) 1 MhLJ 396

Hon'ble Judges : B.P. Dharmadhikari and Kum. Indira Jain, JJ.

Bench : Division Bench

Advocate : Shri. S.V. Manohar, Senior Advocate with Shri. U.J. Deshpande, Advocate, for the Petitioner; Shri. J.B. Kasat, Advocate, for the Respondent no. 1; Shri. N.R. Patil, Assistant Government Pleader, for the Respondent no. 3

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.(Oral)—Looking to the nature of controversy and on joint request, we have heard petition finally by issuing rule and making it returnable forthwith.

2. Petitioner no.1 is an educational Society, which runs petitioner no.2 Engineering College. The petitioners have questioned notification dated 19/5/2016 issued by respondent no.1 University whereby intake capacity of petitioner no.2 has been brought down from 16 to 0 in academic year 2016-17 though affiliation has been continued.

3. We have heard Senior Adv. Manohar with Adv. Deshpande for petitioners, Adv. Kasat for respondent no.1 University and Shri. Patil, learned Assistant Government Pleader for respondent no.3 State. Nobody has appeared for respondent no.2 All India Council for Technical Education.

4. Learned Senior Adv. Manohar has pointed out that the College has been given

intake capacity initially in the year 2014-15 of 18 seats each for post graduation courses in Computer Science and Information Technology as well as Structural Engineering. On 5/4/2016, respondent no.2 AICTE has brought it down to 16 each for academic year 2016-17.

In view of this exercise, it was not open to respondent no.1 to conduct any inspection and to vary either the intake capacity or then on that account, indirectly to restrain petitioners from effecting any admission to these courses by denying affiliation. Our attention is drawn to the report of respondent no.1 University dated 22/4/2016, which initially recommended no admissions either in under graduation courses or then in post graduation courses. The petitioners submitted their reply to this communication on 6/5/2016 and though the reply has been accepted as it is, without conducting any fresh inspection or verification, the earlier direction to bring down intake capacity to `0" in respect of post graduation courses has been maintained. The intake capacity brought down to `0" insofar as under graduation courses is concerned has been varied and thus, petitioners are permitted to admit students to under graduation courses. Contention is that having initiated this exercise belatedly, i.e. in the month of April 2016, when petitioners submitted compliance report and pointed out the recruitment made, denial of verification and indirectly denying their right to admit students to post graduation courses is an act not supported by the provisions of All India Council for Technical Education Act, 1987 (hereinafter referred to as "1987 Act") or then All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012.

5. To demonstrate the primacy of Central legislation in this respect and, therefore, subordinate role of respondent no.1 University in relation to matters covered under Section 10-A of 1987 Act, support has been taken from various judgments to which we will make reference little later. Contention of learned Senior Adv. Manohar is that stand inconsistent with the permission by respondent no.2 could not have been adopted by respondent no.1. Thus, the very exercise of verification undertaken by respondent no.1 is questioned on the ground of absence of authority. In addition, it is stated that when petitioners responded positively and pointed out compliance, without verifying necessary facts, respondent no.1 could not have stuck to earlier position. Prayer is, therefore, to quash and set aside the impugned notification dated 19/5/2016 issued by respondent no.1 and to enable petitioners to admit students in post graduation courses as per permission given by All India Council for Technical Education on 5/4/2016.

6. Adv. Kasat for respondent no.1, on the other hand, submits that the stand taken by respondent no.1 University is in no way inconsistent with the stand of respondent no.2. The request for continuation of affiliation was submitted on 10/3/2016 and a Committee of five members was constituted on 4/4/2016 to visit the establishment of petitioner no.2 and to conduct local enquiry. The Committee verified the position on 22/4/2016 by paying personal visit and

submitted its report. The deficiencies noted therein were brought to the notice of petitioners on 2/5/2016. The petitioners submitted compliance report on 6/5/2016 and in view of short time left as also the fact that verification was already undertaken a few days back, the Enquiry Committee on the basis of documents submitted by petitioners, again submitted to University a report dated 10/5/2016. According to learned Counsel, respondent no.1 University as an examining Authority has every right to look into availability of teaching staff and having noted that deficiency, appropriate orders have been passed. He, therefore, submits that there is no jurisdictional error at all.

7. Shri. Patil, learned Assistant Government Pleader for respondent no.3, has invited our attention to compliance report submitted by petitioners. In order to demonstrate that in the light of said compliance report, stand of respondent no.1 University cannot be said to be unjustified. He adopts the arguments of Adv. Kasat for respondent no.1.

8. The judgment of Hon'ble Apex Court in State of T.N. and another v. Adhiyaman Educational and Research Institute and others (1995) 4 SCC 104, in paragraph 30, points out result of comparison of 1987 Act and Tamil Nadu Private Colleges (Regulation) Act and Madras University Act. It has taken note of the fact that there is a conflict between and overlapping of the functions of the Council and the University. It has found that under Section 10 of the Central Act, it is the Council, which is entrusted with the power, particularly to allocate and disburse grants, to evolve suitable performance appraisal systems incorporating norms and mechanisms for maintaining accountability of the technical Institutions, laying down norms and standards for courses, curricula, staff pattern, staff qualifications, assessment and examinations, fixing norms and guidelines for charging tuition fee and other fees, granting approval for starting new technical Institutions or introducing new courses or programmes, etc. It has also taken note of the fact that it can set up a National Board of Accreditation for periodical conduct of evaluation on the basis of guidelines and standards specified and to make recommendations to it or to the Council or Commission or other Bodies under the Central Act. Thus, in relation to these matters, the Hon'ble Apex Court found that it is not the University Act and the University, but it is the Central Act and Council created under it, which possesses jurisdiction. It has been observed that to that extent, after coming into force of Central Act, the provisions of University Act would be deemed to become unenforceable in case of technical Colleges like Engineering Colleges. Ultimately, the Hon'ble Apex Court has held that such enactments of State cannot lay down standards and requirements higher than those prescribed by the Central Act for technical Institutions and cannot deny seats to applicants on the ground that they do not fulfil such higher standards.

9. In Shri. Shivaji Education Society, Amravati and another v. Maharashtra University of Health Sciences and others 2012 (1) Mh.L.J. 799 Division Bench of this Court has held that provisions of Section 10-A of Medical Council Act

override provisions of Sections 64 and 65 of the Maharashtra University of Health Sciences Act to the extent they are contrary. It has been observed that once permission is given by Indian Medical Council to start a particular post graduate course, further Resolution of State Government as well as affiliation by University would be mere formality and would not debar College in admitting the students.

10. In *Dr. D.Y. Patil Pratishthan's Padmashree Dr. D.Y. Patil Polytechnic, Kolhapur v. Directorate of Technical Education, Mumbai and others* 2014 (5) Mh.L.J. 590, Division Bench of this Court has noted that All India Council for Technical Education, which has final authority, had granted permission to open new Colleges and to start new courses with prescribed intake capacity. In paragraph 19 of the judgment, it is observed that State Government, which may have a role to play in granting approval to these additional Colleges or seats as it imposes additional financial burden on State Exchequer, still that does not mean that State Government has a superior power to refuse such approval as prayed for. In facts before it, reason for refusal was found irrelevant. It has been noted in paragraph 20 that such an objection ought to have been raised immediately at appropriate time where it was required for the State Government or its Officers to forward their views when such application for new College/course was moved by petitioner. In paragraph 21, it has been held that All India Council for Technical Education's approval binds even respondent State unless it was challenged and set aside. The State Government, therefore, could not have withheld permission to petitioner to start the Institution/course or to increase intake capacity.

11. In *Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and another* (2000) 5 SCC 231, in view of Section 10-A of 1987 Act, the Hon'ble Apex Court has held that grant of approval for establishment of technical Institutions is solely governed by the said Act and Council established thereunder is the only Body authorised to grant it. The Hon'ble Apex Court has held that provisions of any enactment conferring such powers on the State Government or University would be void. In paragraphs 13 and 14 of the judgment, the Hon'ble Apex Court has reproduced relevant statutory provisions and at the end of paragraph 17, it has been found that all that was necessary under the Regulations was that All India Council for Technical Education should have consulted the University. In paragraph 30 of the judgment, the Hon'ble Apex Court has stated that University, therefore, ought to have considered the issue of grant of final or further affiliation without waiting for any approval from the State Government and ought to have acted on the basis of permission granted by All India Council for Technical Education and other relevant factors in the University Act or statutes, which are not inconsistent with All India Council for Technical Education Act or its Regulations.

12. Thus, all these judgments show that respondent no.1 University can consider the issue of affiliation or its continuation in a manner, which is consistent with the

provisions of All India Council for Technical Education Act or Regulations framed thereunder. As per Clause 4.14 of 2012 Regulations, State Government and affiliating University can forward their views on applications received under Clauses 4.1 and 4.2 to the concerned Regional Office of the Council as prescribed in approval process. If such views are received within stipulated time, the same need to be considered by the Regional Committee for further processing for grant of approval. In default, the Council can proceed further for completion of approval process. Final decision is to be taken under Clause 4.18 by the Executive Committee of All India Council for Technical Education on recommendations of Regional Committee.

13. Thus, procedure for approval envisaged in these Regulations and application for continuation of affiliation made by petitioners to respondent no.1 University are two entirely different proceedings. Here respondent no.1 University has not denied affiliation and in absence of necessary teaching staff, brought down intake capacity from 16 to 0. The absence of necessary teaching staff is borne out on record. The correctness of report submitted by Committee on 10/5/2016 or before that on 22/4/2016 at least to this extent is not in dispute. The Verification Committee sent by University for local inspection had reported deficiency of six post graduate Teachers as per All India Council for Technical Education's norms and qualifications. It has also mentioned shortfall of 15 numbers of non-teaching staff. Thus, the University has not pointed out that it has applied its own norm, but it has chosen to act and implement All India Council for Technical Education's norms only. In view of this, it has mentioned intake capacity in relation to both post graduation courses mentioned supra as '0'.

14. After receipt of earlier communication from University dated 2/5/2016, petitioners have submitted their compliance report on 6/5/2016. As per that compliance report, they have mentioned that because of resignation of staff, there was shortfall and recruitment process would commence soon after necessary permission from University. They have also mentioned that they had submitted application on 6/5/2016 seeking permission to advertise the vacancies and advertisement would be published on 7/5/2016. Insofar as vacancy in the post of qualified Principal as per All India Council for Technical Education's qualifications is concerned, it has been stipulated that on 7/4/2016 application was submitted to University for necessary permission. Thus, at least till 10/5/2016 or 7/5/2016 the vacancies were not filled in. From records it is apparent that even till 10/5/2016 six vacancies for teaching post graduation courses were not filled in. At the end of compliance report, there is a note, which mentions that petitioners may require time to remove certain deficiencies. However, an assurance that deficiencies would be removed at the earliest has been given. By way of illustration, i.e. to point out difficulties, subject of approval to Principal and Teachers by University has been mentioned.

15. The outcome of inspection conducted by the All India Council for Technical Education, if any, has not been pointed out to this Court by petitioners. During

hearing, we wanted to find out why intake capacity, which was 18 till 2015-16 has been brought down to 16 in the year 2016-17. However, petitioners have not placed on record any documents to explain this. The petitioners have remained satisfied only with technical contention that such deficiency, even if presumed to be in existence, is not relevant and cannot be looked into by respondent no.1 University. However, petitioners, who are exploiting the post graduation education for more than two years, did not care to place on record any inconsistent inspection note or remark by All India Council for Technical Education. It cannot be presumed that All India Council for Technical Education permitted petitioners to admit students without recruiting competent technical staff. Absence of Principal or teaching staff is also not pleaded to be an unforeseen circumstance. In March 2016 while moving for continuation of affiliation, petitioners were aware of it and still they were expecting University not to object. They have acted as late as on 6/5/2016, but while filing this writ petition on 23/6/2016, list of P.G. Teachers appointed with their qualifications is not annexed. No such appointments are pleaded. Petitioners, who did not act within time, wanted to push respondent no.1 University at the eleventh hour. We find that respondent no.1 has adopted a correct line of approach. Petitioners have to appoint competent full time teaching and non-teaching staff immediately. We may point out here that even at under graduate level, it has deficiency of 78 faculty members. Sitting in writ jurisdiction, we cannot permit such petitioners to capitalise only on technicalities and play with career of students and lives of employees.

16. Taking overall view of the matter, we find that respondent no.1 University has applied a relevant norm prescribed by All India Council for Technical Education only and found out deficiencies. As an examining Authority, it has rightly refused permission to admit students though it has continued affiliation. In absence of qualified and competent teaching staff, respondent no.1 University cannot be said to be without any power in issuing the impugned notification dated 19/5/2016. We do not see any inconsistency or occasion therefor in action of respondent no.1 University and action of respondent no.2 All India Council for Technical Education.

17. No case is made out warranting interference. The petition is, therefore, dismissed. Rule is discharged. No costs.

18. Copy of this judgment be sent to All India Council for Technical Education.