

**(2013) 11 JH CK 0098**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 6033 of 2010**

Om Prakash and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 28-11-2013

**Acts Referred:**

**Citation :** (2014) 2 AJR 265 : (2014) 1 JLJR 712

**Hon'ble Judges :** S. Chandrashekhar, J

**Bench :** Single Bench

**Advocate :** Sumeet Gadodia and Mr. N.K. Sahni, for the Appellant; Sumir Prasad, S.C.I for State and Mr. Indrajit Sinha, Advocate for Respondent No. 7, Mr. Jai Prakash Gupta and Ms. Mohini Gupta, Advocates for AICTE, for the Respondent

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## Judgement

S. Chandrashekhar, J.—The validity of degree in Engineering awarded by the J.R.N. Rajasthan Vidyapeeth, Udaipur is in issue in the present proceeding. The brief facts of the case are that, the institute namely, J.R.N. Rajasthan Vidyapeeth, Udaipur was granted a "deemed to be University" status by notification dated 12.01.1987 issued by the Department of Human Resources Development, Government of India u/s 3 of the University Grants Commission Act, 1956. The petitioners were admitted in "Bachelor of Engineering" course in the academic year, 2005-08 and they were granted degree of Bachelors of Engineering in the year, 2009. The petitioners are employed under the Department of Road Construction, State of Jharkhand. A seniority list was published on 27.10.2009 however, When a dispute arose with respect to the validity of degree of Engineering awarded to the petitioners, a show-cause notice was issued on 29.10.2010 and thereafter, an order was passed on 20.12.2010 whereunder the Under Secretary, Road Construction Department found that the degree awarded to the petitioners are not recognised by All India Council for Technical Education (in short "AICTE") and therefore, such degree is not valid. Thereafter, a revised gradation list was published and by notification dated 13.04.2011, the private respondent was made In-charge Assistant Engineer.

2. By orders dated 01.09.2011 and 22.09.2011, the private respondent as well as AICTE have been impleaded as party-respondent in the present proceeding and they have filed their affidavits.

3. A counter-affidavit has been filed on behalf of the respondent-State of Jharkhand stating that, the recruitment to the Bihar Engineering Services Class II is through direct appointment and by way of promotion from Junior Engineers as per seniority however, 10% of the post in promotion quota is reserved for the diploma holders who obtained degree in Engineering or AMIE. The department accorded permission to 23 persons including the petitioners for undertaking further studies. A gradation list was published on 27.10.2009 in which 45 Junior Engineers who had obtained degree in Engineering or AMIE were included. The said gradation list was challenged in W.P. (S) No. 5400 of 2009 on the ground that several persons who do not possess Engineering degree from AICTE approved institute, have been included in the gradation list. The department made enquiries and wrote letter dated 24.11.2009 to the Distance Education Council seeking information regarding approval of the degree in Engineering awarded by J.R.N. Rajasthan Vidyapeeth, Udaipur, Rajasthan and I.A.S.E. Deemed University, Rajasthan. The Department of Road Construction wrote letter to the AICTE also seeking clarification about the degree of Engineering awarded by J.R.N. Rajasthan Vidyapeeth, Udaipur, Rajasthan. By letter dated 23.07.2010, the Distance Education Council informed that it has not accorded approval to any specific programme offered by J.R.N. Rajasthan Vidyapeeth, Udaipur, Rajasthan. The AICTE vide letter dated 13.09.2010 informed that it recognises only M.B.A. and M.C.A. Programmes through distance mode. In view of the aforesaid communications, a show-cause notice was issued to the petitioners and other similarly situated persons for deleting their names from the seniority list published on 27.10.2009 and thereafter, a revised gradation list was published on 20.12.2010 removing the name of the persons who had obtained Engineering degree or AMIE from J.R.N. Rajasthan Vidyapeeth, Udaipur and I.A.S.E. Deemed University Rajasthan.

4. A counter-affidavit has been filed on behalf of the Respondent No. 7 supporting the revised gradation list dated 20.12.2010. Relying on notification dated 01.03.1995, it is stated that the approval of the Distance Education Council and AICTE with respect to the Deemed University is mandatory for a course run or degree awarded by a University.

5. A supplementary counter-affidavit dated 23.09.2012 has been filed by Respondent No. 7 bringing on record the communication dated 18.11.2009 whereunder the Director, Department of Science and Technology has communicated that the Study Centre where a technical course is allegedly conducted by the J.R.N. Rajasthan Vidyapeeth, Udaipur does not belong to it and facilities for laboratory etc. are not available there. It is also pointed out that some of the candidates have taken admission straightway in the 5th semester and some of them have completed their course in degree in Engineering from

J.R.N. Rajasthan Vidyapeeth within a short period of 14 to 15 months.

6. The learned counsel appearing for the petitioners has contended that, since the institute namely, J.R.N. Rajasthan Vidyapeeth, Udaypur has been granted the status of "deemed to be university" u/s 3 of the University Grants Commission Act, 1956, it would have complete freedom insofar as, running of courses and grant of degree are concerned. He has further submitted that the course of the University in question has been recognised by the Distance Education Council and in a joint meeting of the UGC, the AICTE and the Distance Education Council, the courses run by the J.R.N. Rajasthan Vidyapeeth have been approved till the academic year, 2005 and a provisional affiliation was granted for the academic year, 2007 and therefore, the degree awarded by the J.R.N. Rajasthan Vidyapeeth is a valid degree. Relying on the decision rendered by the Hon'ble Supreme Court in *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, which has been approved in *Association of Management of Private Colleges Vs. All India Council for Technical Education and Others*, the learned counsel for the petitioners has contended that, there is no requirement in law for obtaining recognition from the AICTE for a degree awarded by a university/deemed to be university and therefore, the degree awarded by J.R.N. Rajasthan Vidyapeeth cannot be held to be invalid on the ground that AICTE has not granted recognition to the courses run by the Institute under the J.R.N. Rajasthan Vidyapeeth. The learned counsel has assailed the letter written by the Department of Science and Technology whereunder it has been found that the institute run by the J.R.N. Rajasthan Vidyapeeth has no proper facility. The learned counsel has challenged the credibility of the private respondent and his competence to file affidavits and documents which according to him should have been filed by the respondent-State of Jharkhand.

7. The learned counsel appearing for the State of Jharkhand has supported the impugned order on the ground that the degree awarded by the J.R.N. Rajasthan Vidyapeeth is not recognised by the AICTE and therefore, it is not a valid degree for obtaining appointment.

8. Mr. Indrajit Sinha, the learned counsel appearing for the respondent no. 7 has contended that in view of the judgment in *Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others*, which has been approved in "*Association of Management of Private Colleges*" (supra), there is no doubt with respect to the role of AICTE. Though, the AICTE has a supervisory role insofar as, a university is concerned, and though affiliation to the AICTE is not necessary for the courses run by the university, its recognition is necessary because the Council has been established by an Act of Parliament with an object to ensure proper planning and co-ordinated development of the technical education system throughout the country. He has further submitted that in view of the judgment in *Kurmanchal Inst. of Degree and Diploma and Others Vs. Chancellor, M.J.P. Rohilkhand Univ. and Others*, a university has no power to run

a Distant (Education Centre beyond the territorial jurisdiction of the State in which the university is situated. He has further submitted that even in letter dated 07.08.2007 whereunder the joint inspection report of AICTE, University Grant Commission and the Distance Education Centre has been deliberated, it has been categorically stated that the Distance Education Council does not approve franchise of Study Centres. He has further pointed out that, since the course which the J.R.N. Rajasthan Vidyapeeth was running, was approved only till academic year, 2005 and a provisional approval was granted for the academic year, 2007, the degree awarded to the petitioners for the academic year, 2005-07 would not be a valid degree.

9. Before advertng to the rival contentions raised by the counsel for the parties, it would be appropriate to notice the relevant provisions under the AICTE Act, 1987 and UGC ACT, 1956.

The "statement of object and reasons" for setting up AICTE reads; "to setup a national expert body to advice the Central and the State Government for ensuring the co-ordinated development for technical education in accordance with the approved standards". The preamble to the AICTE Act states that, "the AICTE has been established with a view to ensure the proper planning and co-ordinated development of the technical education throughout the country and with a view to promote qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical system." Section 10(1)(c) of the AICTE Act deals with power of the Council with respect to university, which is extracted below:

10.(1) ...

(c) allocate and disburse out of the Fund of the Council such grants, on such terms and conditions as it may think fit to -

(i) Technical institutions, and

(ii) Universities imparting technical education in coordination with the Commission;...

10. Section 2(i) of the AICTE Act defines "university" to mean a university defined under clause (f) of Section 2 of the University Grants Commission Act, 1956. The definition includes an institution "deemed to be a university" u/s 3 of the University Grants Commission Act. Section 10(1)(k) deals with the power of AICTE to "grant approval for starring new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned". Various provisions in the AICTE Act would indicate that, for all purposes the Act maintains the distinct identity and existence of "technical institutions" and "universities" and that is the reason, wherever the university or activities of the university are also to be supervised or regulated and guided by AICTE, specific mention has been made of the university alongside the technical

institutions. Section 10(1)(c), (g), (o) would indicate that universities are mentioned alongside the "technical institutions" whereas, clauses (k), (m), (p), (q), (s) and (u) refers to technical institutions alone and there is no reference to universities.

11. The University Grants Commission has been established by an Act of Parliament for ensuring coordination and determination of standards in universities. Section 22 of the University Grants Commission Act, 1956 confers power on a University to confer degree. Section 22 is extracted below;

22. Right to confer degrees - (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provisional Act or a State Act or an institution to be a University u/s 3 or an institution specially empowered by an Act of Parliament to confer to grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.

12. Section 12A of the UGC Act deals with the powers and functions of the University Grants Commission. Clause (a) of Section 12A speaks of "affiliation" and Clause (d) speaks of "qualification" which means a degree or any other qualification awarded by a university. Section 12B of the UGC Act deals with the powers of the Commission declaring a university not fit to receive grant. Section 13 confers power of inspection upon UGC and Section 14 provides for consequences of failure by the universities to comply with the recommendations of UGC.

13. In *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, the provisions of the All India Council for Technical Education (AICTE) came up for consideration before the Hon'ble Supreme Court and it has been held that insofar as, the question of approval for establishment of technical institutions is concerned, the AICTE Act vested the power of granting approval in the Council.

14. In *"Jaya Gokul Educational Trust Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya"*, reported in (2000) 5 SCC 231, the appellant-Trust was granted conditional approval of the AICTE for setting up a self-financing engineering college however, the State Government refused the Trust permission for establishing the college. The Hon'ble Supreme Court has held thus,

22. ...No doubt the question of affiliation was a different matter and was not covered by the Central Act but in T.N. case it was held that the University could not impose any conditions inconsistent with the AICTE Act or its Regulation or the conditions imposed by AICTE. Therefore, the procedure for obtaining the

affiliation and any conditions which could be imposed by the University, could not be inconsistent with the provisions of the Central Act. The University could not, therefore, in any event have sought for "approval" of the State Government.

23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act Point 1 is decided accordingly.

15. In "Bharathidasan University" (supra), the issue before the Hon"ble Supreme Court was whether the AICTE Act requires a university to obtain prior approval of AICTE before starting a department or a unit as an adjunct to the university itself to conduct technical education courses of its choice and the Hon"ble Supreme Court has held as under:

10. ...All these vitally important aspects go to show that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in any of its departments or units. A careful scanning-through of the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-?-vis the universities is only advisory recommendatory and a guiding factor and thereby subserves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce any sanctions by itself except submitting a report to UGC for appropriate action....."

12...A careful analysis of the various provisions contained in Sections 10, 11 and 22 will further go to show that the role of interaction conferred upon AICTE vis-?-vis universities is limited to the purpose of ensuring the proper maintenance of norms and standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such universities or scope for any direct action except bringing it to the notice of UGC or other authorities only, of any lapses in carrying out any directions of AICTE in this regard, for appropriate action...

15. To put it in a nutshell, a reading of Section 10 of the AICTE Act will make it clear that whenever the Act omits to cover a "university", the same has been specifically provided in the provisions of the Act For example, while under clause (k) of Section 10 only "technical institutions" are referred to, clause (o) of Section 10 provides for the guidelines for admission of students to "technical institutions" and "universities" imparting technical education. If we look at the definition of a "technical institution" u/s 2(h) of the Act, it is clear that a "technical institution" cannot include a "university". The clear intention of the

legislature is not that all institutions whether university or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the legislature to have merely provided a definition of "technical institution" by not excluding "university" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and university in several provisions in the Act. The definition of "technical institution" excludes from its purview a "university". When by definition a "university" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "university" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a "university" but only a "technical institution". If Section 10(k) does not cover a "university" but only a "technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply to universities when the Act maintains a complete dichotomy between a "university" and a "technical institution".

16. In *Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others*, the Hon'ble Supreme Court has observed as under;

20. "AICTE Act is not intended to be an authority either superior to or to supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that they are imparting teaching in technical education or programmes in any of their departments or units...

17. In *Association of Management of Private Colleges Vs. All India Council for Technical Education and Others*, the Hon'ble Supreme Court considered the questions, "(i) whether the colleges affiliated to a University come within the purview of exclusion of the definition of "technical institution" as defined u/s 2(h) of the AICTE Act, 1987? and, (ii) whether AICTE has got the control and supervision upon the affiliated colleges of the respective universities of the member colleges of the appellant in CA No. 1145 of 204 and the appellants in connected appeals ?". The Hon'ble Supreme Court held that the AICTE Act does not contain any evidence of an intention to belittle and destroy the authority and autonomy of other statutory body. Further, the AICTE Act does not intend to be an authority either superior or to supervise or control the universities and thereby superimpose itself upon the said universities merely for the reason that it is laying down certain teaching standards in technical education or programmes formulated in any of the department or unit. It has been held thus,

53. "A cumulative reading of the aforesaid paragraphs of *Bharathidasan University* case which are extracted above makes it very clear that this Court has exempted universities, its colleges, constituent institutions and units from seeking prior approval from AICTE. Also, from the reading of paras 19 and 20 of *Parshvanath Charitable Trust* case it is made clear after careful scanning of the

provisions of the AICTE Act and the University Grants Commission Act, 1956 that the role of AICTE vis-à-vis universities is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself

60. A reading of the aforesaid paragraphs extracted from T.M.A. Pai case makes it very clear that in view of the decision of the eleven-Judge Constitution Bench of this Court, the scheme framed under Unni Krishnan case has been overruled. Therefore, the autonomy of the university is recognised in the said case and the object and intendment of Parliament in excluding the universities from the definition of "technical institution" as defined u/s 2(h) of the AICTE Act makes it explicitly clear, after scanning the definition of "education institution" with reference to the exclusion of universities and Sections 10, 11, 12 and 13 of the AICTE Act. The object of the statutory enactment made by Parliament has been succinctly examined by this Court in Bharathidasan University and Parshvanath Charitable Trust cases referred to supra therefore they have rightly made observations that the role of the AICTE Act in view of the UGC Act and the powers and functions conferred by UGC for controlling and regulating the universities and its affiliated colleges has been explicitly conferred upon UGC. Hence, they have been given the power to regulate such universities and regulations in relation to granting sanctions/approvals and also maintaining educational standards and overseeing the prescription of the fee structure including the admission of students in various courses and programmes that will be conducted by the university and its institutions, constituent colleges, units and the affiliated colleges. Therefore, we have to hold that Bharathidasan University case on all fours be applicable to the fact situation of these appeals and we have to apply the said principle in the cases in hand whereas in the decisions of Adhiyaman Educational and Research Institute case and Jaya Gokul Educational Trust case this Court has not examined the cases from the aforesaid perspective. Therefore, the same cannot be applied to the fact situation. The reliance placed upon those judgments by the learned Senior Counsel on behalf of AICTE is misplaced.

61. Accordingly, Points 47.1 and 47.2 are answered in favour of the appellants.

18. From the aforesaid discussion it is thus clear that, the role of AICTE is supervisory. It cannot impose its own conditions insofar as, the technical course run by a university is concerned. On a conjoint reading of the provisions under the AICTE Act, 1987 and UGC Act, 1956, I find that the power to confer degree is exclusively conferred upon the universities and merely because a degree has not been recognised by AICTE, it would not render the degree invalid on such ground alone.

19. The letter dated 07.08.2007 indicates that the Distance Education Council does not approve franchise of study centres. From the decision in "Kurumanchal Institute of Degree and Diploma and Others" (supra), I find that a university cannot run a Distance Education Centre beyond the territorial jurisdiction of the

State in which the university is situated. In the present proceeding nothing has been brought on record to indicate that J.R.N. Rajasthan Vidyapeeth, Udaipur can set-up and run education centre for running regular courses outside the State of Rajasthan. It is also not in dispute that for the academic year, 2005-06 and 2006-07 even the provisional approval has not been granted by the Distance Education Council. Further, examination for two different courses had been taken together. It is also a matter of record that the degree in engineering course has been awarded by J.R.N. Rajasthan Vidyapeeth, Udaipur within a span of 14-15 months. It has also been found that the J.R.N. Rajasthan Vidyapeeth, Udaipur is running a study centre which does not have proper facilities. Referring to the contention of the learned counsel for the petitioner that, post facto approval of Distance Education Council was granted to J.R.N. Rajasthan Vidyapeeth, Udaipur in offering programmes and therefore, the degree awarded by the university is valid one, I find that the communication dated 03.09.2007 refers to provisional recognition and it is also mentioned therein that the programmes must be approved by the statutory bodies. It has not been brought on record whether the programmes conducted by the said university have been approved by the statutory bodies. It is also a matter of record that it has been communicated to the J.R.N. Rajasthan Vidyapeeth, Udaipur that the university is required to follow the norms and guidelines of the Apex Body with respect to course, design, duration, eligibility etc. for offering programmes through distance mode. The learned counsel appearing for the \_ petitioners further submitted that, the Distance Education Council itself has indicated that it does not insist upon territorial jurisdiction and therefore, the university is authorised to run regular course in the State of Jharkhand also. From the decision in "Kurmanchal Institute of Degree and Diploma and Others" (Supra) as noticed hereinabove, I find (hat it has been held that a university recognised under the University Grants Commission Act, 1956 would have its own territorial jurisdiction except, the Central Universities.

20. In view of the aforesaid discussion, I am of the view that a degree awarded by a university cannot be rendered invalid merely because it has not been recognised by the AICTE. Section 22 of the University Grants Commission Act, 1956 provides that a university is empowered to confer degree and therefore, the power conferred on a university under the University Grants Commission Act, 1956 cannot be taken away by super-imposing the authority of the AICTE. However, in view of the various pronouncements of the Hon''ble Supreme Court it cannot be said that AICTE has no role at all to play in so far as, technical course run by a university is concerned. If such an interpretation is given to the various provisions under the AICTE Act, the very object of enacting the AICTE Act, 1987 would be frustrated.

21. In Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of U.P. and Others, the Hon''ble Supreme Court has held as under:

70. ...Recognition and affiliation are expressions of distinct meaning and

consequences. In *Chairman, Bhartia Education Society and Another Vs. State of Himachal Pradesh and Others*, this Court held that:

19. The purpose of "recognition" and "affiliation" is different. In the context of the NCTE Act, "affiliation" enables and permits an institution to send its students to participate in public examinations conducted by the examining body and secure the qualification in the nature of degrees, diplomas and certificates. On the other hand, "recognition" is the licence to the institution to offer a course or training in teaching education.

22. The facts which have been brought on record in the present proceeding further strengthen my view that the role of AICTE in so far as, university is concerned cannot be wiped out altogether. If the manner in which the Bachelor in Engineering course is run by J.R.N. Rajasthan Vidyapeeth, Udaipur, is ignored, it would bring disaster to the Technical Education System in the Country.

23. It is well settled that even if the reasoning given in the order is not appropriate and the order may not sustain the scrutiny in law, the Court Would not interfere with the order as, such interference would perpetuate illegality. The orders under challenge in the present proceeding have been passed after considering various aspects of the matter and therefore, even after holding that the degree awarded by the J.R.N. Rajasthan Vidyapeeth, Udaipur cannot be held invalid on the ground that it has not been recognised by the AICTE, I am not inclined to interfere in the matter.

24. In *Chandra Singh Vs. State of Rajasthan and Another*, the Hon"ble Supreme Court has held as under:

43. Issuance of a writ of certiorari is a discretionary remedy. The High Court and consequently this Court while exercising their extraordinary jurisdiction under Article 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done...

In the result, this writ petition fails and accordingly, it is dismissed.