

(2010) 11 OHC CK 0005
In the Orissa High Court
Case No : W.A. No. 328 of 2010

Policy Planning Body and Another

APPELLANT

Vs

Silicon Institute of Technology and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Biju Patnaik University of Technology Act, 2002 — Section 44, 45, 51
Constitution of India, 1950 — Article 254
Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 4, 6

Citation : (2011) 1 ILR (Ori) 162

Hon'ble Judges : V. Gopala Gowda, C.J.; B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—On 9.11.2010 after hearing the learned counsel for the parties, we passed the following orders:

...The writ appeals are dismissed. Reasons to follow.

The following are the reasons in support of dismissal of the writ appeals. The Writ Appeal Nos. 328, 329, 330, 331, 332, and 333 of 2010 are filed by the Policy Planning Body (in short "PPB") represented through the Member Secretary and Deputy Director (TE) and Writ Appeal Nos. 334, 335, 336, 337, 338 and 365 of 2010 are filed by Biju Patnaik University of Technology (BPUT) being represented by its Vice-Chancellor have questioning the correctness of the common order dated 26.10.2010 passed in W.P.(C) Nos. 13272 of 2010 and connected writ petitions filed by the respective Respondents-technical education institutions urging various facts and legal contentions.

2. There is no need for us to advert to the facts in the judgment except necessary facts that will be referred to while answering the points that would arise for consideration in these appeals.

3. The Respondent educational institutions filed the writ petitions before this Court seeking for issuance of a writ of mandamus to the University for grant of affiliation for second shift in B. Tech. Courses for the academic session 2010-11 and to direct the JEE to include the second shift B. Tech. course in the ensuing counseling and further to extend the JEE counseling period and to permit the Petitioner-institutions to fill up the 2nd shift seats through college level counseling.

4. The aforesaid prayers prayed by the technical educational institutions were opposed by the Appellants herein inter alia contending that the Policy Planning Body is competent to regulate admission of students to various engineering courses in view of Clause (a) of Sub-section (6) of Section 4 of the Orissa Professional Educational Institution (Regulation of Admission and fixation of Fees) Act, 2007 which empowers it to regulate admission, conduct examination and supervise and guide the process of admission in respect of technical educational institutions in the State. It is further contended by the learned Counsel appearing for the Policy Planning Body that a meeting was convened on 27.8.2010 and in the said meeting a decision was taken not to allow the Technical Educational Institutions in the State of Orissa to admit students in the second shift for the academic year 2010-11 for the reason that more than 17000 seats allotted by the AICTE to various colleges affiliated to the University are still unfilled. Therefore, the said decision is binding on the BPUT. It is further contended that there is no separate approval order passed by the AICTE to start the second shift engineering courses in favour of the educational institutions granting permission to start second shift engineering courses in the respective educational institutions from the academic year 2010-11. Therefore, they are not entitled for the relief. Further it is contended that the constitutional validity of the Act, 2007 was questioned before this Court on the ground that the said provision is repugnant to AICTE Act under Article 254 of the Constitution by some of the educational institutions. Further it is submitted that the Act, 2007 was challenged before this Court on the ground that it was hit by the Doctrine of Repugnancy under Article 254 of the Constitution of India. The Act was struck down on the ground that the provisions of the said Act were repugnant to the provisions of the Central Acts like AICTE, MCI etc. In SLP filed by the State of Orissa, the Apex Court in effect stayed the judgment of this Court and kept alive all the provisions of the Act save some modifications to Sections 4 and 6 in respect of the constitution of Policy Planning Body and Fee Structure Committee. The educational institutions are the members of the association named OPECA, which is one of the parties in the Civil Appeal pending before the Supreme Court. Therefore, it is not open for the said educational institutions to individually come up before this Court challenging the validity of the said Act and seeking for the reliefs. This aspect of the matter has not been taken into consideration by the learned Single Judge while passing the impugned order granting reliefs. It is also further contended that the procedure required to be followed in submitting the applications to the AICTE; and processing the same is in accordance with the

procedure laid down in the AICTE Approval Process Handbook. That procedure has not been followed by the AICTE for granting approval for opening of second shift in favour of the educational institutions without there being no objection certificate from the State Government and the University. This important aspect of the matter has not been considered by the learned Single Judge. Therefore, the grant of relief in favour of the educational institutions is not legal and valid and the same is liable to be set aside. Further the submission of application is after the last date of receipt as mentioned in the time schedule. This important aspect of the matter has also not been considered by the learned Single Judge while granting reliefs in favour of the educational institutions. The procedure contemplated in clauses 27 and 28 was not followed by the Regional committee in evaluating the applications and by the Executive Committee in considering the application of the educational institutions. Therefore, the sanction of second shift in favour of the educational institutions by the AICTE is not legal and valid and this aspect has not been considered by the learned Single Judge and therefore the same is liable to set aside by this Court. It is further contended that the AICTE has not followed the procedure prescribed in the Handbook for guidance to process the application and grant of approval by AICTE either to a new college or for second shift seeking no objection certificate as the State Government has got say in the matter whether there is need for grant of additional or second shift to run the courses in the educational institutions. Without awaiting the views of the State Government, processing the application by the Regional committee and consideration of the same by the Executive Committee under the Rules and accepting the report of the Regional Committee and granting approval to start second shift for the 165 academic session 2010-11 in the engineering courses is contrary to the procedure laid down in the guidelines. Therefore, the increase of intake capacity by permitting them to run second shift to impart education in the courses allocated to it is bad in law. Further, it is submitted that the views of the University-appellants in the connected appeals should have been taken into consideration along with other various relevant factors before granting the sanction for second shift in favour of the educational institutions. The approval granted by the AICTE as per the guidelines 2010 is subject to obtaining necessary affiliation from the University. That has not been done. Therefore, the educational institutions were not entitled for the relief. This aspect of the matter was overlooked by the learned Single Judge while granting the relief. Hence, the impugned judgment is liable to be set aside. Further, the learned Single Judge has erred in quashing the notification of the Industries Department dated 30.7.2010 in the absence of prayer to that effect. This notification was issued on the basis of the policy decision taken by the PPB which is in contravention of Act, 2007 for the reason that the PPB is competent statutory authority to regulate admission in the Technical Educational institutions in the State. The letter of approval has not been issued by the Member Secretary of the AICTE under the 2010 guidelines. The letter giving the details of total intake position of various courses in the educational institutions produced by the Senior Standing Counsel on behalf of the AICTE could not have been termed as letter of approval as the

same is signed by Dr. S.G. Bhirud, who is a Director but not the Member Secretary. Therefore, the same cannot constitute as approval granted by the AICTE in favour of the educational institutions to run their courses in the second shift.

5. The grounds urged by the University Counsel are that the writ petitions filed by the educational institutions are not maintainable in the absence of necessary parties to the proceedings in the writ petition. Therefore the impugned judgment is liable to be set aside. Learned Single Judge ought to have dismissed writ petition at the threshold for nondisclosure of material facts and suppression of material facts. Learned Single Judge failed to consider the submission made on behalf of the University that the University is a statutory body controlled and governed by the Act of State Legislature namely, the Biju Patnaik University of Technology Act, 2002, hereinafter called "BPUT. Chapter VI of Part II deals with affiliation of colleges. There are two types of colleges under the University, one category is known constituent colleges and the second category colleges are known as affiliated colleges. To get affiliation of the University, the procedure prescribed under Chapter-VI is required to be strictly followed. Section 44 of the said Act mandates that college/institution applying for affiliation has to satisfy certain conditions laid down therein including no objection certificate from the Government of Orissa. u/s 45 of the said Act the University, inter alia, has to be satisfied that the college/institution applying for affiliation has valid no objection certificate from the Government of Orissa. Therefore, obtaining valid no objection certificate from the State Government is an essential pre-requisite for grant of affiliation to the college/institution. Neither the copy of the said order nor the original order in favour of the institution to run the second shift is produced. This important aspect of the matter has not been considered by the learned Single Judge. Therefore, the impugned judgment is erroneous and the same is required to be set aside. The granting of relief in the impugned order is bad in law and the same is liable to be set aside. Another ground of attack of the impugned common order passed and the reliefs sought for in the writ petition is that u/s 51 of the Act for affiliation of new courses, the institutions have to satisfy the condition laid down u/s 44 of the said Act. The same has not been complied with. Therefore, the impugned order passed by the learned Single Judge is vitiated in law. It is further contended that the Policy Planning Body which is a statutory body has come into existence under Act 2 of 2007, the provision of Sub-section (6) of the Section 44 of the Act has not been stayed by the Hon'ble Supreme Court while staying the operation of the judgment of this Court, it operates fully in force. Therefore it vests power in the PPB to take such a policy decision to regulate admission in the technical educational institutions in the State. Since the Supreme Court has stayed the judgment of this Court and kept alive all the provisions of the Act save some modification to Sections 4 and 6 in respect of the constitution of Policy Planning Body, and the matter is subjudice in the said Court, therefore, it is not open for the educational institutions to individually come up before this Court in writ petition and indirectly challenge the validity and

propriety of the order of the Apex Court. This aspect has not been considered by the learned Single Judge and hence the impugned order is liable to be set aside. Further learned Counsel for the PPB has also placed reliance upon paragraph-8 of the judgment of the Supreme Court referred to in the impugned judgment is not correct as the same is contrary to the decision of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and P.A. Inamdar and Others Vs. State of Maharashtra and Others, , which are admittedly of a larger bench decision than the two judgments referred to at paragraph-8 relied upon by the counsel appearing for the educational institutions. In the said decision, it has been clearly laid down that the State Legislature has got competence to enact the law to regulate technical educational institutions in the State as per Entry No. 26 in the concurrent list. Not taking up this important matter, giving direction to the University to affiliate is not legal and valid and hence the same is required to be set aside.

6. Mr. S.K. Padhi, learned Senior Counsel appearing on behalf of some of the educational institutions, have sought to justify the order of the learned Single Judge inter alia contending that the AICTE is the competent authority in granting permission to the new technical educational institutions or second shift under the provision of the AICTE Act. Since both the Appellants herein i.e. PPB and the University have not submitted their views though the applications along with necessary requisite documents were furnished to them, when the permission was sought for by the Respondent-educational institutions from the AICTE, they cannot object to the grant of permission by the AICTE which is the competent authority under the AICTE Act, either for grant of affiliation to new educational institutions or to start second shift in the existing educational institutions. Further, it is submitted that since both the PPB and the University have not challenged the composite approval orders passed in favour of the educational institutions, the stand taken by them before the learned Single Judge are wholly untenable in law. Therefore, he submits that the appeals are liable to be dismissed. The impugned order of granting relief in favour of the educational institutions is passed by the learned Single Judge on the approval orders passed by the AICTE permitting the educational institutions to start second shift in engineering courses. Further, it is contended that the order passed by the learned Single Judge are in conformity with the judgment of the Hon"ble Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, and Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Department Thiruvananthapuram and Anr. AIR 2000 SC 1614. He further submits that the reliance placed by the learned Counsel for the PPB upon the judgments mentioned at paragraph-8 of the impugned order are wholly untenable and totally inapplicable to the fact-situation. Further it is contended that the procedure prescribed in the guidelines of the hand book issued by the AICTE for processing the application and granting approval order permitting the educational institutions to start second shift in the courses as mentioned in the order is

strictly valid as the views of the State Government and the University was sought for, but they did not avail the same. Therefore, it is not open for them to turn down the request as both the PPB and the University have been given sufficient opportunity to submit their views and for not giving no objection certificate. For not submitting the views in time, the approval order granted by the AICTE cannot be said to be illegal. Further, it is contended that reliance placed upon the composite orders passed by Dr. S.G. Bhirud, Director and not by the Member Secretary is also wholly untenable in law. The composite orders are passed by the AICTE in favour of the Respondent-educational institutions for the courses which are in existence for the academic year and for the courses under the second shift to be started by the very same institutions. Passing a composite orders is permissible in law as it is in relation to the same institutions and hence, the same cannot be found fault with by the Appellants herein. It is contended that the Regional Council and the Executive Committee have strictly adhered to the procedure in processing the applications of the educational institutions and on the basis of the report submitted by the Regional Council, the same was examined by the AICTE with reference to the request made by the educational institutions after satisfying with the need and requirement and infrastructure available in the institutions, composite approval order was passed by the AICTE, the same has been relied upon by the learned Single Judge which granted reliefs in favour of the educational institutions. Therefore, the same cannot be interfered with by this Court as there is no substantial question of law involved in these appeals. Hence prayed for dismissal of the appeals.

7. Various procedural irregularities as pointed by the Appellants' counsel is wholly untenable in law since no argument was advanced before the learned Single Judge in that regard. Therefore, it is not open for them to urge such additional grounds in these appeals.

8. Mr. Ishan Mohanty, learned Standing Counsel appearing for the AICTE was directed vide order dated 8.11.2010 to secure certain records. He made available those records and sought to justify the order passed by the learned Single Judge contending that the applications were received by the AICTE within the revised time schedule. The same have been processed under the guidelines provided in the handbook prepared by the AICTE. After scrutiny of the applications by the Regional Committee reports were submitted to the Executive Committee which after proper application of mind to the claims of the educational institutions, seeking permission to establish second shift keeping in view the guidelines provided to start new second shift in the educational institutions. AICTE has exercised its power under the provisions of AICTE Act which authority alone is competent to grant approval to start second shift in the courses by the Respondent educational institutions and that has been granted by the AICTE. In the instant case, both the State Government and the University have failed to submit their views basing on the claim of the institutions and their non-issuance of no objection certificate cannot be a criteria for the AICTE not to exercise the power of granting approval in favour of the educational institutions. The

composite approval order granted in favour of the educational institutions is in accordance with the provisions of the AICTE Act and the law laid down on this aspect which are referred to at paragraph-8 in the impugned order and the learned Single Judge has rightly accepted the same for grant of relief in favour of the educational institutions which need not be interfered with as the Appellants have failed to make out a case by showing that the impugned order passed by the learned Single Judge is vitiated either on account of erroneous reasons or error in law.

9. With reference to the above said rival legal contentions, the following points would arise for the consideration:

(a) Whether the non-submission of no objection certificate by not submitting its views despite receipt of the applications of the Respondent educational institutions would come in the way for AICTE for grant of the approval order to run the courses in the second shift by the educational institutions?

(b) Whether the grant of permission by the PPB or the State Government under the Act 2007 is a pre-requisite condition as required u/s 44 of the BPUT Act to affiliate the Respondent educational institutions to run the courses in the second shift?

(c) Whether the impugned common judgment giving direction to the Appellants herein is either erroneous or vitiated in law? Therefore the substantial question would arise for this Court to interfere with the common judgment. What order?

The aforesaid points are answered by assigning the following reasons:

10. It is the case of the educational institutions that they have submitted the applications as per the procedure laid down in the guidelines provided in the handbook prepared by the AICTE in the revised schedule regarding time. It is an undisputed fact that copies of the applications of the educational institutions were submitted to the State Government as well as the University. They have neither submitted their views nor issued no objection certificate. In the absence of the submission of the views by the both the Appellants herein, the applications were taken up for affiliation by the Regional Committee and also the Executive Committee. The Regional Committee and the Executive committee have submitted their reports. The same has been examined by the AICTE.

11. We have carefully gone through the guidelines upon which reliance is placed by both the learned Counsel for the parties. The relevant guidelines No. 23 provides for additional programme/courses/ in the second shift working. Clause 25.4 provides that the views of the State Government and University will be taken into account by the Regional Committee while taking the decision whether the application is to be processed or not which reads thus:

25.4. The views of the State Government /UT and the affiliating university will be taken into account by the Regional Committee while taking the decision whether the application is to be processed or not. In case the Regional Committee decides

not to process the application further based on the views of the State Government/UT and/or the affiliating university, the same will be communicated by the Regional Officer concerned to the applicant Society/Trust along with reasons for such decision. In the absence of receipt of views from the State Government/UT and/or the affiliating University by the date as mentioned in time schedule, the Council will proceed for completion of approval.

12. In the instant case, the Appellants did not submit their views. Therefore, they proceeded to process the applications on the basis of the documents required to be produced under Clause 25.5 and the same has been followed by the Scrutiny Committee and considered by the Executive Committee. Consideration of the Executive Committee reads thus:

28.1 The concerned bureau at AICTE HQ shall cross check and verify the recommendations of the Regional Committee together with the certificate of the Regional Officer concerned and shall issue another certificate certifying that all the processes and parameters as prescribed in regulations and approval process hand book were followed by the Scrutiny Committee and the Regional committee. In case it is not the case, the concerned bureau head at AICTE HQ shall point out the deviations in the process or in the prescribed norms and standards.

The recommendations of the Regional Committee shall be placed before Executive Committee of the Council. Executive Committee, after considering the recommendations of the regional committee and report/certificate of the concerned bureau of the council, shall take a decision at its meeting on grant of approval or otherwise.

13. After consideration of the report of the Executive Committee the Council granted approval. The same has not been challenged by the State Government or the PPB or by the University. Therefore, the case before the learned Single Judge in the writ petitions was that no approval for second shift is passed and the same is not passed by the Member Secretary and produced. The said submission is countered by the learned Standing Counsel on behalf of the AICTE before the learned Single Judge. Learned Standing Counsel for the AICTE has secured the documents and made submission that there is a grant of approval to the educational institutions. Pursuant to the direction, once again he has secured the composite orders of approval granted in favour of the educational institutions to run the second shift in the courses allocated to them in the composite orders. We have perused the same. The grant of approval either to new college or second shift is within the purview of the AICTE under the AICTE Act which is enacted by the Parliament in exercise of its legislative power from entry No. 66. The Hon''ble Supreme Court with regard to this aspect of the matter way back in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, has decided the issue and the same was relied upon by the learned Single Judge which has been extracted at paragraph-15 of the impugned judgment. The same is extracted hereunder:

Thus, so far as these matters are concerned, in the case of the institutions imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the Engineering colleges.

With regard to the competent authority for grant of approval either to impart technical education in favour of the educational institutions or opening of second shift, the Apex Court has held that it is not the University under the University Act, but it is the Central Act and the Council created under it which will have jurisdiction. The composite approval order granted under the Act by the AICTE after following the procedure contemplated under the guidelines is not challenged. Therefore, neither the Appellants nor the University can say before this Court in these appeals that as per Clause (a), Sub-section 6 of Section 4 of the Act, 2007, the Policy Planning Body can regulate admission in technical education in the State which includes recommendation for second shift engineering programme during the academic session 2010-11. Opportunity was given to the State Government and the University to submit their views when the applications were there before them. It is not their case that they had no sufficient time for submitting their views to the claim of the educational institutions before the AICTE and challenged the said order. It is not open for them to say that the order passed by the learned Single Judge is bad in law. It cannot be said that the approval order could not have been granted without there being the views secured from the State Government and the University. There is no such procedure in submitting the views by the State Government. They have lost their say in the matter. Therefore, they cannot say that the composite approval order granted in favour of the technical education institutions is bad in law. Such contention is wholly untenable as the same is contrary to the aforesaid provisions of the Act, decision of the Supreme Court and the guidelines in the hand book. Further reliance has been placed on various judgments of the Supreme Court at paragraph-9 of the impugned judgment. The reliance placed in the case of Govt. of A.P. Vs. M. Srinivasa Reddy and Others, is totally inapplicable to the fact situation. Therefore, reliance placed by the learned Counsel for the Appellants is misplaced. By careful reading of Entry No. 25 which is the law enacted by the State Legislature under Act of 2007 to regulate technical education in the State regarding admission and fee structure and other related matter is subject to the law that is enacted by the Parliament under Entry No. 66 of List. In this view of the matter, the provision of Act, 2007 cannot override the provision of AICTE Act. Therefore, the composite approval orders passed by the AICTE in favour of the Educational Institutions is legally permissible and the same is binding upon the Appellants herein.

14. It is an undisputed fact, as urged by the learned Counsel for the PPB, that more than 18000 seats allocated by the AICTE in various engineering courses are lying vacant. Therefore, there is no need for grant of permission in favour of the

educational institutions in these appeals to start the second shift in various disciplines as it would affect imparting technical education in the backward areas of the State of Orissa since the students would prefer the colleges in the urban areas and therefore, grant of composite orders in favour of the educational institutions will defeat the object and intendment of the State Government to impart education in the backward areas of the State. This contention is wholly untenable in law in view of the fact that for the academic year 2010-11 the State Government in the Higher Education Department has issued No Objection Certificate to seven such educational institutions in the State. In this view of the matter, the contention that composite orders issued for starting second shift in favour of the educational institutions cannot be found fault with either by the State Government or by the PPB.

15. We have carefully examined the legal grounds urged in this case with reference to powers of the AICTE and Policy Planning Body under Act, 2007 and the powers of the University regarding affiliation of the educational institutions on the basis of the approval granted in their favour to run the second shift courses for the academic sessions 2010-11. We are satisfied that the learned Single Judge after referring to certain relevant facts, legal contentions rightly accepted the case pleaded by the writ Petitioners and rightly granted the reliefs as prayed for in the writ petitions. Therefore, the same cannot be said as erroneous or error in law. Further, the quashing of the notification dated 30th July, 2010 of the Government of Orissa in Industries Department is legal and valid as the same is in contravention of the AICTE Act and the composite orders of approval granted in favour of the educational institutions. For the reasons stated, the notification cannot override the permission granted by the AICTE, which is competent to regulate imparting technical education in the State. We do not find any error in quashing the said notification notwithstanding the fact that the same is not challenged. For the reasons stated supra, we are of the view that the point No. 3 is also required to be answered in favour of the educational institutions and against the Appellants as the reasons assigned by the learned Single Judge in the impugned common judgment is neither erroneous finding or error in law. On the other hand giving direction to both the State Government and the University in the impugned order is perfectly legal and valid. Granting affiliation to the 2nd shift, B-Tech course in favour of the technical educational institutions for the academic session 2010-11 and the direction to the OJEE to include the said course in the Petitioners-institutions in the ensuing E-counseling is very much required otherwise, the composite approval orders granted in favour of the Respondent-educational institutions by the AICTE will be arrested and further the direction given to the University is also in accordance with law to affiliate the educational institutions to run the second shift engineering courses for the academic session 2010-11 is perfectly correct.

16. We do not find any merit in these appeals and the same are accordingly dismissed. Writ appeals dismissed.