
(2003) 11 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No's. 35651 and 35687 of 2002 and Writ Appeal No's. 2652, 2833 to 2838 and 3087/3092 of 2001

Sadakathullah Appa College and Others

APPELLANT

Vs

All India Council for Technical Education and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for the Courses or Programmes) Regulations, 1994 — Regulation 5(2)

All India Council for Technical Education Act, 1987 — Section 10(1), 13(2), 2, 23, 24

Citation : (2004) 1 CTC 1 : (2004) 1 MLJ 374 : (2004) WritLR 72

Hon'ble Judges : S.K. Krishnan, J;R. Jayasimha Babu, J

Bench : Division Bench

Advocate : A.L. Somayaji for V. Perumal and in Writ Appeal Nos. 2833 to 2838 of 2001, P. Haridoss for K. Sunanda, in W.A. No. 2652 of 2001, G. Masilamani for G.M. Mani Associates in W.A. Nos. 3087 to 3092 of 2001, for the Appellant; Vijay Narayan, for Respondent Nos. 1 and 2, P. Subbiah, for Row and Reddy for Respondent No. 2 and N.G. Kalaiselvi, Special Government Pleader for Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The appellants and the writ petitioners are Arts and Science Colleges or Associations of Arts and Science Colleges. Most of them are affiliated to Bharathidasan University and some of them are affiliated to Manonmaniam Sundaranar University. They are the only colleges in the State running MCA course who have so far not obtained the approval of the All India Council for Technical Education (AICTE). They are before this Court contending that no such approval is required as, in their submission the AICTE has no jurisdiction over the Arts and Science colleges offering the course MCA. They rely upon the definition of "technical education" in Section 2(g) of the All India Council for Technical Education Act, 1987 (AICTE Act) and the definition of "technical institution" in Section 2(h) of that Act.

2. According to the information placed before the Court by the AICTE, as of the academic year 2001-02, there were 865 institutions in the country offering 40792 seats in the MCA which had the approval of the AICTE. Within the State of Tamil Nadu the number of institutions who have received such approval is 208. In the affidavit filed on behalf of the State it is stated that apart from the petitioners and appellants institutions all other institutions offering MCA have obtained the approval of the AICTE.

3. The AICTE Act came into force with effect from 28.03.1988. That Act was enacted with a view to provide for proper planning and coordinated development of the technical education system throughout the country, and for promoting qualitative improvement of such education in relation to planned quantitative growth and for regulating and proper maintenance of norms and standards in the the technical education system and for matters connected therewith.

4. The Act in Section 2(g) defines "technical education" thus:

"2(g). "Technical Education" means programmes of education, research and training in Engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.

"Technical institution" as defined in Section 2(h) reads thus:

2(h). "Technical institution" means an institution, not being a University, which offers courses or programmes of technical education and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.

5. In the definition of "technical education", after the word "engineering" though a comma which should have been there is missing, AICTE has consistently understood that definition as enabling it to regulate the course in engineering as also in technology and "technology" has been regarded as a separate field for regulation, and is not confined only to engineering technology.

6. In the definition of "technical institution" though the word "institution" is used, it in fact, refers to the "courses" which are technical in nature and are offered by institutions which otherwise may or may not be regarded as "technical institutions". It is the course which is covered by or is subject to the regulations under the Act, the offering of which in an institution that renders the institution in which it is offered a "technical institution".

7. The word "technical", it was sought to be contended by senior counsel appearing for the appellants Mr. G. Masilamani, would not take within it's ambit computer applications. We do not find any substance in that submission. The definition of the word "technology" found in the dictionaries refer to "systematic application of knowledge to practical tasks in industry". The word "technical" is defined in the dictionaries as something which is connected with the execution of

a work.

8. It is, therefore evident that computer application is clearly a course which falls within the ambit of the term "technology", as the Course involve the imparting of knowledge in relation to practical applications of computers in industry and management. The fact that those who study MCA course are not required to become experts in hardware or in computer science does not make the course any less a "technical course" as in order to apply the knowledge required for making effective use of computers in industry and management, they must first have the minimum knowledge of the functioning of computers, their various uses, different computer languages, and also the extent to which computers can be utilised by using appropriate programs for improving efficiency in industry as also in management.

9. The course content of the MCA furnished to us by Counsel shows that it is a course of three years duration with six semesters, the subjects taught in the first semester are : 1. Digital Computer Fundamentals, 2. Mathematical Foundations of CS, 3. Data Structures and Algorithms, 4. Principles of Programming, 5. Accounting and Financial Management, 6. Data Structure Lab, and 7. PC Package Lab. The subjects offered in second semester are : 1. Management Information Systems, 2. Operating Systems, 3. Marketing Management, 4. Probability and Statistics, 5. Object Oriented Programming, 6. OOPS Lab, and 7. OS Lab. The subjects for the third semester are : 1. Data base Systems, 2. Communication Systems, 3. Optimization Techniques, 4. Software Engineering, 5. Computer Graphics, 6. RDBMS Lab, and 7. Computer Graphics Lab. The subjects taught for the fourth semester are : 1. Java Programming, 2. System Modeling and Simulation, 3. Organizational dynamics, 4. Elective-I : a. Artificial Intelligence and it's applications; b. Microprocessor principles and applications, c. Digital image processing, 5. Elective II : a. Artificial Neural networks, b. Distributed systems; c. Unified Modeling Language, 6. Java Lab, and 7. Visual Programming Lab. 1. Web Design, 2. Multimedia Systems and Design, 3. Principles of Compiler design, 4. Elective III : a. WAP and XML; b. Parallel Algorithms, c. Data Warehousing, 5. Elective IV : a. COM/DCOM ; b. Managerial Economics; c. Principles of E-Commerce, 6. Web Design Lab and 7. Mini Project are the subject taught during fifth semester. During the sixth semester project work is done.

10. A bare perusal of the listing is sufficient to show that unless the student learns and acquires some degree of mastery over the computer fundamentals, the student will not be able to earn the degree of MCA.

11. The AICTE Act in Section 13 provides for the constitution of Boards of Studies. Section 13(1) requires the Council constituted under the Act to establish All India Boards for Vocational Education, technical education, Undergraduate studies in Engineering and Technology; for Postgraduate education and Research in Engineering and Technology as also All India Board of Management studies. Sub-section (2) to Section 13 empowers the Council, wherever it is considered necessary, to establish such other Boards of studies as it may think fit.

12. In exercise of its power u/s 13(2) of the Act, the Board has established a number of other Boards of Studies for Architectural education, for Town and Country planning education; for Hotel management and catering technology; for Pharmacy education, and finally for Computer science, engineering, technology and applications.

13. Those other Boards of studies were established by the Rules framed by the Council titled as "All India Council for Technical Education (Constitution and Functions of Studies) Regulations, 1995". The Board Constituted for Computer Science, Engineering, Technology and applications, has since been renamed as "All India Board of Information Technology Education". The Board is composed of Chairman of Super Computer Education and Research Centre, Indian Institute of Science, Bangalore, with several other members. Those other members are currently persons who are holding office as Deputy Managing Director, Infosys Technologies Ltd., Bangalore; Chairman-cum-Managing Director, Semi Conductor Complex Ltd., Chandigarh; Chairman, Sigmon Systems Private Ltd., Hyderabad; President of NASSCOM, International Youth Centre, New Delhi; Professor in the Department of Automation and Computer Science, Indian Institute of Science, Bangalore; Professor of Department of Computer Science and Engineering, Indian Institute of Technology, Kanpur; Professor of Department of Electrical Engineering, Indian Institute of Technology, Chennai; Nominee of National Informatics Centre, Ministry of Information Technology, New Delhi; Professor of Department of Computer Science and Engineering, Indian Institute of Technology, New Delhi; Vice Chancellor of University of Pune; Nominees of University Grants Commission, Department of Electronics and Ministry of Human Resource Development, New Delhi; and one of the Advisors of the AICTE.

14. It is evident that the Board is composed of persons of eminence in the field and this Board has been constituted to oversee the Information Technology in all branches including computer science, technology and application.

15. Even if it were possible to entertain any doubt with regard to the scope of the term "technical", one must accept the view of an expert body like the AICTE with regard to what is technical, and falls within the purview of its jurisdiction, the Council having been entrusted with the responsibility of ensuring the co-ordinated development of technical education system and promoting the qualitative improvement therein.

16. We have, therefore, no doubt that the field of computer applications is clearly covered by the term "technology" used in the definition of "technical education" in Section 2(g) of the Act.

17. The related submission made by the Counsel that unless the Government of India notifies computer applications as a subject, which is also to be regulated by the Council, it would not be covered by the Act, must be and is rejected, as the question of Government declaring any other program or area also as being subject to the jurisdiction of the Council, will arise only in cases where such

programme or area is not already covered by the definition contained in the enactment.

18. It was submitted by the learned senior counsel appearing for the associations of private Arts and Science colleges Mr. Haridoss that the Council has no jurisdiction over the member colleges of the associations, all of whom are affiliated to the University, as according to him, it is the University alone which will have power to regulate the affairs of these affiliated colleges. This submission must be and is rejected, having regard to the very clear area of authority of the Council constituted under the Act, which vests the exclusive power of regulating technical education in the country in the Council constituted under the Act. The power exercised by the university in respect of affiliated colleges is subordinate to the power exercisable by the Council under the AICTE Act in respect of matters covered by that enactment. While the University may not require permission of the Council for starting courses of study which are subject to the AICTE's Regulations, the colleges affiliated to the University cannot claim any such right. Affiliation only enables the students of the affiliated institutions to appear for the examinations which are held by the University on the basis of which students who succeed in the examinations will become eligible for receiving degrees offered by the University.

19. The further submission that was made for the appellants and the petitioners was that the authority of the Council to require the institutions to apply for approval is limited to only institutions which are "new", in the sense that they had come into existence subsequent to the framing of the Regulations providing for matters referred to in Section 10(k) of the Act.

20. Section 10 dealing with functions of the Council is found in Chapter III of the Act titled as "Powers and Functions of the Council". Section 10(1) in the opening part reads thus: "It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical and management education and maintenance of standards and for the purposes of performing it's functions under this Act, the Council may"

The functions and powers are set out in sub-clauses from (a) to (v) of Section 10(1). It is sufficient for the present purpose to refer to only some of those sub-clauses. Sub-clause (b) empowers the Council to co-ordinate technical education in the country at all levels. Sub-clause (g) empowers the Council to evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education incorporating norms and mechanisms for enforcing accountability. Sub-clause (i) enables the Council to lay down norms and standards for the courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations. Sub-clause (k) provides for grant of approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. Sub-clause (m) enables the Council to lay down norms for granting autonomy to technical institution. Sub-clause (n) empowers it

to take necessary steps to prevent commercialization of technical education. Sub-clause (o) enables the Council to frame guidelines for admission of students to technical education institutions and universities imparting technical instruction. Sub-clause (p) empowers the Council to inspect or cause to inspect any technical education. Sub-clause (r) empowers it to take steps to strengthen the existing organizations and to set up new organizations to ensure effective discharge of the Council's responsibilities and to create positions of professional, technical and supporting staff based on requirements. Sub-clause (u) enables it to set up National Board of Accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it, or to the Council, or to the Commission or to other bodies, regarding recognition or de-recognition of the institution or the programme.

21. Thus, the scope of the Council's power is vast. It includes every facet of technical education in the country. It enables the Council to do everything that is required to achieve the objects for which it was formed, namely the development of technical education system in the country and the qualitative improvement thereof. Having regard to the scheme of the Act, it is not possible to accept the submission that the Act is meant to apply only to new institutions and not to those which were in existence at the time the Act was brought into force. If such a submission were to be accepted it would result in the country having to continue to suffer qualitatively inferior set of technical institutions established prior to 1987, even while the requisite quality is to be maintained by the new institutions established subsequent to the coming into force of the Act.

22. The argument based on the language employed in Section 10(1)(k) is also not the one which is worthy of acceptance. The reference to grant of approval for starting new technical institutions, does not imply that no approval is required for institutions which were already in existence before the Act came into force or before the Regulations providing for approval were promulgated. Section 10(1) (i), inter alia, empowers the Council to lay down the norms and standards for the courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations. Clause (p) empowers the Council to inspect or cause to inspect any technical education. Clause (n) empowers it to take necessary steps to prevent commercialization of technical education. Clause (u) enables it to set up National Board of Accreditation. These provisions taken together would clearly indicate that every institution which can be regarded as a technical institution by reason of such an institution offering a course which is a technical course is subject to the jurisdiction of the AICTE and must conform to the requirements stipulated by the Council for the establishment and functioning of such institutions.

23. The Regulations framed pursuant to Section 10(1)(k) of the Act, titled "All India Council for Technical Education (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of

Intake Capacity of Seats for the Courses or Programmes) Regulations, 1994", has prescribed Form II, which is in terms of Regulation 5(2)(b) which reads: "An application for approval of Degree level institution functioning on the date of commencement of these regulations shall be made in Form II". Form II is titled "Application for existing degree institution(s) seeking AICTE approval without additional course(s) and/or additional intake(s) in Engineering/Technology, Architecture, Pharmacy, Applied Arts, etc. "

24. Thus, even though Section 10(1)(k) refers to new institutions and the title of the Regulations also refer to new institutions, nevertheless in the body of the Regulations the existing institutions have been specifically addressed and have been required to seek approval for seeking which a special form which is specifically designed for existing institutions has been prescribed.

25. These Regulations have been framed in exercise of the power of the Council u/s 23(1) of the Act. Section 23(1) of the Act sets out the power of the Council to make Regulations. It enables the Council to make Regulations not inconsistent with the provisions of the Act and the Rules therein, to carry out the purposes of the Act. Such a broad power in the Council is certainly wide enough to cover the provisions contained in the approval regulations regarding existing institutions. We do not find any merit in the submission that the Act or the regulations do not apply to existing institutions offering technical course.

26. A minor argument advanced on behalf of some of the appellants is that the reference to "degree" in the Regulations would indicate that it would apply only to under graduate courses and not to post graduate degree like MBA and MCA. It cannot be disputed that what is awarded by the University is a degree - whether it is the first degree or the second degree, professional degree or a research degree. All these are degrees - whether it be B.A., M.Sc., M.Phil, or Ph.D. A post graduate degree is as much a degree as the first degree. The Regulations clearly apply to MBA and MCA as well, and cannot be regarded as inapplicable solely on the ground that MBA and MCA are postgraduate degrees.

27. The fact that the Council had not regulated and had not insisted upon institutions offering MCA courses obtaining its approval prior to 1994, does not militate against it requiring such institutions to obtain its approval after these courses were subjected to regulations under the Approval regulations. As seen from the affidavit filed on behalf of the AICTE, for several years after the Act came on the statute book, the Council had not made much headway in formulating criteria and in prescribing a procedure for approval of technical institutions. The Council appears to have been energised to act in this field only after the Supreme Court rendered judgment in March 1994 in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . Between September 1993 and October 1994 the AICTE approved a number of engineering colleges apparently with a view to comply with the directions that had been given by the Supreme Court in that case regarding allotment of seats in all professional colleges in accordance with the scheme formulated by the

Court in that case. At that time the Council does not appear to have paid much attention to institutions offering courses in computer applications.

28. Even after the Approval Regulations were framed in the year 1994 the Council did not enforce the Regulations with rigour in relation to the institutions offering MBA and MCA courses. In 1997 the Regulation was amended, and MBA and MCA as also Postgraduate Courses in the field of technical education were deleted from it's scope. The reason for such deletion, as stated by Counsel was that the Council had formulated separate regulations for MBA and MCA, but those regulations for some inexplicable reasons were not notified. The MBA, MCA, and Post graduate courses in technical education were however brought back into the fold of the Approval Regulations by the impugned amendment of 11.8.2000.

29. According to the affidavit filed on behalf of the Council, the Council approved 58 institutions - new and existing in this State conducting MCA course, prior to 1997-98. During the year 1997-98 and thereafter the Council has been approving institutions offering these courses year after year: 25 in 1997-98; 19 in 1998-99; 30 in 1999-2000; 9 in 2000-01; 47 in 2001-02; 18 in 2002-03 and 2 in 2003-04. In all 208 institutions in the State of Tamil Nadu offering these courses have received the approval of the AICTE.

30. The petitioner institutions have been practically defying AICTE and have so far managed to function without obtaining the AICTE's approval. They cannot be allowed to do so any longer.

31. We do not find any merit in any of the submissions that were made on behalf of the petitioners and the appellants. The writ petitions and the appeals are dismissed.