
(2010) 10 OHC CK 0033
In the Orissa High Court
Case No : Writ Petition (C) No. 13272 of 2010

Silicon Institute of Technology

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10(1)

Constitution of India, 1950 — Article 254

Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 4, 4(6), 4(7), 6

Citation : (2011) 111 CLT 404 : (2011) 1 OLR 161

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Judgement

R.N. Biswal, J.—The facts and points of law involved in the aforesaid six cases being identical, they were heard together and the following common order is passed thereon.

2. For the sake of convenience and to understand the issue, the facts in W.P.(C) No. 13272 of 2010 are referred. The Petitioner-institution therein was established in the year, 2001 to cater to the need of qualitative higher technical studies of students. It imparts four years B. Tech Degree course and 2 years M.C.A. course apart from other higher technical approved studies. It has been duly approved by AICTE and affiliated to Biju Pattnaik University and Technology (in short B.P.U.T.) from the year of its establishment.

3. With a view to increase the Gross Enrolment Ratio (GER) in technical education to 30% by the year 2020, the AICTE allowed the institutions already approved, established and affiliated to apply for establishing 2nd shift so that the existing infrastructure, laboratory, library etc. can be optimally utilized and cost effective education can be given to the intending students. The present GER in India is very low being 13-14%, and in the State of Orissa, it is much less than the national average. Accordingly, the AICTE in its web-site invited applications

from the eligible interested existing technical, educational institutions for approval to start 2nd shift B. Tech course. Accordingly, the present Petitioner duly submitted its application to AICTE with copy to the State Government and B.P.U.T. seeking approval for introduction of 2nd shift B. Tech course in its institute for the current academic session 2010-11. After thorough inspection and scrutiny and keeping in mind the need of the State of Orissa, the AICTE accorded approval to the Petitioner-institution in respect of 60 seats in each of two disciplines, viz., "Computer Science and Engineering" and "Electronic & Telecommunication" for the current academic session 2010-11 vide notification dated 30.6.2010 in its web-site. Thereafter, the Petitioner-institution submitted application along with required fees to B.P.U.T. for grant of affiliation to the above 120 seats in 2nd shift B. Tech course 2010-11 along with its existing courses, but without any reason, it is sitting over the matter. The Petitioner-institution vide its letter dated 30.6.2010 and 8.7.2010 apprised the fact of approval to the Orissa Joint Entrance Examination (J.E.E. in short) and State Government authorities respectively so as to enhance the seat matrix for JEE-E Counselling. However, they did not do it. Hence, the present Petitioner-institution along with all other five similarly placed institutions have filed the writ petitions with substantially, the following reliefs:

- (i) to direct B.P.U.T. to grant affiliation for 2nd shift B. Tech for current academic, session.
- (ii) to direct the J.E.E. to include the 2nd shift B. Tech course in the ensuing counselling.
- (iii) to extend the J.E.E. counselling period and
- (iv) to permit the Petitioner-institutions to fill up the 2nd shift seats through college level counselling.

4. The State Government in its counter affidavits in all the writ petitions, inter alia, contended that mere obtaining of approval from the AICTE did not entitle the institutions in question to admit students and get affiliation from the B.P.U.T., particularly when neither the Policy Planning Body nor the State Government recommended for starting of 2nd shift in any of the Petitioner-institutions. Further, basing on the recommendation of Policy Planning Body and consequent upon the decision taken in the Board of Governors Meeting of B.P.U.T., the Government of Orissa in Industries Department vide notification dated 30.7.2010 decided not to implement/introduce 2nd shift engineering programme in the existing private engineering colleges for the academic session 2010-11.

5. In its counter, the B.P.U.T. has taken a similar stand in all the writ petitions. Further, according to it, the Policy Planning Body is the Apex Body to take decision in respect of technical educational institutions in the State of Orissa. The B.P.U.T. as well as the other Bodies like J.E.E., functions on the basis of the policy decision taken by the Policy Planning Body. In its meeting dated 28.7.2010, the Policy Planning Body decided not to allow the technical educational institutions in

the State of Orissa to admit students in the 2nd shift for the academic session 2010-11, which is binding on the B.P.U.T.

6. Opp. party Nos. 3 and 4 in their counter affidavits in all the writ petitions contended that approval of 2nd shifts accorded by the AICTE does not bind the State Government or the affiliating University. The Policy Planning Body, which is the apex policy making body in respect of admission of students in their meeting held on 27.8.2010, decided not to allow 2nd shift in any technical educational institution in the State of Orissa in view of large number of vacancy of seats in other single shift technical educational institutions. The said decision has not been challenged by any of the Petitioner-institutions. Mainly basing upon the policy decision of the Policy Planning Body, the Government decided not to implement/introduce 2nd shift engineering programme in existing Private Engineering Colleges for the academic session 2010-11. It is the further case of opp. party Nos. 3 and 4 that normally a policy decision of the Government cannot be subject to judicial review, unless it is unconstitutional or against the provision of any Act or Regulations, So, these opp. parties prayed to dismiss the writ petition.

7. As found from the pleadings of opp. parties, their main contention is that, since the Policy Planning Body, which is the apex policy making body concerning admission in technical educational institutions, in its meeting held on 28.7.2010 decided not to recommend 2nd shift B. Tech programme in the J.E.E. 2010-11, the Government in its Industries Department accepted the proposal and issued the notification dated 30.7.2010 and that BPUT is bound by the decision of Government.

8. Learned Counsel appearing for the Petitioners submitted that the Policy Planning Body is not authorized under law to take a decision not to recommend the introduction of 2nd shift engineering programme when the AICTE has already approved the same. No doubt, under Clause (a), Sub-section 6 of Section 4 of the Orissa Professional Educational Institution (Regulation of Admission and Fixation of Fees) Act, 2007 (in short "Act, 2007") gives power to the Policy Planning Body to regulate admission, conduct examination and to supervise and guide the process of admission in respect of technical educational institutions, but it does not empower it either to allow or disallow permission for establishment of any such institution or to extend the seats or courses in any existing institution, which are exclusively under the domain of AICTE. The Policy Planning Body being a statutory Body created under the Act, 2007 cannot traverse beyond the powers conferred upon it by the said Act. In other words, Clause (a) to Sub-clause 6 of Section 4 of the Act, 2007 does not empower the Policy Planning Body to prohibit admission to an institution approved by the AICTE. In support of their submissions, learned Counsel for the Petitioners relied on the decisions 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,

Thiruvanantha Puram and Anr. AIR 2000 SC 1614.

9. Mr. S. Palit, learned Counsel appearing for the Policy Planning Body and JEE-2010 contended that on 28.7.2010, the Policy Planning Body conveyed a meeting wherein along with other matters, the issue regarding allowing the existing Technical Educational Institutions to start 2nd shift was taken up. After due deliberation, it was decided not to recommend the introduction of 2nd shift engineering programme for the current academic session, 2010-11. The said decision having not been challenged by the Petitioner-institutions, they can not challenge it now. The decision of the Policy Planning Body was forwarded to the State Government which on being approved was notified in the gazette on 30.9.2010 and a copy of it was forwarded to AICTE. Under Clause (a) Sub-section 6 of Section 4 of the Act, 2007, the Policy Planning Body has been authorized to regulate the admission. As a matter of policy, it decided not to recommend 2nd shift Engineering Programme for the Academic Session, 2010-11, in view of large number of vacancy of seats in various technical educational institutions in the State of Orissa in the regular single shift. Scope of interference of this Court in policy matter being extremely limited this Court should not interfere with the decision taken by the Policy Planning Body. In support of his submission, he relied on the decisions in the cases of Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, , State of U.P. and Others Vs. Chaudhari Ran Beer Singh and Another, , Basic Education Board, U.P. Vs. Upendra Rai and Others, , Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others, , Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, , Union of India Vs. Era Educational Trust and Another, and Govt. of A.P. Vs. M. Srinivasa Reddy and Others, . Mr. Palit, learned Counsel further submitted that the decisions cited on behalf of the Petitioners were with regard to repugnancy of the State Acts, and, as such, the same were not applicable to the present case. Furthermore, he 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 Petitioners are all members of an 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 Petitioners to individually come up before this Court in writ petitions and indirectly challenge the validity and propriety of the order of the Apex Court.

10. Mr. A.K. Mohapatra, learned Counsel appearing for B.P.U.T. contended that the scheme of 2nd shift programme was introduced by AICTE in 2008 on the statistics of the students of a State: students studying in Engineering per lakh of population as an index. The objective was to promote 2nd shift in those states

where the index was less than the national average of 75. At that time, the index of State of Orissa average was 57 as the number of seats available then were 19,000. But at present, the average seats available in the State of Orissa is more than national average, as per the view given by the Vice Chancellor, BPUT in the meeting held by the Policy Planning Body on 28.7.2010. So, in the State of Orissa, there is no need of introducing the 2nd shift course in the academic session 2010-11.

11. Mr. A.K. Mohapatra drawing the attention of this Court to Section 44(a) of the B.P.U.T. 1st Statute 2006 further submitted that a college must obtain AICTE approval and NOC from the Government of Orissa before applying for affiliation. In the present cases, in absence of NOC from the Govt. of Orissa, the University cannot grant affiliation to the new courses in the 2nd shift. Furthermore, Mr. Mohapatra contended that the Petitioner-institutions have not produced their respective letter of approval of the AICTE before the university. Even if it is presumed that all the institutions have been approved by the AICTE, it does not lead to automatic grant of affiliation by the University.

Mr. Mohapatra again submitted that as per Clause 23.2 of the AICTE approval Process, Hand Book, approval for additional programme/course/division in 2nd shift should be considered with views of the State Government and affiliating university. In the present case, the AICTE having not considered the views of either the State Govt. or the BPUT committed gross illegality by violating its own guidelines in granting approval of 2nd shift course in favour of the Petitioner-institutions. So, the BPUT is not bound to affiliate the said course.

12. As per Clause (K) Sub-section (1) of Section 10 of the AICTE Act, 1987 it is the duty of the council to grant approval for starting new technical institutions and for introduction of new courses or programme in consultation with the agencies concerned. It is the case of the Petitioner-institutions that they applied for approval of 2nd shift programme to AICTE with copy to the State Govt. and the B.P.U.T. Annexure 1/1 series in W.P.(C) No. 13272 of 2010 show that copies of such applications were sent to the State Govt. as well as the BPUT. Clause 23.2 of the AICTE Approval Process of Hand Book envisages that approval for additional programme/courses/divisions in 2nd shift working shall be considered with views by State Govt./UT and affiliating university. Clause 25.4 thereof lays down that in the absence of receipt of views from the State Govt./and/or the affiliating university, the Council will proceed for completion of approval. As it appears in the cases in hand, when the Government and the university did not send their views, the Council proceeded for completion of approval and granted approval to run 2nd shift programme in the Petitioner-institutions. The AICTE approval order, Annexure-2 reflects that 2nd shift programme was approved in favour of all the Petitioner-institutions for the current academic year 2010-11. Mr. Ishan Mohanty, learned senior Counsel appearing for AICTE, on information, submitted that 2nd shift programme in respect of all the Petitioner-institutions have been approved by AICTE for the year 2010-11. So, it cannot be said that

there was no lawful approval.

13. Now the question is, when the AICTE has already approved the 2nd shift programme in favour of the Petitioner-institutions, whether the Policy Planning Body can refuse to recommend the introduction of such programme. As per Clause (a), Sub-section 6 of Section 4 of the Act 2007, the Policy Planning Body can regulate admission. Sub-section 7 thereof postulates that the Policy Planning Body shall supervise and guide the entire process of admission of students to the Govt. institutions, private professional educational institutions and sponsored institutions with a view to ensuring that the process is fair, transparent, merit based and non-exploitative. But it can not sit over the decision of the Council granting approval. If the Petitioner-institutions are not allowed to take admission of students in their respective institutions, because of the Policy decision of the Policy Planning Board/Govt. then the decision of granting approval by the Council would be rendered nugatory. In the case of Tamil Nadu and Anr. (supra) the apex Court held as follows:

When the power to recognize or de-recognize an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down under the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act.

There is nothing in Act, 2007 to show that the Policy decision of the Policy Planning Body/Govt. would override the decision of the council granting approval for running 2nd shift programme. So, the decision quoted above would be squarely applicable to the present case. The submission of Mr. Palit, learned Counsel that the said decision can not be applicable to the cases in hand can not be accepted.

14. The Policy Planning Body has no authority to sit over the decision of the AICTE so far granting approval in favour of a technical institution. As it lacks inherent jurisdiction, the Petitioners were not required to challenge the decision of the Policy Planning Body earlier. So, the submission of Mr. Palit, that since the Petitioners did not challenge the decision of the Policy Planning Body earlier, they can not challenge the same can not be accepted. On the same analogy, the decisions cited by Mr. Palit, that scope of judicial interference in policy decision is limited can not be applicable to the present cases. The Petitioners have not challenged the validity of the interim order passed by the Supreme Court in any manner. They have challenged the decision of the Policy Planning Body. So, the submission of Mr. Palit, learned Counsel that indirectly they have challenged the interim order passed by the Apex Court cannot also be accepted.

15. Section 44(a) of the BPUT, 1st statute, 2006 requires that a college must obtain AICTE approval and NOC from the Government of Orissa before applying for affiliation. In the cases at hand, admittedly NOC was not obtained by any of

the Petitioner-institutions from the Government of Orissa. There is no provision in the Act, 2007 to grant NOC to any technical educational institution for its affiliation by the BPUT. Moreover, when the Council has already approved the 2nd shift programme in favour of the Petitioner-institutions, the BPUT cannot deny granting affiliation in their favour, only on the ground that they did not produce NOCs from the Government of Orissa.

In the case of Tamil Nadu and Anr. (supra) the apex Court held:

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.

16. Therefore/under such premises, the Government notification in Industries Department dated 30th July, 2010 is quashed. The BPUT is directed to grant affiliation to the 2nd shift, B-Tech course of the Petitioner-institutions for the Academic Session 2010-11 in an early date and the OJEE is directed to include the said course of the Petitioner-institutions in the ensuing E-counselling.

Accordingly, the writ petitions stand disposed of. No cost.