
(2005) 10 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4260 of 2005

Sitwanto Devi Mahila Kalyan Sansthan

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 2, 4(19)

Citation : AIR 2006 Jhar 39 : (2006) 1 JLJR 358 : (2006) 1 AIRJharR 265

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;N.N. Tiwari, J

Bench : Division Bench

Advocate : Anil Kumar, Gauri Shankar Prasad and Satish Kumar Keshri, for the Appellant; Anil Kumar Sinha, AG, Anoop Kumar Mehta, Arbind Kumar Jha and Subha Jha, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ application, the petitioner has prayed for quashing the letter No. GE/355 dated 1.3.2005 (Annexure 10) issued by the respondent No. 3 whereby the petitioner has been directed to deposit inspection fee for grant of "No Objection Certificate" to start Under Graduate Level Course in the Management purportedly, in response to the application of the petitioner for grant of affiliation by the University for establishment of M.B.A. Course. The petitioner has further prayed for a direction commanding upon the respondents 2 and 3 to proceed for granting affiliation to the petitioner-Institute for M.B.A. Course.

2. The petitioner is a Society registered under the Societies Registration Act, having its registration No. 209/96-97. The petitioner intending to establish an institute for M.B.A. Course in the name of Netaji Institute of Business Management at Jamshedpur, made an application for grant of approval dated 24th November, 2002 before the All India Council for Technical Education, New Delhi and to its Regional Director, Eastern Region Regional Office, Kolkata (respondent Nos. 6 and 7) for the establishment of new technical institute for

M.B.A. Course in the name of Netaji Sub-hash Institute of Business Management, Jamshedpur for the academic year 2005-06, along with the requisite documents. The petitioner also made an application before the respondent No. 5 and respondent No. 3 for grant of affiliation and "No Objection Certificate". The State Government on receipt of the said application, constituted a three member committee for Inspection by letter No. 1644/43, dated 8.12.2004. The Inspection team, thereafter Inspected the Institute and by Memo No. 23. dated 20th January. 2005. the Secretary, Department of Science and Technology. Government of Jharkhand. Ranchi Issued "No Objection Certificate" for establishment of the said Institute of business management at Pokhari, Jamshedpur for the Session 2005-06.

3. On receipt of the application, the All India Council for Technical Education. New Delhi through its Advisor (UG/PG) also issued a letter of Intent for establishment of the institute on the recommendation of the appraisal committee and the EC Sub-Committee, after examining the proposal in accordance with the procedure, guidelines, policy, norms and standards of the All India Council for Technical Education. The validity of the letter of intent is for three academic years. The letter of intent required the institute to submit the documents of registered undertaking on Non-Judicial Stamp Paper of not less than Rs. 100/- stating that the Institute shall abide by all the Regulations, Guidelines Norms and Standards of the Council, as applicable from time to time Refundable Performance Guarantee Fee (RPGF) in the form of Demand Draft in favour of the Member Secretary. All India Council for Technical Education on a Nationalised Bank payable at New Delhi of Rs. 35 lakh, original documents related to the land for the proposed institute, the site plan for the proposed land in relation to the adjoining built-up structure, road etc. the building plan for the proposed Institution, clearly mentioning the survey particulars of the land area and a non-refundable visiting fee of Rs. 50,000/- drawn in favour of the Member Secretary AICTE on any nationalized bank payable at New Delhi. It was clearly mentioned that the visiting expert committee would verify that all the necessary infrastructure facilities have been created for the proposed institution as per the norms of AICTE including that--(1) The land of the proposed institution has been fully developed with clear demarcations, either by a boundary wall/barbed wire fencing and all weather approach road to the Institution; (11) there is clear cut demarcation of the built up space for the proposed institution from the built up space for the existing institutions (if any in the same land/permits); (iii) Building is complete in all respects Including plastering, internal electrification and effective conduct of classes etc. at least adequate for first-year of the programme; (iv) Permanent electrical and potable water connection is obtained; (v) All the required furniture and fixtures are in place as per requirements; (vi) Books and Journals, as per Norms and Standards have been procured stamped and entered in the Accession Register; (vii) Equipment, as per syllabus of first year, has been procured and is ready for use, (vil) Copy of Advertisement for recruitment of faculty, composition and proceedings of selection committee

meeting; (ix) Director/Principal has been appointed and faculty identified and their consent letter for Joining the institution obtained; (x) Adequate operational funds as per AICTE norms are available in the form FDR/Savings Account/Current Account in the name of (he Society/Trust for all the Institutions run by the Trust.

4. Pursuant to the said letter of intent, the petitioner submitted that Demand Draft of Rs. 15.000/- Non-Refundable Visiting Fee of Rs. 50.000/- and other required documents In the said letter of intent which was received in the office of the respondent No. 7 on 22.3.2005. The respondent No. 7. thereafter, by letter No. 133-35, dated 16.4.2005 (Annexure 8) communicated the programme of visit of the expert committee for verification of the infrastructure facilities and the date of visit was fixed on 26.4.2005. The Ranchi University (respondent No. 3) was requested to send a representative of the University to participate in the Inquiry. As per the programme the Expert Committee visited the petitioner institute on 26th of April. 2005 and completed its verification as per the AICTE norms and requirement. However the Ranchi University did not depute any representative to participate in the said inquiry. After examining the inquiry report submitted by the Inspection Team, the AICTE accorded its approval vide letter of the Advisor (UG/PG). AICTE, dated 5.7.2005 (Annexure 9) sent to the respondent No. 5 communicating the grant of approval for establishment of Netaji Sub-hash Institute of Business Management. Jamshedpur for the academic year 2005-06, for M.B.A. Course with an annual Intake of 16. The said approval has been granted subject to fulfillment of certain conditions and one of the conditions is that the institution must have affiliation to a University for the above course before making admission and in absence of such affiliation, the letter of approval shall be treated as withdrawn.

5. The petitioner's grievance is that though the application was made to the Ranchi University for process of affiliation of the institute for its M.B.A. Course, the University has surprisingly Issued letter No. GE/355. dated 1.3.2005 (Annexure 10) under the signature of its Registrar whereby the petitioner has been directed to deposit Rs. 15.000/- as inspection fee for examining the feasibility of the grant of NOC to start Under Graduation Level Course in Management, (emphasis supplied). It has been stated that the petitioner has never applied for any "No Objection Certificate" for starting any Graduate Level Course in Management and that the petitioner has sought affiliation for the M.B.A. Course only and issuance of the said letter (Annexure 10) is wholly arbitrary, illegal and unwarranted. The respondent No. 3 has not even disclosed any reason for not granting affiliation for the Post-Graduate Level M.B.A. Course while the competent authority for such course AICTE, has already granted approval and the State of Jharkhand has also issued a "No Objection Certificate (NOC)" to the petitioner-Institute. The affiliation or disaffiliation of colleges, according to the statute is subject to the prior approval of the State Government under the provisions of the Jharkhand State Universities Act. 2000 and when the Slate Government has already granted "No Objection Certificate" to the petitioner, the respondent No. 3 has no authority to deny affiliation to the

institute. The petitioner Institute comes within the definition of technical education as defined in Section 2(g) of the All India Council for Technical Education Act, 1987 (hereinafter referred to as the AICTE Act. and according to the provision of Section 10(k) of the said AICTE Act, the AICTE has to grant approval for establishing such Institution as technical education is solely governed by the AICTE Act and the council established under the said Act is the sole body authorized to grant approval and when the approval is granted by the AICTE, there Is no justification of the University authorities (respondent No. 3) to withhold affiliation or "No Objection Certificate" for MBA Course which is one of the conditions to start the course of M.B.A.

6. The University and its authorities, respondents 1. 2, 3 and 8 have filed counter affidavit wherein it has been admitted that the AICTE has accorded approval for establishment of the institute to conduct M.B.A. Course subject to affiliation of the University and also that the Department of Science and Technology. Government of Jharkhand has granted "No Objection Certificate" for establishment of the institute, but inspite of the same affiliation has not been granted to the institute by the respondent University. It has been vaguely stated that the petitioner-institute has not followed the provisions of statute for grant of affiliation. That statute, relating to admission and exclusion of colleges other than those managed and maintained by University has been brought on record as Annexure A in support of the affidavit, but no where it has been stated as to which condition or requirement has not been fulfilled by the petitioner institute.

7. A counter affidavit has been also filed on behalf of respondents 6 and 7 (AICTE) wherein it has been specifically stated that the approval has been given to the institute in accordance with the Procedure. Guidelines. Policy, Norms and Standards of AICTE and one of the conditions is that the institute must have affiliation to the University for the above courses and in absence of such affiliation, the letter of approval shall be treated as withdrawn.

8. A counter affidavit has been filed on behalf of respondent Nos. 4 and 5, the State Government and its Secretary, Department of Science and Technology. It has been stated that the State Government has already granted "No Objection Certificate" to the proposal of the petitioner for the establishment of Netaji Subhash Institute of Business Management for the Session 2005-06 and that the State Government has also recommended and requested the Ranchi University to grant affiliation to the said institute.

9. In *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, , the Hon"ble Supreme Court reiterating its earlier decision *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, , has held that the All India Council for Technical Education Act, 1987, a Central Act and, in particular Section 10(k) occupied the field relating to grant of approval and for establishing technical institutions provisions of the Central Act alone were to be complied with. It has been further held that the Statue of the

University contrary to the provisions of the said AICTE Act would be void.

10. The Supreme Court in *State of T.N. v. Adhyaman Educational and Research Institute* (supra), had held that there were enough provisions in the Central Act for consultation by the council of AICTE with various agencies including the State Government and the University concerned and those are sufficient safeguard for ascertaining the views of the State Governments and the Universities and that the Universities could not impose any condition inconsistent with the AICTE Act or its Regulations. Any procedure for obtaining the affiliation and any condition imposed by the University could not be inconsistent with the provisions of the Central Act.

11. In the instant case by the impugned letter No. GE/355, dated 1.3.2005 (Annexure 10), the Ranchi University has asked the petitioner-institute to deposit Rs. 15,000/- as inspection fee for examining the plausibility of grant of "No Objection Certificate" to start Under-Graduate Level Course in Management. No other reason has been assigned for not granting affiliation to the institute for the M.B.A. Course (P.G.), There is no statutory requirement for ascertaining any such feasibility to start Under-Graduate Level Course in Management for granting affiliation to an institute for M.B.A. Course. The said letter dated 1.3.2005 (Annexure 10) is thus repugnant to the AICTE Act. There is absolutely no relevance for examining the feasibility to start Under Graduate Level Course for granting affiliation to the institution for Master in Business Administration (M.B.A.) Course. The same cannot be a ground for withholding affiliation to the institute, which has already been approved by the AICTE and to which "No Objection Certificate" has been granted by the State Government Even under the provisions of Section 4(19) the University has to affiliate or disaffiliate colleges according to the statute, subject to prior approval of the State Government. While granting "No Objection Certificate" the State Government has also recommended for affiliation of the institute by sending a letter to the Ranchi University. In the affidavit filed by the State Government it has been clearly stated that the Government has also recommended and requested the University to grant affiliation. Such is the situation, there is no visible reason on record for not granting affiliation to the petitioner-institute after according approval by the AICTE and issuance of "No Objection Certificate" by the State Government.

12. For the reasons aforementioned, the impugned letter dated 1.3.2005 (Annexure 10) is hereby held to be wholly arbitrary, unwarranted and repugnant to the AICTE Act and accordingly, the said letter No. GE/355, dated 1.3.2005 contained in Annexure 10 is quashed. The respondent University is directed to process the petitioner's application for grant of affiliation expeditiously so as to complete the process with final decision within a period of four weeks from the date of receipt/production of a copy of this order. This writ application is allowed, accordingly, but without any order as to costs.

S.J. Mukhopadhaya, A.C.J.

13. I agree.