
(2000) 11 MAD CK 0088

In the Madras High Court

Case No : Writ Petition No's. 10023, 10658 to 10661, 10766 to 10768, 10786 to 10788, 11026, 11027, 13335, 11434, 11882 and 12501 of 2000

Smt. Indira Gandhi College

APPELLANT

Vs

All India Council for Technical Education and Three Others

RESPONDENT

Date of Decision : 22-11-2000

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 2, 23(1), 3
Constitution of India, 1950 — Article 14, 226, 246, 248, 254

Citation : (2000) 11 MAD CK 0088

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr.S. Ramamoorthy, Mr. R. Krishnamoorthy, for Mr. R. Muthukumaraswamy, Mr. G. Masilamani, for Mr. K. Muthuramalingam, for the Appellant; Mr. N.R. Chandran, for Mr. R. Santhanam, Additional Central Government Standing Counsel, Mrs. P. Selvi, Government Advocate, for the Respondent

Judgement

1. The petitioner-institution, except in W.P.No.11434 of 2000, challenge the proceedings issued by the All India Council for Technical Education (hereinafter called AICTE), dated 31.5.2000 asking the concerned universities to initiate appropriate action in accordance with clauses (v) and (vi) of AICTE Gazette Notification GSR No.476E dated 20.5.1994 to ensure that no examinations are conducted for such technical programmes, which are not approved by AICTE, and also directing to comply with the same.

2. The petitioner-institution in W.P.No.10023 of 2000 in an Arts and Science college, established in the year 1984. It offered M.C.A. course in the year 1991-92 with the affiliation from the Bharathidasan University, Tiruchirapalli in the proceedings dated 6.6.1991 for one section with an intake of 30 students. From the academic year 1994-95 the University gave permission to have an additional section with an intake of 30 students. The first intake of 30 students was raised to 40 students as per the Registrar's letter dated 15.11.1994.

Permanent affiliation was also granted to M.C.A. course (first section). The intake for the additional section was also raised to 40 under the proceedings of the Registrar dated 1.6.1995.

3. The petitioner-institution in W.P.No.10658 of 2000 also in an Arts & Science college established in 1993. It offered M.C.A. course in the year 1995-96. The approval was obtained from the Bharathidasan University vide proceedings dated 21.8.1995 for an intake of 30 students. Subsequently, in the proceedings dated 2.8.1996 the university granted approval for an intake of 45 students. In the letter dated 22.12.1998 the University gave approval for 58 students. Ultimately, in the proceedings dated 28.8.1999, the petitioner college was granted permission to have 60 students.

4. The petitioner-institution in W.P.No.10658 of 2000 is also an Arts & Science college established in 1951 with minority status. It has been offering M.C.A. courses with the intake of 30 students for the I year, plus 5 students to be admitted from B.Sc. Computer Science students in the II year. The said approval was given by the Bharathidasan University in the proceedings dated 6.7.1988. The petitioner was granted permission to have an additional section of MCA (Evening) with an intake of 30 students from the academic year 1992-93 vide Registrar's letter dated 3.8.1992. From 1994-95 the university granted permanent affiliation to MCA course in the Day College with an intake of 40 students. Subsequently, the said intake was raised to 45 from 1998-99 as per proceedings dated 15.7.1998. The intake for MCA course (Evening) college was also raised to 40 from the academic year 1998-99.

5. The petitioner-institution in W.P.No.10660 of 2000 is also an Arts and Science College established in 1984. It offered MCA course in the year 1993-94. The Bharathidasan University granted approval for one section of M.C.A. with an intake of 40 students in the proceedings dated 16.6.1993.

6. Similarly, the petitioner-institution in W.P.No.10661 of 2000 is another Arts & Science college, established in 1966, offered M.C.A. course from the year 1991-92. The Bharathidasan University in the letter dated 21.5.1991 granted affiliation to the said course to have one section with an intake of 30 students, in the proceedings dated 30.7.1992. The said college secured affiliation for an additional section from 1992-93. The said intake was raised to (both sections) 60 as per proceedings dated 7.8.1996.

7. The petitioner-institution in W.P.No.10766 of 2000 in addition to other courses in Arts and Science offered M.C.A course in the year 1992-93. The same was affiliated by Bharathidasan University in the proceedings dated 15.9.1992. Such affiliation was granted to have one section with an intake of 30 students. In the proceedings dated 9.2.1995, additional section with an intake of 40 was granted. Subsequently, it was raised to 45 as per proceedings dated 15.7.1998.

8. The petitioner-institution in W.P.No.10767 of 2000 offered M.C.A. course from 1995-96 in addition to the Arts and Science course. Approval was granted by

Bharathidasan University in the proceedings dated 8.6.1995 for one section with an intake of 40 students.

9. The petitioner-institution in W.P.No.10768 of 2000 offered M.C.A. course from 1994-95. It got approval of Bharathidasan University in the proceedings dated 14.6.1994 to have one section with an intake of 20 students. The same was increased to 40 according to the proceedings dated 29.7.1994.

10. The petitioner-institution in W.P.No.10786 of 2000 in addition to Arts and Science course offered M.C.A. course from 1994-95. It got approval from Bharathidasan University in the proceedings dated 19.6.1994 to have one section with an intake of 15 students. Permanent affiliation by Bharathidasan University was granted in the proceedings dated 10.7.1998.

11. The petitioner-institution in W.P.No.10787 of 2000 also besides Arts & Science course offered M.C.A. course from 1992-93. After obtaining approval from Bharathidasan University in the proceedings dated 29.6.1992, affiliation was granted to have one section with an intake of 25 students.

12. The petitioner-institution in W.P.No.10788 of 2000 was established in 1970. In addition to Arts & Science courses, it offered M.C.A. course from 1990-91. It obtained approval from Bharathidasan University vide proceedings dated 18.6.1990.

13. The petitioner-institution in W.P.No.11026 of 2000 offered M.C.A. course from 1992-93 in addition to other Arts & Science courses. The approval was obtained from Bharathidasan University in the proceedings dated 21.5.1992 to have one section with an intake of 30 students. It was raised to 45 under the proceedings dated 10.8.1993, and further raised to 50 vide proceedings dated 5.8.1996.

14. The petitioner-institution in W.P.No.11027 of 2000 was established in 1994. It offered M.C.A. course from 1995-96 in addition to Arts & Science courses. The approval was granted by Bharathidasan University in proceedings dated 5.6.1995 to have one section with an intake of 30 students. It was then raised to 50 in proceedings dated 20.8.1999.

15. The petitioner-institution in W.P.No.11335 of 2000 was established in 1974. Besides various courses in Arts & Science, it started offering MCA course from 1995-96, and affiliation was also obtained from Bharathidasan University in the proceedings dated 3.7.1995, to have one section with an intake of 30 students.

16. The petitioner-institution in W.P.No.11882 of 2000 affiliated to Madurai Kamaraj University on 27.8.1996, started offering full time MBA course. It offered M.C.A. course and got affiliation from Madurai Kamaraj University in the proceedings dated 7.7.1994, to have one section with an intake of 16 students. Thereafter it was increased to 30 students during the academic year 1998-99.

17. The petitioner-institution in W.P.No.12501 of 2000 was established in 1967. It has also offered M.C.A. course. It obtained affiliation from Bharathidasan

University to have one section with an intake of 20 students in the proceedings dated 25.6.1993. It was allowed to increase to 45 under the proceedings dated 10.7.1995.

18. The petitioner-association in W.P.No.11434 of 2000 is seeking to quash the proceedings issued by the AICTE dated 31.5.2000 and consequently to direct the respondents to release the endowment fund created by the members of the petitioner- association for seeking approval of M.B.A. and M.C.A. courses.

19. The learned Senior Counsel appearing for the petitioners have submitted that M.C.A. courses will not come under the purview of AICTE so as to enable them to regulate the said courses. Even if the said courses come under their purview, in view of 1997 amendment to the Regulations of 1994 issued in exercise of the powers conferred by sub-section (1) to Section 23 of the All India Council for Technical Education Act, 1987, Master of Business Administration or equivalent, Master of Computer Application or equivalent and all Post Graduate courses in the field of technical education are exempted from the Regulations made by the AICTE. It is also submitted that unless particular "technical education" and "technical institution" are notified by the Central Government in consultation with the AICTE declaring that such technical education or technical institution will come under the purview of AICTE, the AICTE cannot regulate such technical education and such technical institution. On the basis of the abovesaid submissions, the learned Senior Counsel have further submitted that the impugned order cannot be sustained in law.

20. The learned Senior Counsel appearing for the AICTE have submitted that though the exemption was given in the year 1997, the said Regulations of 1994 was in force from 1994 to 1997, and during that period it was made applicable to M.B.A. and M.C.A. courses also. The said amendment was introduced only for the purpose of issuing separate Regulations for the said courses alone. Due to certain administrative reasons, though the draft notification was ready and approved by the AICTE, the same was not notified. The learned Senior Counsel has further submitted that though the Regulations of 1994 relating to grant of approval may not apply to M.B.A. and M.C.A. courses, in spite of the exemption given in the year 1997, the Regulations of 1994 regarding norms and guidelines for fees and guidelines for admission in professional colleges will apply to M.B.A. and M.C.A. courses also as the said courses have not been exempted under the said Regulations. It is his further submission that certain categories of "technical education" and "technical institution" have already been specified u/s 2(g) and 2(h) of the Act and the Government has to notify only with respect to such "technical education" and "technical institution" which are not specified under the said definitions respectively. According to him, M.B.A. and M.C.A. courses have already been defined in the definition and the AICTE has power to regulate the management and engineering technology. Even if it is not defined, taking into consideration the scope of the Act, it has to be construed that AICTE has jurisdiction and power to regulate the said courses. He has also brought to my

notice that subsequently, on 16.8.2000, the exemption granted to M.B.A. and M.C.A. courses from the application of the Regulations has been withdrawn by way of an amendment dated 16.8.2000 which has been published in the Gazette dated 16.8.2000. By such amendment, the Regulation No.2(2) of Regulations 1994 relating to grant of approval has been withdrawn, and the said courses have been included under Regulations No.8(iv) of the said Regulations.

21. Though "education" including "technical education" is the matter enumerated under Entry 25 of List III, the same is only subject to the provisions of Entries 64 to 66 of List I, to the Seventh Schedule of the Constitution of India. So the Parliament has made laws with respect to Entries 64, 65 and 66 which are as follows:-

"64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for-

(a) professional, vocational or technical training, including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

In the decision in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, :, the Apex Court has dealt with the scope of the above entries as follows:-

"12. The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so before the Forty-Section Amendment, since Entry II of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened in that Entry II was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State Legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.

22. We may now refer to the provisions of Articles 246, 248 and 254 in Part II of Chapter I which relates to the distribution of the legislative powers between Parliament and the State legislatures. It is not necessary to enter into a detailed discussion of these articles since they have been the subject-matter of various decisions of this Court. We may only summarise the effect of these articles as has emerged through the judicial decisions, so far as it is relevant for our discussion. While Article 246 states the obvious, viz., that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I and has also the power to make laws with respect to any of the matters enumerated in List II, the State legislature has exclusive power to make laws with respect to any of the matters enumerated in List III subject, of course, to Parliament's power to make laws on matters enumerated in List I and List II. Parliament has also power to make laws on matters enumerated in List III for any part of the territory of India not included in a State. Article 248 vests Parliament with the exclusive power to make any law not enumerated in the Concurrent List or the State List including the power of making any law imposing a tax not mentioned in those lists. This is a residuary power of legislation conferred on Parliament and is specifically covered by Entry 97 of List I. In case of repugnancy in the legislation made by Parliament and the State Legislatures which arises in the case of legislations on a subject in List III, the law made by Parliament whether passed before or after the law passed by the State legislature shall prevail and to that extent, the law made by legislature of a State will be void. Where, however, the law made by the legislature of a State is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the law made by the legislature of the State shall, if it has received the assent of President, prevail in that State. However, this does not prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State. The repugnancy may also arise between a pre-Constitutional law made by the then Provincial Legislature which continues to be in force by virtue of Article 372 and the post-Constitutional law of Parliament in which case, the law made by the Provincial Legislature shall stand impliedly repealed to the extent of repugnancy to the law made by Parliament."

23. On the basis of the power given under the Constitution, the Parliament, to establish All India Council for Technical Education with a view to provide planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned, quantitative growth and regulation and proper maintenance of norms and standards in the technical education system and for matters connected thereto, gave birth to All India Council for Technical Education Act, 1987. The competence of the Parliament to pass the said Act has been approved by the Supreme Court in *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*, . According to the said Act, the power and functions assigned to AICTE inter alia provide laying down norms and standards for programmes and the

institutions given approval for Government technical institution prescribing guidelines of admission of students and the charging fees, inspecting and evaluating periodically with a view to maintaining the standards and to provide recognition or withhold recognition or programmes and institutions. The said Act came into force on 28.3.1988.

24. The Apex Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, has dealt with the scope of the Act as follows:-

"156. This Act has been made by the Parliament for the established of the "All India Council for Technical Education" with a view to the proper planning and coordinated development of the technical education system throughout the country, promotion of qualitative improvement of such education and other allied matters. Section 3 of the Act provides for the establishment of the Council while Section 10 specifies the functions of the Council. Apart from directing generally that the Council shall take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards, the Act specifically empowers the Council, inter alia to (j) fix norms and guidelines for charging tuition and other fees", (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned, and (n) take all necessary steps to prevent commercialisation of technical education. It is true, there is no express provision in the Act which says that no engineering college or any other college or institution imparting technical education shall be established except with the permission of the Council. But this may be for the reason that such a power was intended to be exercised by the Council itself if it thinks necessary to do so. We are of the opinion that the vast powers conferred upon the Council by Section 10, including those specified above, do extend to and entitle it to issue an order to the above effect. It can also say that even in the existing institutions, no new course, faculty or class shall be opened except with its approval. It can also pass appropriate directions to the existing institutions as well as for achieving the purposes of the Act. Such an order may indeed be necessary for a proper discharge of the wide- ranging functions conferred upon the Council."

25. u/s 10 of the Act, the functions of the Council has been set out. For the purpose of the present cases, it is enough for us to deal with the powers of the AICTE regarding grant of approval with respect to M.C.A. course, as the petitioners are offering the said course and arguments are made only with respect to the said course. u/s 10(1)(k), of the Act, the Council is having power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with agencies concerned. "Technical institution" has been defined u/s 2(g) of the Act. Section 23(1) of the AICTE Act empowers the Council to make Regulations not inconsistent with the provisions of the AICTE Act and the Rules generally to carry out the purpose of the Act.

26. Before dealing with the existence of power, to regulate the AICTE for M.B.A.

and M.C.A. courses, as submitted by the learned Senior Counsel appearing for the petitioners, it is better to deal with the validity of the impugned order, first. The learned Senior Counsel appearing for the respondent-AICTE has submitted that the impugned order has been issued exercising their powers under the Act and also the regulations of 1994. We are concerned about the admission of students for the year 1999- 2000. According to the impugned order, only such admission should not be made without getting approval from the AICTE. During the relevant period, the Regulations of 1994 regarding grant of approval to start new technical education was not in force, in view of Regulation No.2(2) of the Regulations 1994 which came into force from 11.4.1997, reads as follows:-

"2(2). These regulations shall not be applicable to the proposals relating to post graduate courses for Master of Business Administration or equivalent, Master of Computer Application or equivalent, and all post graduate courses in the field of technical education."

In Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., : and in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the validity of the Regulations has been upheld.

27. According to the said Regulation, the regulations shall not be applicable to the proposals relating to post graduate courses for M.B.A. and M.C.A. or equivalent and the post graduate courses in the field of technical education. So, now it cannot be said that in spite of the said exemption in AICTE can insist the institutions which are having M.B.A. and M.C.A. courses to get approval from the AICTE to admit the students during the relevant period. In view of the said provisions, viz., the Regulation No.2(2) of the Regulations, the institutions which had admitted the students for M.B.A. and M.C.A. courses for the year 1999-2000, had no obligation to approach the AICTE.

28. The learned Senior Counsel appearing for the respondents-AICTE has submitted that though the Regulations of 1994 relating to grant of approval has been exempted with respect to the abovesaid courses, the other Regulations of 1994 relating to norms and guidelines for fees and guidelines for admission in the professional courses will apply effectively even with respect to the said courses. I am not able to accept the said submission.

29. Though the said Regulations are for prescribing norms and guidelines regarding fees and admission, they also deal with grant of approval for establishment or administration of professional colleges, as contemplated under Regulation No.4 of the said Regulations. The said Regulations of 1994 have been made in exercise of the powers conferred by clauses (j) and (o) of Section 10 read with Section 23 of the Act. As set out in the statement of objects and reasons, the power and functions assigned to AICTE inter alia provide laying down norms and standards for programmes and institutions giving approval for getting up the technical institutions, prescribing guidelines for admission of students and charging of fees and inspecting and evaluating institutions

periodically with a view to maintaining the standards and to provide recognition or withhold recognition of programmes and institutions. Though the technical institutions offering courses or programmes of technical education have to be brought within the purview of the Act, it is for the Council to make regulations with respect to specific courses and institutions and it is not necessary to have regulations in general. Under the power given to the Council to make Regulations u/s 23 of the Act, the Council can make Regulations with respect to the specific courses and leave other courses without bringing the same into their clutch for the purpose of regulating the same. The Regulation No.E.304.4/CCF/REG/94 under which the exemption is granted will apply to technical institutions and the other Regulation (GSR 476 E) will apply to the professional colleges which means any private unaided college imparting technical education and include a private unaided technical institution. Having understood their power, the AICTE had exempted M.B.A. and M.C.A. courses or equivalent thereto from the Regulations 1994, saying that the Regulations framed by the AICTE will not apply to the said courses. So it cannot be allowed to urge that in spite of the exemption, AICTE can extend their jurisdiction to the said courses.

30. So, in view of Regulation No. 2(2) of the Regulations exempting the application of the Regulations to the M.B.A. and M.C.A. courses during the relevant period, the AICTE has no power to give directions with respect to the said courses to get approval from them. So, the impugned order cannot be sustained in law and so it is set aside.

31. Insofar as the W.P.No.11434 of 2000 filed by the petitioner-Association on behalf of its members the learned counsel appearing for the respondents-AICTE has submitted that the association cannot sustain the writ petition, challenging the proceedings dated 31.5.2000 and also claiming refund of endowment already paid by some of the members.

32. First of all, it is not the case of the association that the members who paid endowment for getting approval from AICTE had approached AICTE for the purpose of getting refund. It is well settled that before seeking a direction from the Court for issuing writ of mandamus, the concerned party should have made a demand from the concerned authority to that effect. In this case, I do not find any material to show that the concerned members approached the AICTE for the same. Moreover, it is for the individual members to urge such a prayer. So the Association cannot sustain such a prayer. Even with respect to the challenge to the proceedings dated 31.5.2000, the Association cannot sustain the same as some of the members are willingly filed an application and obtained affiliation from the AICTE for offering MCA course. Such members have not challenged the jurisdiction of the AICTE's power to extend the Regulations to the said course. That being the fact the Association cannot file the abovesaid writ petition challenging the jurisdiction of the AICTE as if all the members are aggrieved by the same. It is the specific case of the respondents-AICTE that some of the members of the petitioner-Association have voluntarily applied for and obtained

approval from the AICTE. In view of the abovesaid facts, the said writ petition filed by the petitioner-Association cannot be sustained in law.

33. An argument with respect to the jurisdiction of the AICTE was pressed into service on the basis that MCA course will not come under the definition "technical education", as defined u/s 2(g) of the Act. It is the case of the petitioners that unless the AICTE establishes that the MCA course also comes under the definition of "technical education", the AICTE cannot have any jurisdiction to regulate the said course and so it has no power to issue any direction with respect to the same.

34. In these cases, the petitioner are aggrieved only with respect to the impugned proceedings dated 31.5.2000 which relates to the admission for the academic year 1999-2000. The said proceedings have been set aside in this order on the basis of the Regulation No.2(2) of the Regulations 1994 as amended in the year 1997. Hence with respect to the issue regarding jurisdiction of AICTE, this Court need not go into the said wider question at this stage as it is not warranted to decide the sustainability of the impugned proceedings dated 31.5.2000. Though it may arise to decide the legality of the subsequent amendment made on 16.8.2000, removing the exemption under Regulation No.2(2) of the Regulations 1994 as amended in the year 1997, but the same is not challenged before this Court, and the said notification is not the subject matter in these writ petitions. So, I am not inclined to go into the said question.

35. It is well settled that an issue cannot be decided by the Court exercising Article 226 of the Constitution for academic interest if the same does not arise directly in the pending proceedings. If any authority is required, it is decided in the decision in *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, wherein the Apex Court was pleased to hold regarding the said principle as follows:-

"12. The fundamental right, the breach whereof is complained of by the assesses, is founded on Article 14 of the Constitution. The problem, therefore, before us is whether a breach of the fundamental right flowing from Article 14 can be waived. For disposing of this appeal it is not necessary for us to consider whether any of the other fundamental rights enshrined in Part III of our Constitution can or cannot be waived. We take the view that this Court should not make any pronouncement on any question which is not strictly necessary for the disposal of the particular case before it. We, therefore, confine our attention to Article 14 and proceed to discuss the question on the footing."

36. In view of the abovesaid facts, except WP.No.11434 of 2000 all other Writ Petitions are allowed accordingly, as the impugned proceedings dated 31.5.2000 has been quashed, and W.P.No.11434 of 2000 is dismissed as not maintainable at the instance of the petitioner-Association. No costs. The connected W.M.Ps. are closed.