

(2008) 08 OHC CK 0148

In the Orissa High Court

Case No : Writ Petition (C) No's. 10697 and 10698 of 2008

Subas Institute of Technology

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11, 23(1)

Citation : (2008) 08 OHC CK 0148

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Both the aforesaid writ petitions have been filed by Subas Institute of Technology established by a Trust on 25.5.2005, namely, Subas Foundation. The said institute is established at Gyana Vihar, Barang with the object for promotion of higher technical studies in the State. On 20.6.2008, after due enquiry, the All India Council for Technical Education (for short, "the AICTE" accorded its approval to the Petitioner-institute for imparting the courses, namely, (i) Computer Science and Engineering-60 seats, (ii) Electronics Telecom Engineering 60 seats, (iii) Electrical & Electronics Engineering-60 seats, and, (iv) Information Technology-60 seats, i.e., with a total intake capacity of 240 students.

2. The grievance of the Petitioner in both the writ petitions is that even though it has been accorded with the approval of the AICTE under Annexure-2 to the writ petitions, and even though they have complied with all the requirements as mentioned in the said approval letter and copy of the said approval letter is endorsed to the Registrar of Bijou Patnaik University of Technology, the authorities of the University have failed to communicate the letter of affiliation to the Petitioner. On request of institute-institute to the Principal Secretary, Industries Department of the Government of Orissa for issuance of necessary direction to the University authorities for according affiliation to the Petitioner institute, the Government in its Industries Department while referring to the

Department's letter dated 8.7.2008 by which, the Petitioner-institute was permitted to participate in the J.E.E. 2008 requested the University authorities for immediate action in according affiliation to the Petitioner-institute. The said letters have been annexed as Annexures-5 and 5/1 respectively to the writ petitions. On 8.7.2008 under Annexure-6 to the writ petition, i.e., W.P. (C) No. 10697 of 2008, the Government of Orissa in its Industries Department issued a letter to the Chairman, J.E.E. 2008 enclosing copies of the letters of approval of the AICTE in respect of New Degree Engineering/MBA/MCA/Pharmacy/HMCT during the year 2008-09 intimating the authorities of the University that the Government after careful consideration have been pleased to decide to allow the newly approved institutions to participate in the J.E.E. Counselling, 2008 subject to condition noted in paragraph-2(c) of the letter of approval of the AICTE. The said condition enumerated in 2 (c) of the letter of approval is that the admissions to the courses shall be made only after affiliating University/State Board has given permission to start the course. It is an admitted position that in this State, the numbers of candidates securing ranks in the J.E.E. are more than the total number of seats available in all the streams as mentioned above. It is, therefore, apt for all the concerned authorities to act expeditiously for enabling a technical institute to admit students for prosecuting the courses which are imparted in such institutes, provided they fulfill the criteria of all infrastructure requirements as well as faculty members.

3. In a public notice under Annexure-7 to the writ petition being W.P. (C) No. 10697 of 2008, the Chairman, J.E.E., 2008 notified that counselling for admission of successful candidates in All India Quota into Private Engineering Colleges against 15% seats, which is reserved for All India Quota, shall be held from 19.7.2008 till 23rd July, 2008 and counselling for admission of J.E.E. 2008 qualified candidates into Government and Private Engineering Colleges shall be held from 24th July, 2008 onwards till 1.9.2008. Thereafter, the Chairman, J.E.E. 2008 issued a notice indicating the names of 18 new Colleges, which are to participate in the counselling. In the said notice, the Petitioner-institute has been omitted, though the Petitioner institute was named at serial No. 1 in the list of New Colleges published by the AICTE, which have been approved.

4. Being aggrieved by the action of the Bijou Patnaik University of Technology (in short, "the BPUT") in not according affiliation to the Petitioner-institute and the Chairman of the J.E.E. in not allowing the Petitioner-institute to take part in the process of counselling for the academic session 2008-09, the Petitioner institute has preferred both the aforesaid writ petitions seeking appropriate remedy.

5. Mr. Bijan Ray, learned senior counsel appearing for the Petitioner-institute in both the writ petitions, contended that once the AICTE has given its approval to the Petitioner institute, granting of affiliation by the University and recognition by the State are only formalities and the University cannot refuse to grant affiliation once the institute has been approved by the AICTE to impart the courses as already mentioned. Mr. Ray specifically drew the attention of the Court to

Clause-10(i) of the AICTE Act, 1987, which lays down the norms and standards for courses, curriculum, physical and -instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examination. He further drew the attention of the Court to paragraph 6.2.3 of the Regulation of the AICTE framed by the powers conferred under Sub-section (1) of Section 23 read with Section 10 (b) (g) (i) (k) (p) and (v) and Section 11 of the All India Counselling for Technical Education Act, 1987. In the said paragraph 6.2.3, it is provided that the Regional office shall forward a copy of the proposal for establishment of a new" Technical Institution, complete in all respect, within 15 days from the date of receipt of such proposals, to AICTE Headquarters at New Delhi. The State Government/Union Territories and the affiliating University shall forward their views within thirty days from the date of receipt of the proposal from the applicant society/trust/institution. It further provides that the State Government and the affiliating University shall provide reasons and justification to substantiate their stand. The views of the concerned State Government/University shall be taken into consideration while processing the proposals for establishment of new Technical institution and, accordingly, no separate No Objection Certificate (NOC) is required to be submitted to the AICTE by the applicant, from the concerned State Government/University. It further provides that the Council shall have the right to over rule the recommendations of the State Government/University while deciding the matters of establishment of new Technical Institutions. The subsequent paragraph in the said Regulation prescribes the manner in which the approval order can be passed and the requirements therefore. Paragraph-2.8.8 (a) prescribes that the decision on grant of approval or otherwise shall, be communicated to the, institution throughout the year. It shall be the responsibility of the applicant-institutions to obtain necessary affiliation/permission from the concerned University/State Government etc. as per the prescribed schedule, of the University/Admission Authority etc. It IS only thereafter, the applicant-institution shall furnish information about the commencement of programmes within thirty days to the AICTE for updating its database.

(Emphasis supplied.)

6. A counter affidavit has been filed in W.P. (C) No. 10698 of 2008 on behalf of the University. The stand of the University is that approval of AICTE is subject to fulfillment of conditions as provided under Clauses (1) to (16) of the letter of approval under Annexure-2. A further stand has been taken that the Petitioner-institute might have suppressed regarding the title and possession of the land and non-fulfillment of other pre-requisites as required and managed to obtain the letter of approval from the AICTE. According to the University, Statute 43 of the first Statute, 2006 of BPUT confers powers to the University to grant affiliation to different institutions/colleges imparting technical education in the State as per the provisions under Sub-section (II) of Section 18 of the BPUT Act. Statute 43 (3) provides that new institutions/colleges, who intend to offer such technical courses must obtain University affiliation before starting of the

programme and Sub-Statute (4) of the said Statute 43 provides affiliation to a new college, shall be subject to scrutiny of the University, which shall be accorded on yearly basis and each year an application for affiliation shall be submitted in the prescribed proforma along with the affiliation feeds and inspection feeds within a specified date in the office of the Registrar. In paragraph-3 of the counter affidavit, the conditions required to be fulfilled for grant of affiliation have been mentioned.

7. Mr. R.K. Dash, learned Counsel appearing for the BPUT contended that as provided in the letter of approval of the AICTE, the said approval is subject to fulfillment of the conditions mentioned therein and the Petitioner having not fulfilled the same, the University rightly did not affiliate the Petitioner as per the Statute of the University.

8. The conditions as specified in the Statute of the University, to be fulfilled by the institute for being affiliated are akin to the conditions as mentioned in 4.3.5 of the Regulation of the AICTE. The said clause of the Regulation also states that the expert visiting committee includes the representative of the affiliating University. The letter of approval under Annexure-2 mentioned that the approval is valid for two years from the date of issue of the said letter for getting affiliation with respective University and fulfilling the State Government requirements of admission. It is also specified that the approval is further subject to the conditions stipulated therein. It is the case of the Petitioner that all the conditions mentioned in the letter of approval have been fulfilled. As already stated above, the University has never communicated any letter to the AICTE intimating it that the Petitioner has not fulfilled the conditions mentioned in the letter of approval. Under the AICTE Regulations, the AICTE has the right to over rule the recommendations of the State Government/University while deciding the matters of establishment of new technical institutions.

9. Mr. Yeeshan Mohanty, learned Counsel appearing for the AICTE has produced before this Court the application of the Petitioner for getting approval of the AICTE and all other documents in relation thereto culminating in the letter of approval under Annexured-2. It appears from the said document that the Expert Committee visited institute and, as a matter of fact, have found all infrastructure to have been provided by the institute and adequate necessary faculty have also been engaged. This Court has meticulously scrutinized the report of the said committee of the AICTE. As a matter of fact, a team also made a surprised visit to the Petitioner-institute and has submitted a report before the AICTE from where it is seen that the particulars of the buildings of the institute have been measured and found out.

10. Mr. Bijan Ray, learned senior counsel appearing for the Petitioner relied upon the decision in the case of *Jaya Gokul Educational Trust v. Commissioner and Secretary to Government Higher Education Deptt. Thiruvananthapuram and Anr.* AIR 2000 S.C. 1614 and submitted that the Supreme Court in the said case quashed the letter of the Government refusing to grant approval, where approval

was already granted by the AICTE. In paragraphs-25, 26, 27 and 30 of the said decision, the Supreme Court has held thus:

25. As already stated, in view of the judgment of this Court in Tamil Nadu case (AIR 1995 SCW 2179), it is obvious that there is no need to approach the State of Kerala for its approval for starting the Engineering colleges. There is no power vested in the State under any State Law to grant approval and even if it was so vested, it would have been void in view of Tamil Nadu case. This ground of repugnancy alone would be sufficient to quash the State Government's letter dated 16.8.1996 refusing to give their approval.

26. Even on merits, the reasons given by the State Government in its counter are not tenable in law. The Director of Technical Education of the State was a member of the State Level Committee as per Regulation 9 (4) of the AICTE Regulations. The Secretary, Technical Education of the State of Kerala was also a member of that Committee. The AICTE's approval dated 30.4.95 showed that the approval had been given by the State Level Committee of which they were obviously members. It is, therefore, not understandable how the Director had given a contrary opinion to the State Government. Regulation 8 (4) of AICTE only required calling for the "comments/recommendations" of the State Government and of the University. In case, there was difference between the State Government, University or the Regional Committee the Central Task Force was to make a final recommendations under Regulation 8 (4). Here the letter of approval of the AICTE dated 30.4.95 showed that the Central Task Force had given its approval. The said approval was based also on the inspection by the Expert Committee of the AICTE. Hence the State Government in its counter, could not have relied upon any contrary opinion of the Director of Technical Education. If the State Government had any other valid objections, its only remedy was to place its objections before the AICTE Council under the AICTE Act or before the Committees, e.g. State Level Committee etc.

27. The so called "policy" of the State as mentioned in the counter affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , which was a case relating to Medical Education and which also related to the effect of a Central Law upon a law made by the State under Entry 25, List III, it was held (see p. 35 para 34) that the "essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now vests with the Central Government alone." Therefore, the State could not have any "policy" outside the AICTE Act and indeed if it had a policy, it should have placed the same before the AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8 (4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light

after an approval was granted by the AICTE or if the State felt that some conditions attached to the permission and required by the AICTE to be complied with, were not complied with, then State Government could" always write to the AICTE, to enable the latter to take appropriate action.

Decision of University in not granting further or final affiliation wrong on merits:

30. Thus, the University ought to have considered the grant of final or further affiliation without waiting for any approval from the state Government and should have acted on the basis of the permission granted by AICTE and other relevant factors in the University Act or statutes, which are not inconsistent with the AICTE Act or its Regulations.

11. In the case of *S. Sudhir Kumar Patra and Others, Debasis Guman Singh and Others and Golak Bihari Sahoo and Others Vs. State of Orissa and Others*, , this Court while considering the writ petition filed by some students of integrated Master-in-Computer Application Course in private educational institution relying upon the decision in the case of *Bharathidasan University and Anr. v. All India Council for Technical Education and Ors.* AIR 2001 SC 2861, came to hold that the Supreme Court has laid down that AICTE Act and Regulation apply to the technical education defined in the said Act and, therefore, the technical institutions in which the Petitioners therein were prosecuting their studies cannot escape the restriction and prohibition contained in the AICTE Act and the Regulations framed there under. This Court further held that it is not possible for the Court to direct the University to approve or affiliate the professional institutions unless the said course is accepted by the AICTE as an approved course and professional colleges obtain the required permission from the AICTE for conducting the said technical course. The corollary, therefore, is that if a technical institution like the Petitioner-institute in the present case has obtained the approval -of the AICTE, the Court can issue a direction to the University to affiliate the said institution under the University.

12. As already stated above, the State Government has requested the University to accord affiliation inasmuch as requesting the JEE to permit the Petitioner-institute to take part in the process of counselling.

13. Examining the facts of the case in the touch stone of the ratio decided in the case of *Jaya Gokul Educational Trust (supra)*, it would be clear that after the AICTE has granted approval basing on the report of the enquiry made by the expert visiting committee as provided under 4.3.5 of the Regulation of the AICTE, it was for the University to grant affiliation to the Petitioner-institute. The University cannot shirk from its responsibility by taking the ground that the Petitioner-institute has not fulfilled the conditions as per the Statute of the University when the said conditions to be fulfilled are akin to the conditions which have already been examined by the expert visiting committee of the AICTE before granting approval to the Petitioner-institution, the said expert visiting committee having a representative of the University as one of its members as

per the Regulation of the AICTE. In the instant case, as submitted at the Bar, the representative of the University may not have taken part in the enquiry conducted by the expert visiting committee, but nevertheless, it is not open for the University to contend that the Petitioner-institute has not fulfilled the conditions as required under the Statute of the University for the reasons already stated above. As held by the Supreme Court in the case of *Jaya Gokul Educational Trust (supra)*, once an institute has obtained the approval of the AICTE, the AICTE only required calling for the "comments/recommendations" of the State Government and of the University. In case of any difference between the State Government, University or Regional Committee, the Central Task Force of the AICTE was to make a final recommendation under Regulation 8(4). It is, therefore, clear that the University, after institute-institute obtained the approval of the AICTE, had no authority to withhold affiliation to institute-institute.

14. In view of such position and in view of the law laid down in the case of *S. Sudhir Kumar Patra and Ors. (supra)*, this Court has no hesitation in directing the BPUT - opp. party No. 3 in W.P. (C) No. 10697 of 2008 and opp. party No. 2 in W.P. (C) No. 10698 of 2008 to grant affiliation to the Petitioner institute immediately and to allow the Petitioner-institute to take part in the ongoing process of counselling if the same is continuing, permitting them to give admission to the selected candidates in the JEE, who are interested to take admission in the Petitioner-institute. However, it is made clear that on grant of affiliation by the BPUT, the Petitioner-institute shall intimate the AICTE for updating its database.

15. Both the writ petitions are disposed of with the aforesaid observations and directions.