

(2012) 12 BOM CK 0157
In the Bombay High Court
Case No : Writ Petition No. 10512 of 2012

Sushila Danchand Ghodawat Charitable Trust and Another	APPELLANT
Vs	
All India Council for Technical Education and Others	RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Maharashtra Universities Act, 1994 — Section 81

Citation : (2013) 3 ALLMR 161 : (2013) 2 MhLj 637

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : V.M. Thorat with Nitin Dhumal, for the Appellant; Mihir Desai with Ms. Ushajee Peri for Respondent No. 1, S.S. Bhende, AGP for Respondent Nos. 2 and 4 and Amit B. Borkar, for the Respondent

Judgement

D.Y. Chandrachud, J.—The Petitioners have challenged the action of Shivaji University, the third Respondent to these proceedings in declining to grant affiliation for a new post graduate degree course, namely, M.E. in Civil Engineering for the academic year 2012-13. The Petitioners applied to the All India Council for Technical Education (AICTE) seeking extension of approval for their existing under graduate courses in Engineering; for an increase in intake capacity and for approval of a new post graduate engineering course with an intake capacity of eighteen students. AICTE granted its approval on 28 June, 2012 for the M.E. Degree Course with an intake capacity of eighteen students in Civil Engineering. An application for affiliation was made to the University. The university appointed a local inspection committee. The Committee inter alia noted that the college must appoint faculty for the post graduate degree programme and recommended affiliation for a period of one year for 2012-13, The Academic Council by a decision which was communicated to the Petitioners on 5 November, 2011 declined to grant affiliation for the M.E. programme in Civil Engineering after drawing attention to the finding of the local inspection committee that for the post graduate Civil Engineering programme appointment of faculty had not been made. The present Petition has been placed together with

a batch of connected Petitions including Sou. Devibai Narayandas Chhabda Rural Education Society and Another Vs. Shivaji University, in which a judgment has been delivered on 6 December, 2012. In the judgment which has been delivered in the lead petition, this Court has held, following the judgment of the Supreme Court in State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, that the provisions of the AICTE Act, 1987 under which approval of AICTE is granted do not override the requirement of affiliation of the affiliating university under State legislation. However, the conditions that are prescribed by the university for grant and continuation of affiliation will have to be in conformity with the norms and guidelines prescribed by AICTE in respect of the matters entrusted to it u/s 10 of the Central Act and cannot be at variance. While deciding the issue, the Court has also followed the subsequent decisions of the Supreme Court in State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, and in Adarsh Shiksha Mahavidyalaya and Others Vs. Subhash Rahangdale and Others, . As a matter of fact AICTE has also submitted before the Court that the role of the affiliating University under State legislation continues to remain in operation, subject to the condition that the University cannot prescribe requirements at variance with what is stipulated by AICTE.

2. The issue which has been raised in the present case is whether the University was justified in declining to grant affiliation. Two affidavits in reply have been filed by the University in these proceedings. In the first reply dated 26 November, 2011, the University has stated that despite a letter dated 24 August, 2012 requiring the Petitioners not to enroll students unless preliminary affiliation was granted by the University and cautioning them that if admissions were granted the Institution will be responsible for the consequences thereof, the Petitioners proceeded to grant admissions in breach of the directions and without affiliation. Moreover, it was stated that as against 90 sanctioned posts of teachers in the institution of the Petitioners, taking into consideration the strength of students for under graduate posts, the institution had filled in 29 Teachers through a University Selection Committee, 37 posts through a local selection committee by appointing Teachers who are not qualified whereas 24 posts were still vacant. In the second affidavit dated 11 December, 2012, it has been pointed out that the Petitioners at Exhibit N-1 to the Petition have annexed a list of faculty available for running the M.E. Course in Civil Engineering. The University has stated that one of the faculty members Dr. Vikas Karan jinni has been appointed as Director of the Institution and he has not been exclusively appointed for the M.E. Course. It has been stated that the college intends to run an integrated Course for B.E. and M.E. and it was necessary to mention whether the faculty has been appointed exclusively for the M.E. degree course.

3. On 7 December, 2012, this Court had directed the University to verify as to whether the teachers concerned were shown against the approved staff for the undergraduate course and after verifying the factual position in regard to the approved faculty for the post-graduate course in question for which affiliation has

been sought, to file a further affidavit. It was in pursuance of the aforesaid directions that the second affidavit has been filed.

4. During the course of the hearing, learned Counsel appearing on behalf of AICTE has placed on record for the perusal of the Court the relevant regulations, namely, the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010. Clause 4.22 of the Regulations framed by the AICTE provides as follows:

4.22 New Institutions granted Letter of Approval and the existing Institutions granted approval for introduction of new course/s division/s program/s second shift and change in intake capacity, shall comply with appointment of teaching staff and Principal/Director as the case may be, as per policy regarding minimum qualifications pay scale etc. norms prescribed by the Council and other technical supporting staff and administrative staff as per the schedule prescribed in the approval process hand book.

Institutions other than minority Institutions shall appoint teaching staff/Principal/Director and other technical supporting staff and administrative staff strictly in accordance with the methods and procedures of the concerned affiliating university particularly in case of selection procedures and selection committees.

The information about these appointments of staff in the prescribed format shall also be uploaded on the web portal of AICTE as per the schedule prescribed in the approval process hand book.

In no circumstances unless the appointment of all teaching and other staff is in place, the Institutes shall start the approved Technical Courses.

Appendix 7 contains norms for faculty requirements and prescribes the cadre ratio both for undergraduate and post-graduate degree courses. For a postgraduate degree programme with an intake capacity of 18 students, the requirement under Clause 7.3 of the Appendix is of one Professor and one Associate Professor. Counsel for the Petitioners accepts this position.

5. According to the University, the same list of faculty was annexed by the Petitioners for the proposal submitted by them for the post graduate degree Course and for the undergraduate degree course when affiliation was sought. The following two teachers figure in both the faculty lists for the undergraduate and post-graduate degree courses for affiliation:

(i) Dr. Vilas Vijay Karjini (Director-cum-Professor)

(ii) Mr. Vishwas Shamrao Patil (Associate Professor).

6. In the submissions of the Petitioners before the Court, it has been urged that there is no prohibition under the Regulations on the Director of the Institute also being a full time Professor in the post-graduate programme. Hence, it is submitted that even though Dr. Karjini has been appointed as Director, there was no reason to exclude him from the faculty strength for the post-graduate degree

course. Learned Counsel appearing on behalf of AICTE submitted that this would not be a correct reading of the Regulations framed by AICTE. It was submitted that in the case of an undergraduate course in Engineering/Technology, Clause 7.2 of Appendix 7 provides for a deduction of one post while computing the faculty strength for Professors since a corresponding provision is made for appointment of a Principal/Director. On the other hand, in the case of the faculty requirement in Clause 7.3 of Appendix 7 for the post-graduate programme, such a relaxation has not been made.

7. We have had due regard to the relevant Regulations framed by the AICTE, At the outset, it may be noted that Clause 4.22 of the Regulations requires that new institutions who have been granted a letter of approval and existing institutions granted approval for introduction of new course/s or for increase in the intake capacity, are required to appoint teaching staff and a Principal/Director as the case may be. Moreover, Clause 4.22 specifies that unless the appointment of all teaching and other staff is in place, the Institute shall not, in any circumstances, start the approved technical course. In the case of Undergraduate Courses, the faculty required in Clause 7.2 of Appendix 7 provides for appointment of a Principal/Director for Courses in Engineering/Technology. In computing the requirement of professors, a deduction of one post is allowed primarily in view of the fact that independently, a Principal/Director has to be appointed. On the other hand, in case of the faculty requirement for a post-graduate course in Engineering/Technology Clause 7.3 provides for a faculty student ratio of 1 : 12 and stipulates the manner in which the strength of Professors and Associate Professors is to be computed. A person who has been appointed as a Director of the Institution cannot be shown to fulfill the requirement of a Professor against the post-graduate degree programme in Engineering/Technology.

8. In the present case, the decision of the Academic Council cannot be faulted in view of the fact that the Petitioners do not possess required complement of a faculty consisting of one Professor and one Associate Professor for the post-graduate degree course. As regards the post of Associate Professor, it has also been submitted by the University that Mr. V. S. Patil is shown both against the list of faculty for the undergraduate and postgraduate programme.

9. On behalf of the Petitioners it has been submitted that on 11 December, 2012 the Petitioners have forwarded to the University a comprehensive statement indicating that as against the required strength of 92 teachers for the undergraduate programme, the Petitioners have appointed 116 teachers (including two post-graduate teachers).

10. Undoubtedly, now that a fresh statement has been submitted on behalf of the Petitioners to the University during the pendency of these proceedings, it will be open to the university to verify the exact factual position by appointing a local inspection committee and by scrutinizing the relevant records. On the basis of the material which was available to the University when the Academic Council took its decision, it cannot be held that the University was in error in coming to

the conclusion that the Petitioners did not have the required complement of faculty under the Regulations framed by the AICTE. In the batch of Petitions we have already come to the conclusion that a State University exercising its powers under the Maharashtra Universities Act, 1944 cannot disregard the Regulations framed by AICTE in deciding whether or not to grant affiliation. The Regulations framed by AICTE are relatable to an enactment made by Parliament with reference to Entry 66 of the Union List to the Seventh Schedule to the Constitution and every affiliating university is duty bound to apply its mind to the norms and requirements prescribed by AICTE. The grant of affiliation is an important element in the entire process and the powers of the University u/s 81 of the Maharashtra Universities Act, 1944 cannot be exercised at variance with the norms which are laid down by AICTE.

11. The Petitioners have proceeded to admit students in breach of the requirements of AICTE as well as without the grant of affiliation by the University. Clause 4.22 of the AICTE Regulations stipulates that in no circumstances shall an institute start an approved technical course without appointment of all teaching and other staff. The grant of affiliation u/s 81 of the Maharashtra Universities Act, 1944 is necessary because the degrees which are to be awarded are those of the University concerned. In the judgment in *Adarsh Shiksha Mahavidyalaya* (supra), the Supreme Court has viewed with displeasure the passing of interim orders as well as the issuance of directions by the High Courts protecting admissions granted by institutions without affiliation. AICTE has also urged in these proceedings that if colleges are allowed to grant admissions without affiliation, that would lead to a break down of the regulatory framework. We agree with the submission of AICTE. Having regard to the law laid down by the Supreme Court it will be impermissible for this Court to direct by a writ of mandamus that the University permit students to appear for the examination despite the absence of affiliation. In this case the college has been brazen in its defiance of the caution addressed by the University on 24 August, 2012.

12. In the circumstances, we have come to the conclusion that the decision of the University to decline affiliation cannot be faulted. However, in view of the fact that the Petitioners have filed before the University fresh material in the form of a representation dated 11 December, 2012, we direct while disposing of the Petition, that the University shall verify the factual position by the appointment of a Local Inspection Committee and in the event that the required norms are duly fulfilled, to consider whether affiliation should be granted in accordance with law. The Petition shall accordingly stand disposed of. There shall be no order as to costs.