

(2019) 02 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition No. 3683, 3684 Of 2018 (S Of S)

Tarun Bisht & Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

University Grants Commission, 1956 — Section 3

All India Council For Technical Education, 1987 — Section 2(g), 2(h), 10

Citation : (2019) 02 UK CK 0016

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Sandeep Tiwari, Pushpa Bhatt, Pradeep Hairiya, Mohd. Umar, Ashish Joshi, Yogesh Pacholia, Sushil Vashisth

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The Miscellaneous Application No. 1663 of 2019 is filed along with Counter Affidavit on behalf of respondent No. 4. In the counter affidavit, the respondent No. 4 has placed on record a judgement as rendered by the Hon'ble Apex Court as passed in Writ Petition (Civil) No. 905 of 2018, Jai Singh and others Vs. University Grants Commission and others which has recorded the following findings.

2. The Hon'ble Apex Court in its judgement as reported in 2018(1) SCC 468, Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others has held that the course of AICTE as being imparted by the Institution of respondent No. 6 has been held out to be not to be a recognized course, which could be taken into consideration for granting the relief as claimed by the petitioner to the following effect:-

"23. UGC, DEC and AICTE as well as MHRD Government of India have issued various Notifications, Circulars and Guidelines touching upon the issues involved

in the present cases, which may now be referred to:

23.1. On 25.11.1985, UGC (the minimum standards of instructions for the grant of the first degree through formal education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Science) Regulations, 1985 (hereinafter referred to as 1985 UGC Regulations) came into force which applied to every University including a Deemed to be University. The relevant portion of these Regulations are:-

"2(3). No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.SC/B.Com. (General/Honors/Special) degree as the case may be....

3. Working days - (1). Every University enrolling students for the 1st Degree Course shall ensure that the number of actual teaching days does not go below 180 in an academic year.....

(2). The total periods provided in the timetable shall not be less than 40 clock hours a week. The timetable on working days shall be so drawn up that physical facilities are adequately utilized and not used only for a few hours a day."

23.2. In 1986, National Policy on Education was published by Government of India, Part VI of which dealt with Technical and Management Education, Paras 6.6, 6.8 and 6.19 of the Policy were:-

"6.6. In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial education, programmes through a distance learning process, including use of the mass media will be offered. Technical and management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counseling service will be provided.

* * *

6.8. Appropriate formal and non-formal programmes of technical education will be devised for the benefit of women, the economically and socially weaker sections, and the physically handicapped.

* * *

6.19. The All India Council for Technical Education, which has been given statutory status, will be responsible for planning, formulation and maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring the coordinated and integrated development of technical and management education. Mandatory periodic evaluation will be carried out by a duly constituted Accreditation Board. The Council will be strengthened and it will function in a decentralized manner with greater involvement of State governments and technical institutions of good quality."

23.3. The AICTE (Grant of Approval for starting new Technical Institutions, introduction of courses or programmes and approval of intake capacity of seats for courses or programmes) Regulations were issued in 1994 (1994 AICTE Regulations, for short). Clause 4 of these Regulations was to the following effect-

"4.0 Requirement of Grant of Approval

4.1 After the commencement of these regulations,

- a) No new Technical Institution or University Technical Department shall be started; or
- b) No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College or;
- c) No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma courses or programmes;
- d) No approved intake capacity of seats shall be increased or varied; Except with the approval of the Council."

23.4. On 01.03.1995, a notification was issued by Government of India to the following effect:-

"On the recommendation of the Board of Assessment for Education Qualifications, the Government of India has decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government, provided it has been approved by Distance Education Council, Indira Gandhi National Open University, K 76, Hauz Khas, New Delhi-110016 and wherever necessary by All India Council for Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi-110 002."

23.5 On 03.07.1997, DEC published Guidelines for Design, Development and Delivery of programmes/courses through distance mode. These were essentially dealing with distance education as a concept without specifying the details or mechanism as to how and in what circumstances the concerned universities and institutions were expected to initiate courses in distance education.

23.6 In 2004, UGC issued Guidelines for establishing new departments within the campus, setting up of off -campus centre(s)/institution(s)/off-shore campus and starting distance education programmes by the Deemed to be universities, 2004 (2004 UGC Guidelines, for short). The terms institution, off-campus centre, off-shore campus and Study Centre were defined by these Guidelines as under:-

"Definitions. - (a) "Institution" means an institution set up by the same

management to impart studies in a specialized branch of study and registered under the same society or trust under which the existing deemed university is registered.

(b) "Off-campus centre" means a center of the university located outside its main campus (within or outside the State where the deemed university is located)' operated and maintained as its constituent unit by the resources of the university, having the centre's own compliment of facilities, faculty and staff.

(c) "Off-shore Campus" means a campus of the university located outside the country, established and maintained as its constituent unit by the resources of the university having its own compliment of facilities, faculty and staff.

(d) "Study Centre" means a centre established and maintained or recognized by the university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education."

23.6.1. It was laid down that a Deemed to be University shall normally be authorized to operate within its own campus to conduct the authorized courses falling within the area of their specialization. However, in deserving cases, the Deemed to be University could start new departments within the university campus or start off-campus centre(s)/institutions/off-shore campus(s) on selective basis with prior specific permission of the UGC in each and every individual case. The procedure in that behalf was laid down as under:

"2. Procedure to be followed. - All Deemed to be universities intending to set-up new departments within their campus, off-campus centre(s) or an institution outside the main campus of the deemed university may apply as follows:

2.1 The deemed university intending to open a new department in its campus or an off-campus center/ institution shall approach the University Grants Commission (UGC) at least six months prior to opening such center on a proforma prescribed for this purpose (Annexure-I). The deemed university desirous of starting the new off-campus center / institution or introducing a new course/ programme in a professional subject, shall comply with all the requirements as required by statutory professional Councils and obtain their prior approval before approaching the UGC.

2.2 The new Departments, new off-campus center/ institution shall be set up only after obtaining approval of the UGC and that of the concerned state Government where such a center is proposed to be established. The UGC shall cause spot visit/ verification of the proposed new departments, new off-campus center/institutions to verify its infrastructure facilities, programmes, faculty, financial viability, etc. before giving permission to start the centre. The report of the committee shall be considered by the Commission for its approval.

2.3 An off-shore campus shall be set up only after due permission from the Government of India on the recommendations of the UGC and also that of the Government of the host country"

23.6.2. Paras 3.3, 3.4 and 3.8 were as under:

"3.3 The off-campus centre/institution/off-shore campus shall conform to the relevant regulations/norms of the UGC and other statutory bodies concerned regarding minimum standards of instruction, qualifications of teachers, merit-based admission of students on an all India basis and the fee structure etc. and shall have adequate number of qualified teachers.

3.4 The new off-campus centre/institution/off-shore campus shall offer only those courses which are approved by the appropriate bodies of the deemed university. If the course to be offered in the centre is in technical/professional subject, its academic programmes shall have to be approved by the concerned statutory professional council.

* * *

3.8. The over-all performance of the off-campus centre/ institution/off-shore campus shall be monitored annually, initially for three years, and subsequently after every five years by the UGC whose directions for management, academic development and improvement shall be binding. The UGC shall associate the nominee(s) of the concerned statutory professional council in the monitoring process."

23.6.3. Paras 4 and 5 dealt with Distance Education and Ex-

Post-Facto Approval in following terms:

"4. Distance Education: The Deemed to be University could offer the distance education programmes only with the specific approval of the Distance Education Council (DEC) and the University Grants Commission (UGC). As such, any Study Centre(s) can be opened only with the specific approval of Distance Education Council and UGC.

5. Ex-Post-Facto Approval: The Deemed Universities shall obtain the ex-post-facto approval of the GOI/UGC/DEC, whichever applicable within a period of six months in the following cases:

I. Continuation of all the Departments opened in the campus of the Deemed Universities and off- campus Study Centre(s)/ institutions / offshore campus started without the prior approval of the UGC.

II Distance education programme(s)/Study Centre(s) started without the specific approval of the DEC/UGC."

23.7. On 03.02.2004 DEC published an advertisement that it was mandatory for all Centres/Institutions/Directorates offering programmes through Distance Education mode to apply to DEC and obtain prior approval before starting any new Centres/Institutions/Directorates of programme. It further stated that the Distance Education Centres/Institutions/Directorates already offering programmes through distance mode should submit their applications for approval

of DEC in the prescribed format.

23.8. A circular was issued by the UGC on 16.03.2004 directing Deemed to be Universities conducting courses through Distance Education mode to seek ex post facto approval for the courses conducted by such Deemed to be Universities.

24. We have referred to the notifications, circulars and guidelines as were in existence and in force in 2004. The Deemed to be Universities in the present case had started their distance education programmes without taking any prior approval from any of the authorities including UGC, AICTE or DEC. However, it appears that in terms of paragraphs 4 and 5 of 2004 UGC Guidelines, the advertisement of DEC dated 03.02.2004 and circular of UGC dated 16.03.2004, the concerned Deemed to be Universities sought ex-post- facto approval for courses conducted by them through distance education mode. Before we deal with the facts leading to the consideration of such ex- post-facto approval, an important development must be adverted to.

46. The definition of "Technical Education" in Section 2(g) of the AICTE Act shows that the emphasis is on the programmes of education, research and training in Engineering Technology in general and the idea is not limited to the institutions where such programmes of education, research and training are to be conducted or imparted. However, the definition of "Technical Institution" in Section 2(h) leaves out an institution which is a University. The distinction between the broader concept of "Technical Education" and the limited scope of "Technical Institution" is clear from Section 10 of the AICTE Act where certain functions concern the broader facets or aspects of technical education which by very nature must apply to every single institution (whether university or not) where such courses are conducted or imparted. At the same time, certain functions are relatable to technical institutions alone, which by definition are not applicable to universities. For example, Functions in sub-clauses (a), (b), (d), (e), (f), (l) and (n) are concerned with broader facets of technical education, while functions in Clauses (k), (m), (p) and (q) deal with matters concerning technical institutions and thus may not apply to universities, whereas there are certain functions as set out in Clauses (g) and (o) which apply to both "Technical Institutions" and "Universities" imparting technical education. Clauses (c), (d) and (f) of Section 10 deal with subjects, inter alia, coordination of the technical education in the country at all levels; promoting innovation, research, development, establishment of new technologies, generation, adoption and adaptation of new technologies to meet the developmental requirements; and promoting and effecting link between technical education and systems and other relevant systems. AICTE is thus the sole repository of power to lay down parameters or qualitative norms for "technical education". What should be course content, what subjects be taught and what should be the length and duration of the courses as well as the manner in which those courses be conducted is a part of the larger concept of "technical education". Any idea or innovation in that field is also a part of the concept of "technical education" and must, as a matter of principle, be in

the exclusive domain of AICTE.

48. Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory under the watchful eyes of Demonstrators or Lecturers. Face to face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals, thus, constitute an integral part of the technical education system. If this established concept of imparting technical education as a qualitative norm is to be modified or altered and in a given case to be substituted by distance education learning, then as a concept the AICTE ought to have accepted it in clear terms. What parameters ought to be satisfied if the regular course of imparting technical education is in any way to be modified or altered, is for AICTE alone to decide. The decision must be specific and unequivocal and cannot be inferred merely because of absence of any Guidelines in the matter. No such decision was ever expressed by AICTE. On the other hand, it has always maintained that courses leading to degrees in Engineering cannot be undertaken through distance education mode. Whether that approach is correct or not is not the point in issue. For the present purposes, if according to AICTE such courses ought not to be taught in distance education mode, that is the final word and is binding - unless rectified in a manner known to law. Even National Policy on Education while emphasizing the need to have a flexible, pattern and programmes through distance education learning in technical and managerial education, laid down in Para 6.19 that AICTE will be responsible for planning, formulation and maintenance of norms and standards including maintenance of parity of certification and ensuring coordinated and integrated development of technical and management education. In our view whether subjects leading to degrees in Engineering, could be taught in distance education mode or not is within the exclusive domain of the AICTE. The answer to the first limb of the first question posed by us is therefore clear that without the Guidelines having been issued in that behalf by AICTE expressly permitting degree courses in Engineering through distance education mode, the Deemed to be Universities were not justified in introducing such courses.

55. We thus accept the view taken by the High Court of Punjab and Haryana at Chandigarh and set aside the decision of the High Court of Orissa. With the aforementioned observations, appeals are disposed of. No order as to costs. No orders are called for in Contempt Petition Nos.194-197/2016 which stands disposed of."

3. In the writ petition, the petitioner, who has done his AMICE(1) from the Institution of Civil Engineers (India), Ludhiana, Punjab through a distance mode, which has been taken as the basis for being considered as to be an equivalent to the degree in Civil Engineering from a recognized Institution for the promotion of the petitioner on the post of Assistant Engineer has been held out to be not to be

a recognized course and in that eventuality, no equivalence can be claimed by the members who have qualified and done their civil engineering i.e. AMICE(1) from the Institution of Civil Engineers (India) Ludhiana, Punjab.

4. In view of the aforesaid judgement of the Hon'ble Apex Court, the relief as claimed for by the petitioner cannot be granted. Accordingly, the writ petition stands dismissed on that ground itself.