

Sahu Trust Vs. All India Council for Technical Education and ors.

Sahu Trust Vs. All India Council for Technical Education and ors.

SooperKanoon Citation : sooperkanoon.com/537046

Court : Orissa

Decided On : Aug-16-2002

Reported in : 2002(II)OLR437

Judge : A.K. Patnaik and ;M. Papanna, JJ.

Acts : All India Council for Technical Education (Norms and Guidelines for Fees and Guidelines for Admissions in Professional Colleges) Regulations, 1994 - Regulations 12 and 13

Appeal No. : Writ Petition (Civil) No. 319 of 2002

Appellant : Sahu Trust

Respondent : All India Council for Technical Education and ors.

Advocate for Def. : Shyamananda Mohapatra and J.S. Misra, Advs. for O.Ps. 1 and 4, ;D.R. Nanda Addl. Govt. Adv. for O.Ps. 2 and 5, ;D. Mohapatra and D.K. Sahu, Advs. for O.P. 3 and ;R.K. Mohapatra, Adv. for O.P. No. 6

Advocate for Pet/Ap. : Pitambar Acharya, S.R. Pati, P.K. Ray, M.R. Mohanty and R.S. Mishra ;J. Patnaik, Adv.

Disposition : Petition allowed

Judgement :

A.K. Patnaik, J.

1. The petitioner was accorded approval for starting a new technical institution, namely, The Institute of Technology Bhubaneswar, by the All India Council for Technical Education (for short, 'AICTE') by an order dated 21st of October, 1998.

The AICTE passed an order dated 14th of December, 2001 withdrawing the approval accorded to the petitioner with immediate effect. A copy of the said order dated 14.12.2001 has been annexed to the writ petition as Annexure-3 and is quoted herein below :

'ALL INDIA COUNCIL FOR TECHNICAL EDUCATION

(A STATUTORY BODY OF THE GOVERNMENT OF INDIA)

F. NO : 760-82-220(E)/ET/97

Date : 14th Dec. 2001

To,

Commissioner Cum Secretary

Industrial Department

Govt of Orissa

Bhubaneswar - 751001

Sub : Withdrawal of approval accorded to Institute of Technology, Bhubaneswar, Orissa.

Sir,

AICTE had accorded extension of approval to Institute of Technology, Bhubaneswar for the academic year 2000-2001 for the following branches; Courses Intake Duration Period of Approval Computer Science Engg. 60 4 yrs 2000-2001 Electrical Engg. 60 4 yrs 2000-2001 Electronics and Telecomm

Engg. 60 4 yrs 2000-2001 Mechanical Engg. 60 4 yrs 2000-2001TOTAL INTAKE
240 Subsequently the Institute was placed under NO-Admission Category for
academic year 2000-2001.

The trust vide their representation dated 28.11.2004 has requested for withdrawal
of approval and return of Joint Fixed Deposit. Based on the representation from
the Institution and the directives from the Hon'ble High Court of Orissa, the Council
has decided to withdraw the approval accorded to above named Institute with
immediate effect.

Thanking you, Yours Faithfully, Dr. P. N. Razdan Adviser (E & T) Copy to :

1. The Regional Officer, ERO, AICTE, Institute of Leather Technology Campus,
Salt Lake City, Sector - III, Kolkata - 70091.
2. The Chairman, Sahu Trust, C-9 Saheed Nagar, Bhubaneswar - 752001

Sd/ - P. J. Razdan

Dr. P. N. Razdan

Adviser (E & T)'

Aggrieved by the said order dated 14.12.2001 of the AICTE withdrawing the
approval accorded to the petitioner with immediate effect, the petitioner has filed
this writ petition with a prayer to quash the same.

2. Mr. Pitambar Acharya, learned counsel for the petitioner, submitted that the
power to withdraw approval accorded to a professional college or a technical
institution is vested in the AICTE under Regulation 13 of the All India Council for
Technical Education (norms and guidelines for fees and guidelines for admissions
in professional colleges) Regulations, 1994 as well as Regulation 12 of the All
India Council for Technical Education (Grant of approval for starting new technical
institutions, introduction of courses of programmes and approval of intake capacity
of seats for the courses or programmes) Regulations, 1994. The said
Regulations 13 and 12 of the aforesaid two Regulations respectively are quoted
hereunder :

Regulation - 13

'13. Withdrawal of approval - If a professional college contravenes any of the provisions of these regulations, the Council may withdraw its approval after making such enquiry as it may consider appropriate and after giving the professional college an opportunity of being heard.' Regulation - 12 '12. Withdrawal of approval - If any technical institution including University, University Department or deemed University or College contravenes any of the provisions of these regulations, the Council may, after making such inquiry as it may consider appropriate and after giving the technical institution concerned an opportunity of being heard, withdraw the approval granted under these regulations.'

Mr. Acharya submitted that the aforesaid Regulations 13 and 12 of the two Regulations are almost identically worded and it provides that withdrawal of approval granted to a professional college or technical institution can be withdrawn if the professional college or the technical institution contravenes any of the provisions of the Regulations and only after making such inquiry as the AICTE may consider appropriate and after giving the professional college or the technical institution concerned an opportunity of being heard, Mr. Acharya stated that in the present case, no such opportunity of being heard was granted to the petitioner before the impugned order was passed withdrawing approval to the petitioner's college/institution. He further submitted that it will be clear from the impugned order dated 14.12.2001 that the AICTE withdrew the approval accorded to the petitioner's college/institution on the representation dated 28.11.2001 of the petitioner, but the copy of the said representation annexed to the additional affidavit filed on behalf of the petitioner would show that no request was made therein for withdrawing the approval accorded to the petitioner's college/institution.

3. Mr. S. Mohapatra, learned counsel for the AICTE, on the other hand, submitted that the petitioner's college/institution was placed under 'No-Admission' category for the academic year 2001-2002 on account of various deficiencies and the order of the AICTE putting the petitioner's college/institution in 'No-Admission' category for the academic session 2001-2002 was challenged before this Court in a separate writ petition (O.J.C. No. 14412 of 2001) and on 5.12.2001, this Court took

note of the submission of Mr. Sahu appearing for the petitioner's college/institution in the said case that the Trust which has established the college/ institution has decided to close down the college/institution if the AICTE does not permit it to admit students for the session 2001-2002 and that the Trust has already approached the AICTE for permission to admit students in the present session or to return the fixed deposit receipts and to allocate the batches of students who would be left in the college at the end of current academic year to other approved institutions from the beginning of next academic year commencing to July 2002. He further submitted that by the said order dated 5.12.2001, this Court disposed of the writ petition (O.J.C. No. 14412 of 2001) by directing the AICTE to consider the petitioner's representation dated 10th of November, 2001 and 28th of November, 2001 in accordance with law within one month from the date of communication of the order. Mr. Mohapatra contended that a reading of the said representation along with the order dated 5.12.2001 of this Court in O.J.C. No. 14412 of 2001 would show that the petitioner had decided to close down the college/institution and for this reason, the AICTE passed the impugned order dated 14.12.2001 withdrawing approval accorded to the petitioner's college/institution.

4. Without going into the controversy between the parties in this case as to whether or not the petitioner had actually decided to approach the AICTE for withdrawal of the approval accorded to the establishment of the college/institution, we find that under the aforesaid Regulations 13 and 12, approval could only be withdrawn if the professional college/institution contravened any of the provisions of the Regulations and that too after making such inquiry as may be considered appropriate and after giving the professional college/technical institution an opportunity of being heard. Hence, only if the professional college/institution contravenes any provision of the Regulations, proceedings for withdrawal of approval granted to the professional college/technical institution could be initiated under the said Regulations 13 and 12. In our considered opinion, therefore, even if the petitioner is found to have requested the AICTE to withdraw the approval accorded to the establishment of the college/institution, the AICTE could not withdraw the approval granted to the establishment of the college/institution of the petitioner unless it came to a definite conclusion that there was contravention of any of the provisions of the Regulations as indicated in the aforesaid Regulations

13 and 12 of the two Regulations.

5. The AICTE could not withdraw approval only on the decision of the petitioner to close down the college/institution because this may affect the interest of the students who are studying in the institution. The power that is vested in Regulations 13 and 12 of the two Regulations quoted above could be exercised by the AICTE only after it reached a conclusion that any of the provisions of the Regulations have been contravened and not otherwise. The petitioner had been given an opportunity to fulfil the deficiencies pointed out by the AICTE in its letter dated 12.07.2001 by 30.4.2002 and the petitioner had agreed to submit an undertaking by an authorised signatory of the society to remove the said deficiencies by 30.4.2002. If the deficiencies pointed out in the letter dated 12.7.2001 by the AICTE were not removed by 30.4.2002, it was clearly open for the AICTE to have given an opportunity to the petitioner's college/institution and after hearing and after making necessary inquiry pass orders under Regulations 13 or 12 of the two Regulations quoted above, but before 30.4.2002 the impugned order dated 14.12.2001 was passed by the AICTE withdrawing the approval granted to the petitioner's college/ institution on the basis of representation dated 28.11.2001 of the petitioner. In the order dated 5.12.2001 of this Court in O.J.C. No. 14412 of 2001, this Court only directed the AICTE to dispose of the representation of the petitioner in accordance with law. Hence AICTE would have passed an order for withdrawing approval only in accordance with the aforesaid Regulations 13 and 12 of the two Regulations while disposal of the representation of the petitioner and not otherwise.

6. As a consequence of the impugned order dated 14.12.2001 withdrawing the approval accorded to the petitioner's college/ institution, the students of the institution were sought to be distributed to other Engineering Colleges in the State of Orissa under the Utkal University but many of the students of the petitioner's college/institution have approached this Court in separate writ petitions and intervention petitions, some wanting to continue in the petitioner's college/institution and others wanting to leave the petitioner's college/institution. In writ petitions (O.J.C. No. 5809, 5928, 6009 and 6021 of 2002) the impugned order of the AICTE withdrawing approval and the order of AICTE distributing the

students to other colleges/institutions have been challenged by an Advocate and several students of the said college/institution. It is not as of AICTE cannot pass any order withdrawing approval to a professional college or technical institution which affects the interest of students. But as we have held, the AICTE can pass such order of withdrawal of approval only if it reaches a conclusion that any of the provisions of the Regulations has been contravened and after following the procedure as laid down in the said Regulations 13 or 12 of the Regulations quoted above.

7. Considering all aspects of the matter, we are of the opinion that the impugned order dated 1.4.12.2001 withdrawing approval to the petitioner's college/institution should be quashed, leaving it open to the AICTE to initiate fresh action for withdrawal of approval accorded to it in case the deficiencies pointed out by the AICTE are not removed by the petitioner's college/institution. We, accordingly, allow this writ petition and quash the impugned order dated 14.12.2001 leaving it open to the AICTE to take action in accordance with Regulations 13 and 12 of the two Regulations quoted above.

8. Regarding students of the petitioner's college/institution, we had passed orders on 25.6.2002 in O.J.C. Nos. 5809, 5928 and 6009 of 2002 to the effect that it will be open for such students of the petitioner's college/institution who want to go and join other colleges as per the distribution made by the authorities and further that students who are not willing to go and join other colleges as per the impugned decision of the AICTE may continue in the petitioner's college/institution until further orders passed by this Court and that their continuance in the petitioners college/institution will be by virtue of the interim orders passed by this Court and they will not be made to suffer in future by any of the authorities - AICTE, Utkal University or State Government. By another order dated 9.7.2002 passed in Misc. Case No. 7239 of 2002 arising out of O.J.C. No. 5809 of 2002, we had temporarily directed that counselling for the purpose of such distribution of the students of the petitioner's college/institution will not be held, but thereafter on 18.7.2002, we passed orders in Misc. Case No. 7239 of 2002 that our orders dated 25.6.2002 passed in O.J.C. Nos. 5809, 5928 and 6009 of 2002 are to be given effect to by all parties concerned. By the said order dated 18.7.2002, we had directed that a fresh

date will be fixed by the AICTE for counselling so that the students can go and attend the classes in the colleges to which they are allotted as early as possible, Pursuant to the aforesaid interim orders passed by this Court, it appears that many students have left the petitioner's college/ institution and some students have continued in the petitioner's college/institution. It will be open for the students who have already left the petitioner's college/institution to come back to the petitioner's college/institution but those who do not want to come back, may continue in the college/institution to which they have been allotted pursuant to the counselling.

9. A grievance has been made before us with regard to the fees demanded or retained by the petitioner's college/institution and the college/institution to which the students of the petitioner's college/institution have been allotted. The Director of Technical Education, Government of Orissa, will look into these individual grievances as and when it is brought to his notice and pass appropriate orders in accordance with law.

This judgment shall govern disposal of O.J.C. Nos. 5809, 5928, 6009 and 6021 of 2002 and all the misc. cases in the said writ petitions as well as this writ petition.

M. Papanna, J.

10. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com