

FOUNDATION FOR ORGANIZATIONAL RESEARCH AND A
EDUCATION FORE SCHOOL OF MANAGEMENT THROUGH
ITS DIRECTOR

v.

THE ALL INDIA COUNCIL FOR TECHNICAL EDUCATION B
THROUGH THE MEMBER SECRETARY

(Writ Petition (Civil) No. 581 of 2016)

JUNE 21, 2019

[DEEPAK GUPTA AND SURYA KANT. JJ.]

Education/Educational Institution: C

Admission – Management course – Application by institution seeking extention of approval of existing seats and for increase in seats – All India Council for Technical Education (AICTE) granted extention while did not communicate anything about increase in seats – After exchange of correspondence between the parties, AICTE rejected the prayer for increase in seats – In the meantime, the institution had already admitted students in excess of the seats – Institution filed writ petition challenging order of AICTE rejecting increase in seats – During pendency of the petition AICTE imposed penalty of Rs. 23 crores for admission of 42 students in excess of the permissible seats – Held: Action of the institution in granting admission to the students beyond sanctioned seats was illegal and contrary to law – AICTE is empowered to impose the penalties for excess admission, as prescribed in Approval Process Handbook (2016– 2017) of AICTE – Penalty being only financial penalty is rather very light penalty and hence not unjustified – However, admission of students are not set aside. D
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Disposing of the appeal, the Court

HELD : 1. The action of the petitioner in granting admission to the students beyond the seats sanctioned, is totally illegal and contrary to law. Even assuming that the decision of the AICTE was not correct, the petitioner institution had no business to admit students beyond the number permitted by the AICTE. In case the petitioner institution felt that the AICTE was delaying the matter or was not acting fairly, the proper course for the petitioner G
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A was to have approached this Court and prayed for appropriate relief. The petitioner could not take the law into its own hand and grant admission to students in excess of the seats permitted by the AICTE. The admission of the students are not set aside because that action would be too harsh upon the students who should not suffer for the totally illegal action of the petitioner institution. [Paras 7 and 8] [791-D-G]

2. The Approval Process Handbook (2016-2017) of the AICTE provides the penalties in case excess admissions are carried out. The AICTE can impose any one or more of the prescribed penalties. In the present case, the AICTE has only imposed the financial penalty which is the first penalty prescribed. It is the admitted case of the petitioner that it was charging Rs.11,00,000/- as fees for the entire course from each student. In terms of Clause 3.1 of Chapter IV of Approval Process Handbook, 5 times penalty for each student works out to Rs.55,00,000/- and for 42 students it works out to Rs. 23,10,00,000/-, which is the penalty imposed by the AICTE. The AICTE has no discretion to award a lesser penalty and, in fact, the petitioner has been let off lightly since only one penalty has been imposed whereas the AICTE could have imposed more than one penalty prescribed. However, it is made clear that the amount of Rs.4,00,00,000/-, which is deposited, shall be adjusted towards the penalty and the petitioner is directed to deposit the balance amount of Rs.19,10,00,000/- with the AICTE within 8 weeks from the date of the judgment, failing which AICTE shall be at liberty to take appropriate action in accordance with law. [Para 10] [791-H; 792-A, E-H]

Parshvanath Charitable Trust v. AICTE (2013) 3 SCC 385 : [2012] 11 SCR 1057 - referred to.

Case Law Reference

G [2012] 11 SCR 1057 referred to Para 6
CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 581 of 2016.

(Under Article 32 of the Constitution of India)

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Shekhar Naphade, Sr. Adv., M. Shoeb Alam, R. K. Joshi, A
Ms. Fauzia Shakil, Saurabh Joshi, Ujjwal Singh, Gautam Prabhakar,
Mojahid Karim Khan, Advs. for the petitioner.

Harish Pandey, Anil Soni, R. Anand Padmanabhan, Prawal
Chaturvedi, Shashi Bhushan Kumar, Ginny J. Rautray, Ms. Anushka
Ashok, Mrs. Kanchan Kaur Dhodi, Advs. for the respondent. B

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

1. The petitioner, Foundation for Organizational Research and
Education Fore School of Management is a registered educational C
institution running courses in management. On 15th March, 2016, the
petitioner applied to the respondent, the All India Council for Technical
Education (for short 'the AICTE') for extension of approval of existing
seats and for increase in seats in certain courses. On 25th April, 2016,
the AICTE granted extension of approval to the petitioner for existing D
seats in the existing courses. However, in this communication nothing
was written with regard to the prayer for increase in seats.
Correspondence was exchanged between the parties but finally on 22nd
June, 2016, the AICTE rejected the request of the petitioner.

2. The petitioner, despite having no permission for increase in
seats, admittedly granted permission to students in excess of the seats. E
Therefore, the petitioner filed a writ petition before this Court for quashing
of the letter dated 22nd June, 2016 and also prayed that the petitioner be
permitted to continue with the session which had commenced on 6th
July, 2016 for the current academic year without jeopardizing the career
of the students who had already been admitted. When the matter was F
taken up by this Court on 25th July, 2016, the petitioner institution was
directed to deposit Rs. 2,00,00,000/- (Rupees Two Crore only) and it
was noticed that the petitioner had admitted 51 students in the meantime.
Thereafter, on 6th September, 2016 another order was passed in which it
was recorded that a sum of Rs.2,00,00,000/- (Rupees Two Crore only) G
in terms of the order dated 25th July, 2016 had been deposited and it was
also noticed that admission of 51 students who had been admitted beyond
the sanctioned number of seats had been axed without giving any
explanation. We may also note that in the order it has been recorded as
follows:

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A “Mr. Khurshid, learned senior counsel, conceded that the sanction strength is 240, but 372 students were admitted; but the Institution had reasons to do so, for the A.I.C.T.E. did not proceed with the approval within the stipulated framework of time and further the Institution had been experiencing that the students after taking admission, leave the Institution.”

B Thereafter, the Court issued the following directions:

(a) “A.I.C.T.E. shall verify who are the students eligible under the norms regard being had to the concept of merit, to continue in the petitioner-Institution.

C (b) The Inspection Team of A.I.C.T.E. shall carry out another inspection to find out as to whether the Institution has removed the deficiencies that were pointed out by the inspecting authority.

(c) The petitioner-Institution shall cooperate with the Inspection Team.

D (d) The petitioner-Institution shall deposit a further sum of Rs. 2 crores before the Registry of this Court within four weeks hence.”

E 3. The petitioner deposited another sum of Rs.2,00,00,000/- (Rupees Two Crore only) pursuant to the said direction. Therefore, Rs.4,00,00,000/- (Rupees Four Crore only) stands deposited in this Court. The inspection report was received, according to which the deficiencies earlier pointed out by the AICTE had been removed but the inspection committee pointed out certain other deficiencies.

F 4. During the pendency of the petition, the AICTE issued notice to the petitioner as to why a penalty should not be imposed upon it. After considering the reply of the petitioner, the AICTE imposed a penalty of Rs.23,10,00,000/- (Rupees Twenty Three Crore Ten Lakhs only) towards the excess admission made of 42 number of students. The petitioner has not cared to amend the writ petition to challenge the order imposing penalty but has filed an application being I.A. No.8 in this regard.

G Though this may not be technically correct, we are examining this issue also.

H 5. Mr. Shekhar Naphade, learned senior counsel for the petitioner has drawn our attention to the various communications exchanged between the parties and submits that inaction of the AICTE in not responding to the request of the petitioner for increase in seats was itself an arbitrary

action and the reasons given for not permitting increase in the intake in the courses was totally illegal. Mr. Naphade also argued that an affidavit had been submitted clearly setting out that all the deficiencies would be removed before the session commences. Mr. Naphade further urged that the penalty imposed is highly excessive and arbitrary. He further submits that when the Court is seized of the matter, penalty should not have been imposed.

6. On the other hand, Mr. Harish Pandey, learned counsel for the respondent submits that the AICTE had zero deficiency policy especially with regard to the students who have come from abroad. According to the AICTE, statutory committees were not set up by the last date, as provided in the case of *Parshvanath Charitable Trust v. AICTE*¹ and therefore, the petitioner's case was rejected. Mr. Pandey further submits that the penalty has been imposed strictly in accordance with the Approval Process Handbook (2016-2017) of the AICTE.

7. We are not going into the submissions made by Mr. Naphade that the AICTE delayed the grant of permission and acted arbitrarily. Even assuming that the decision of the AICTE was not correct, the petitioner institution had no business to admit students beyond the number permitted by the AICTE. In case the petitioner institution felt that the AICTE was delaying the matter or was not acting fairly, the proper course for the petitioner was to have approached this Court and prayed for appropriate relief. The petitioner could not take the law into its own hand and grant admission to students in excess of the seats permitted by the AICTE. Therefore, we have no doubt in our mind that the action of the petitioner in granting admission to the students beyond the seats sanctioned is totally illegal and contrary to law.

8. Time and again, this Court has noticed that the educational institutions admit students beyond the numbers permitted putting the future of the students at stake. In the present case, we are not setting aside the admission of the students because that action would be too harsh upon the students who should not suffer for the totally illegal action of the petitioner institution.

9. This brings the question as to whether the penalty imposed is proper or not. The Approval Process Handbook (2016-2017) of the AICTE itself provides the penalties in case excess admissions are carried

¹ (2013) 3 SCC 385

- A out. Chapter IV deals with Actions in case of Violation of Regulations. Clause 3.1 of Chapter IV of this handbook reads as follows:

“3. Excess admissions

- B 3.1 Excess admissions over the sanctioned intake shall not be allowed under any circumstances. In case any excess admission is reported to/noted by the Council, appropriate penal action will be initiated against the Institution. The Institution shall be liable to following punitive action from any one or more of the following by the Council.

- C
- Penalty for excess admission amounting to five times the total fees collected per student shall be levied against each excess admission
 - Suspension of approval for supernumerary seats for one academic year
- D
- Reduction in sanctioned intake
 - No admission status in one/more courses for one academic year
 - Withdrawal of approval for Program/course
- E
- Withdrawal of approval of the Institution”

- F 10. The AICTE can impose any one or more of the aforesaid prescribed penalties. In this case, the AICTE has only imposed the financial penalty which is the first penalty prescribed. It is the admitted case of the petitioner that it was charging Rs.11,00,000/- as fees for the entire course from each student. In terms of Clause 3.1 of Chapter IV of Approval Process Handbook, 5 times penalty for each student works out to Rs.55,00,000/- and for 42 students it works out to Rs.23,10,00,000/-, which is the penalty imposed by the AICTE. The AICTE has no discretion to award a lesser penalty and, in fact, the petitioner has been let off lightly since only one penalty has been imposed whereas the AICTE could have imposed more than one penalty prescribed. However, we make it clear that the amount of Rs.4,00,00,000/-, which is deposited, shall be adjusted towards the penalty and the petitioner is directed to deposit the balance amount of Rs.19,10,00,000/- with the AICTE within 8 weeks from today failing which AICTE shall be at liberty to take appropriate action in accordance with law.
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11. Having held thus we are also of the considered view that the A
students who had paid large sums of money should not be made to suffer.
They have already completed the course but the degrees have not been
awarded to them. We, therefore, direct that the degrees be awarded to
the said students.

12. The writ petition is disposed of in the aforesaid terms. All B
pending application(s) also stand disposed of.

Kalpana K. Tripathy

Appeal disposed of.