



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. **10925 OF 2011**

The Association of Management of

Unaided Engineering Colleges (Mah.)

.. Petitioner.

versus

All India Council for Technical

Education & Ors.

.. Respondents.

.....

Mr. Rajeev Kumar with Mr. Kapil Moye i/by Mr. Sandeep R.

Waghmare for the Petitioner.

Mr. Ashutosh Kumbhkoni with Mr. Rui Rodrigues

for Respondent No. 1.

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**CORAM : DR.D.Y.CHANDRACHUD &
A. A. SAYED, JJ.**

20 DECEMBER 2011.

ORAL JUDGMENT : (PER DR.D.Y.CHANDRACHUD, J.

In these proceedings under Article 226 of the Constitution the Petitioner seeks to challenge a stipulation contained in Appendix 10 of the Approval of Process Hand Book of the All India Council for Technical Education for the Academic Year 2012-2013. The stipulation provides for a mandatory subscription to e-Journals as a condition for the grant of approval. The challenge of the Petitioner to this stipulation is on the following grounds :

- (i) The All India Council for Technical Education has only recommendatory powers under Section 10 of the All India Council for Technical Education Act, 1987;
- (ii) The stipulation that Colleges must purchase e-Journals is likely to affect the fee structure;

(iii) Colleges have to obtain affiliation from the State University under The Maharashtra Universities Act, **1994** from time to time and the Board of Studies requires library facilities as a condition for affiliation.

2. The First Respondent has filed an affidavit of its Regional Officer in reply. In the affidavit it has been stated that for the forthcoming academic session **2012-2013**, uploading of the Approval Process Hand book on the web portal of AICTE was carried out and made effective from **6 October 2011**. According to the approval process as amended till date, each institute has to opt from different 'bouquets' of e-journals available for its class. The requirement to have a particular bouquet of e-journals relevant to the discipline was the outcome of a comprehensive expert exercise conducted by a high powered committee consisting of five Vice Chancellors and three Directors, cutting across disciplines. The Council at a meeting held on **13 September 2011** accepted the Report which

culminated in the policy decision reflected in Appendix 10 of the Approval Process Handbook. The AICTE has clarified that in order to ensure that the bouquets of e-Journals are available on competitive terms to institutions, AICTE conducted negotiations on the best possible rates which have the option of unlimited download for unlimited number of users for member institutions. However, the AICTE has not made it compulsory that individual institutions should subscribe to e-Journals from a particular vendor prescribed by AICTE or at a price prescribed by AICTE. The only requirement is that the institution has to be a subscriber for unlimited downloads for unlimited number of users amongst the options available from a specific programme.

3. Counsel appearing on behalf of the First Respondent has, during the course of submissions, reiterated what is stated in the affidavit and submitted that the AICTE has not transgressed the limitations on its powers under the Act.

4. The All India Council for Technical Education Act, 1987 is an Act to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. Section 10 of the Act provides that it shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards for the purposes of performing its functions under the Act. The Council may, inter alia, “promote innovations research and development in established and new technologies, generation, adoption and adaptation of new technologies to meet developmental requirements and for overall improvement of educational processes.” (clause d)

Parliament has conferred wide powers on the Council to take all such steps as it may think fit to ensure co-ordinated and integrated development of technical education and maintenance of standards. Information technology is an indispensable source of knowledge in the contemporary age. The All India Council for Technical Education as an expert body subscribes to the view that institutions must, with a view to ensuring quality education provide access to e-Journals. The decision of the Council as an expert body, cannot be questioned under Article 226 of the Constitution. The power of the Council under Section 10 is not recommendatory. Parliament having conferred a duty upon the Council, the Council must necessarily have the mandate to enforce its obligations under the Act. The Court is informed that initially, AICTE made it mandatory for institutions to purchase conventional hard copies of Journals. Presently the purchase of hard copies has been made “desirable” and therefore optional, and the saving which is generated in not being required to purchase hard copies of Journals as a mandatory requirement can well be utilised for

purchasing e-Journals. Moreover, it has been clarified on affidavit as well as before the Court that AICTE does not mandate that institutions purchase e-Journals from a particular vendor or at a particular price. Institutions have been left, if they so desire, to negotiate even better terms than those which were negotiated by AICTE. Institutions are at liberty to choose vendors who offer them the most competitive price. Counsel appearing on behalf of the AICTE has further stated before the Court that AICTE has decided not to decline renewal of approvals for academic year 2012-2013, for non-compliance of the requirement but, it is expected that all institutions must fulfill the requirement in due course. However, it has been stated that AICTE will not grant permission for additional courses or enhancement of intake capacity unless the requirement is complied with. We are of the view that there is no merit in the submission that AICTE has acted ultra vires its powers or that, the direction will amount to an insuperable financial burden on institutions.

5. The Petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

(Dr. D.Y. Chandrachud, J.)

(A. A. Sayed, J.)