

CASE NO.:
Appeal (civil) 4167 of 2003

PETITIONER:
I.I.T.T. College of Engineering

RESPONDENT:
State of H.P. & Ors.

DATE OF JUDGMENT: 08/08/2003

BENCH:
K.G.Balakrishnan & [P.Venkatarama Reddi.

JUDGMENT:

J U D G M E N T

K.G. BALAKRISHNAN, J.

Leave granted.

Heard the learned counsel for the appellant and respondents 1 to 4. This appeal is preferred by I.I.T.T. College of Engineering represented through its Officiating Chairman. The Engineering College was started by a Society, by name, International Institute of Telecom Technology Society, Kala Amb, registered under the Societies Registration Act. The Society established the Engineering College at Sirmaur District in the State of Himachal Pradesh after obtaining initial permission from All India Council for Technical Education (for short AICTE) in 1997 and 'no objection' certificate from the University and started four year degree courses in Electrical Engineering, Electronics & Communication Engineering and Computer Science & Engineering, with a maximum intake of 40 students in each discipline. The College sought permission to start a Degree course in Information Technology and extension of approval for the session 1998-99. For this purpose, an expert Team of AICTE visited the institution, on 28.3.1998. AICTE extended its approval on 31.7.1998 for the academic session 1998-99 with an intake of 140 students. The AICTE (4th respondent herein), however, did not accord its approval to the additional courses in Information Technology and Electronics and Instrumentation for the session 1998-99. The college again applied for extension of approval for the session 1999-2000 with a request for increasing intake and starting additional courses. The Expert Committee visited the institution on 16.2.1999 and recommended Information Technology as additional course with intake of 40. After considering the said report, the AICTE had accorded approval through its communication dated 27.7.1999 for the intake of 200 students including 40 in the additional course of Information Technology subject to fulfillment of norms and the conditions stipulated by the Council. However, the H.P. University, which had also sent its team for inspection in April, 1999, declined to grant its approval and affiliation for the I.T. Course. The University had also issued a press note on 12.8.1999 warning the students seeking admission to the said course. However, the students were admitted by the appellant-college on the basis of the approval granted by AICTE.

The question of extension of approval for the session 2000-2001 was again considered by AICTE in the light of the inspection reports of the Expert Committee. The AICTE, by its letter dated 24.7.2000, communicated the extension of approval with reduced intake of 160 subject to the conditions specified in Annexure-I. No approval was given for the Information Technology Course. In Annexure-I to the said letter, it was made clear that the permission for starting I.T. was withdrawn since the college had not made any attempt to provide proper infrastructure for this course. Moreover, the College Management was warned that the admissions to the existing three courses will be stopped from the next year if the deficiencies pointed out therein continued. By its communication dated 17.7.2000, the Registrar of the University advised the appellant-college to delete the IT course from the Prospectus for the academic

session 2000-2001 and to issue a public notice to that effect. Faced with these two adverse communications from AICTE and University, the appellant filed a Writ Petition (C.W.P. No. 4104 of 2000) in Delhi High Court. The High Court stayed that part of the order dated 24.7.2000 deleting the seats in IT Course. The University by its letter dated 1.12.2000 informed the appellant-college that the admission/examination forms sent by the college for holding the first semester examination in I.T. were returned. The University made it clear by its further communication dated 4.12.2000 that no student who was admitted to I.T. course shall be allowed to appear in the first semester examination in the absence of affiliation from the University. At this stage, it appears that the college had submitted an application for grant of affiliation for the course of I.T. on 11.12.2000. However, the application was returned by the University as it did not fulfill the necessary requirements. The appellant then challenged the decision of the University by filing CWP No. 956 of 2000 in Himachal Pradesh High Court. The same was dismissed as withdrawn on 4.1.2001. While so, on 27.3.2001, the Division Bench of High Court of Delhi, while admitting LPA No. 461 of 2000 filed by the State of Himachal Pradesh and H.P. University against the interim order granted on 28.7.2000, permitted the admitted I.T. students to take the examination while making it clear that no special equity will be created in their favour and it will be subject to the ultimate decision. The S.L.P. filed by the State against that order was dismissed. Surprisingly, the AICTE by its communication dated 14.6.2001, accorded approval for the academic year 2001-2002 for all the courses including IT which was withdrawn earlier, subject to the fulfillment of three conditions regarding library, physics and chemistry lab and senior faculty. However, the University suspended the affiliation granted to the college initially and directed the College Management not to make fresh admissions from the session 2001-2002.

In the meanwhile, five students of the Information Technology course filed Writ Petition No. 24 of 2001 in Himachal Pradesh High Court out of which the present appeal arises. Inter alia, they sought for directions to accord affiliation, to direct AICTE to take appropriate steps to safeguard interests of the students and to direct the College Management to comply with the directions issued by the University and AICTE. A prayer was also made that till the College Management takes steps to comply with the directions of the concerned authorities, the management and administration of the college should be taken over by a senior official-cum-administrator who shall also conduct an inquiry against the management of the college.

The High Court took the view that the approval by AICTE does not result in automatic affiliation by the university and the affiliation fell within the exclusive power of the university. As there was no affiliation or approval from the University to run the IT course, the action of the University authorities in not allowing the IT students to appear for the examination cannot be faulted. The High Court, based on the report given by the AICTE on the basis of inspection conducted on 16.8.2001 i.e., during the pendency of the writ petition, observed that the College did not possess the minimum required infrastructure as per the norms of AICTE and the college failed to comply with the conditions subject to which the approval was accorded by AICTE. The High Court also referred to the affidavit filed by the Member Secretary-cum-Officiating Chairman of AICTE, in which he stated that the college lacked basic infrastructure not only for the course of IT, but also other courses. He further stated that the Council had decided to keep the admission of fresh batch of students for the session 2001-2002 in abeyance. The High Court then observed: "The Member-Secretary probably realized albeit belatedly, that the stand taken on behalf of AICTE earlier was not befitting a responsible Council. He, therefore, tried to be rather objective and frankly admitted that the grievance of the State Authorities and University had substance."

Having commented adversely on the manner in which the college was being run and the litigative zeal of the College Management, the High Court considered it just and proper to issue certain directions in the interests of the student community and for better administration. The substance of directions are as follows:

1. The AICTE should take an appropriate decision keeping in view the

statutory provisions and various communications and reports forming part of the record.

2. Director of Technical Education, Vocational and Industrial Training, Himachal Pradesh should act as Administrator for the college and temporarily takeover the management and administration of the college and initiate steps for obtaining affiliation/extension of affiliation from the University for IT course of B.Tech.

3. He shall also comply with the relevant rules and regulations and do everything necessary to safeguard the future of the petitioners and other students. In particular, the Administrator in collaboration with respondent Nos.1-4 should take necessary steps to ensure that the students in IT, if otherwise eligible, should be adjusted in other Engineering colleges. Thus, the writ petition was partly allowed with heavy costs.

Pursuant to this order, the Director of Technical Education nominated the Joint Director of Technical Education to look after the affairs of the college. The said official is now functioning under the overall control of the Administrator. The entire management and control is now with the Administrator. Steps were taken to see that the students of IT course were allocated seats in other colleges in adjoining States. The IT course has been discontinued at present.

The counter affidavit filed by the Additional Secretary (TE) gives an elaborate account of various steps taken by the Administrator to set right the mal-administration, the improvement of facilities and service conditions of staff and the refund of security deposit amount to a substantial extent. It is also stated that some of the deficiencies pointed out by the Committee constituted under the directions of this Court have been rectified and in due course of time, other steps will also be taken in the light of the financial position. It is also averred in the counter affidavit that because of various improvements made by the Administrator, AICTE and H.P. University gave approval for the year 2002-2003 to run the courses (other than IT). For granting approval for the ensuing year, the AICTE team already inspected the college.

The inspection committee constituted as per the interim order of this Court focused its attention on seven aspects, namely, space, laboratories, staff, library, facilities like hostel, games etc., interaction with students and financial discipline. The committee commented that the infrastructure, laboratories and equipment were deficient in many respects and the salary and other conditions of service were not satisfactory. However, the committee reported certain improvements and works in progress after the takeover of the management by Administrator. In the course of interaction with students, it was noticed that there was marked positive change in many respects and hostel life was more satisfying and secure.

The learned senior counsel appearing for the petitioner was strident in his criticism of the reports furnished by the inspection team of AICTE during the pendency of the writ petition and the latest inspection report submitted by a committee headed by Director, IIT during the pendency of this SLP. It is his contention that the former report and the volte face adopted by AICTE in its subsequent affidavit in the High Court was the result of unwarranted intervention by the High Court and that the inspection was slipshod lasting only for a few minutes. It is submitted that the material facts noted in the two inspection reports are opposed to the ground realities and the approach was not fair. Certain photographs were produced in support of his contention. It is pointed out that the previous reports of AICTE were not referred to by the two inspection teams and there was no specific reference to the 'norms of AICTE' which are not satisfied. The learned counsel repeatedly emphasized that the infrastructural facilities and the establishment the appellant has are far superior to many other colleges for which the affiliation/approval was granted and if reasonable time was granted, the defects could have been rectified. The learned senior counsel also made it clear that at present the appellant is not interested in starting the IT course having regard to various developments that have taken place and it would make a fresh approach to the AICTE and University as and when it intends to restart the course. Above all, the learned counsel submitted that the direction of the High Court appointing an Administrator and taking over the management is without authority of law and even opposed to the concept of autonomy of private unaided colleges stressed by the larger Bench of this Court in T.M.A. Pai

Foundation vs. State of Karnataka [(2002) 8 SCC Page 481]. He drew our attention in particular to paragraphs 50, 53, 55 & 68. Reliance has also been placed on the dicta laid down in *Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education Department* [(2000) 5 SCC 231] at para 28. The learned counsel finally submitted that the High Court clearly exceeded its jurisdiction under Article 226 of the Constitution.

It is not possible for us to discredit the two inspection reports—one by the AICTE and the other by the team headed by the Director, IIT. No doubt there is an apparent variation between the observations made in these two reports and the earlier reports of AICTE, as well as the report of CSIO which was prepared at the instance of the appellant. In fact, this Court directed constitution of an independent team of experts when it was brought to the notice of the Court that there were conflicting reports. Such report should be given its due weight. Even though some of the comments, especially with regard to the buildings, are too widely made and even if there are some inaccuracies here and there as pointed out by the learned counsel for the appellant, the report cannot be simply ignored. Even if basic infrastructure in the form of buildings and land is available, that is not all. The latest report of the team constituted under the orders of this Court as well as the report of AICTE furnished to the High Court and the earlier report of the University inspection team unmistakably indicate that there were deficiencies in many respects, especially in regard to IT course and all was not well with the functioning of the college. However, there seems to be good deal of improvement after the Administrator took over. The obligation to make up the deficiencies and to improve the general academic atmosphere lay on the shoulders of the College Management, but unfortunately, no positive steps were taken. Undoubtedly, there was discontentment amongst the students and the teachers. The High Court, taking stock of this factual situation and in order to ensure better administration and management, thought it fit to appoint an Administrator. However, the High Court apparently did not realize that there was no provision under which the management of an unaided private college could be taken over by the Administrator. In spite of our repeated query, none of the counsel was able to point out any provision either under the AICTE Act or the HP Education Act or University Act permitting the authorities to take over the management of institution. However laudable the objective behind the steps taken by the High Court, it cannot be justified under law. The imposition of an Administrator to take over the reins of administration for an indefinite point of time would undoubtedly amount to interference with the right of administering and managing a private educational institution which is now recognized to be a part of the fundamental right under Article 19(1)(g) as held by this Court in *TMA Pai Foundation Vs. State of Karnataka* (Supra). It would go against the principle of autonomy in regard to administration which has been emphasized by this Court in the said case. In the circumstances, the jurisdiction under Article 226 could not have been exercised by the High Court to oust the private management and transfer the management to a Court-appointed official.

Directions to check mal-administration in conformity with the provisions of relevant statutes is one thing and deprivation of management to the private body which established the institution is another thing. The latter should not have been resorted to without authority of law. We have, therefore, no option but to set aside the order of the High Court appointing the Administrator to manage the affairs of the college. At the same time, we are of the view that certain checks and balances are needed to ensure proper administration of the college in the overall interest of the students. While allowing the previous Management (Society) to resume management, the present nominee of the Administrator (Joint Director, Technical Education) shall continue to play a role in overseeing the functioning of the college and guiding the Managing Committee at least for a year. It is to be noted that the Director, Technical Education is also one of the members of the Governing Body. He is not a stranger to the managing body of the College. If so, he can continue to play an active role if not in the capacity of the Director, in his capacity as a member of the Governing Body. We are anxious to see that the process of improvements brought about by the Administrator and his nominee should not come to a halt and the students should not feel insecure.

Before concluding, we may refer to the argument of the learned senior

counsel for the appellant that in view of what has been laid down in *Jaya Gokul Educational Trust Vs. Commissioner & Secretary to Government Higher Education* [(2000) 5 SCC 231], the University should not have withheld the affiliation inspite of the approval given earlier by AICTE. It is contended that the provisions of the AICTE Act and Regulations will prevail over the provisions if any in the University Act or State Act which are inconsistent with the provisions of the former Act. This contention need not be considered in view of the latest stand taken by AICTE and the approval/affiliation given by AICTE as well as University during the tenure of Administrator for courses other than IT.

In the result, the appeal is disposed of with the following directions:--

The management and administration of the college shall be restored to the appellant within a month. However, to protect the interests of the students by keeping up the tempo of improvements made by the Administrator and to have a check against mal-administration at least for sometime, we direct that the present nominee of the Administrator, namely, the Joint Director of Technical Education should be allowed to oversee the running of the institution and give necessary instructions to the Management in the interests of creating proper academic atmosphere in the campus, while keeping in view the financial position and the obligations to be discharged by the Management to maintain necessary standards. The said official should be allowed to have access to material information including the financial position and transactions. In regard to admissions for the current year i.e., for the year 2003-2004, the list of admissions shall be finalized only after consultation with the said official and any objections pointed out by him should be duly considered by the Management. Nothing should be done by the Management to disturb the existing conditions of service of teaching and non-teaching staff to the detriment of such staff. Whatever amount that was withdrawn just before the pronouncement of the judgment of the High Court and subsequent to the judgment, shall be put back in the bank under intimation to the Joint Director, Technical Education. In case any irregularities or instances of mismanagement or non-compliance with the directives given herein are noticed, the Director of Technical Education may approach the High Court for appropriate orders. It is open to the AICTE/University authorities to call upon the petitioner to remedy the deficiencies that may be persisting at the time of granting affiliation/approval in the future and in case of non-compliance, to take such action as is open to them under law. The need or otherwise of the nominee official (Joint Director, Technical Education) to continue to be associated with the administration on the lines indicated supra may be reviewed by the High Court after the expiry of at least one year.

The operative part of this judgment was pronounced on 9th May, 2003.
This detailed judgment with reasons is now pronounced.