

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR MINORITY EDUCATIONAL
INSTITUTIONS

Case No. 1663 of 2012

In the matter of:

1. Brown Hills College of Engineering & Technology
Vill. Dhauj, Dist. Faridabad, Haryana
Run by Al-Falah Charitable Trust
274- Jamia Nagar
Okhla, New Delhi – 110 025
Through its Chairman, Governing Board

..... Petitioners

Versus

1. The State of Haryana
Through
 - A. The Financial Commissioner & Principal Secretary
(Technical Education Department)
New Secretariat, Sector 17
Chandigarh
Also as Chairman
Haryana State Board of Technical Education
 - B. The Director General
Technical Education Department
Bays No. 7 to 12, Sector 4

Panchkula
Haryana
Also as Secretary
Haryana State Board of Technical Education

2. The Additional Secretary
Technical Education Department
Bays No. 7 to 12, Sector 4
Panchkula
Haryana
3. Member Secretary
All India Council for Technical Education (AICTE)
7th Floor, Chanderlok Building
Janpath, New Delhi – 110 001

... Respondents

ORDER

(Delivered on the 27th day of September, 2012)

Justice M.S.A. Siddiqui, Chairman

Malicious intent with a streak of vindictiveness is what this petition smacks of. The factual matrix as uncurtained is that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution. Approved by the AICTE, the petitioner college affiliated to the Maharishi Dayanand University,

Rohtak, Haryana vide Annexure P-2. In the month of October 2011, the AICTE announced online approval process for extension of approval , increase in intake, starting diploma courses in second shift in the engineering colleges by issuing approval process handbook 2012-13. Accordingly, on 3.1.2012, the petitioner college applied online to AICTE for starting diploma courses in second shift in mechanical engineering and civil engineering with an intake of 60 seats each. By the letter dated 10.5.2012, the AICTE granted approval to the petitioner college for starting the aforesaid diploma courses vide letter dated 10.5.2012 (Annexure P3). Thereafter on 31.5.2012, the petitioner college applied to the Financial Commissioner and Principal Secretary, Technical Education department, government of Haryana (Respondent No. 1B) for grant of affiliation for the aforesaid courses duly approved by the AICTE. Along with the said application, the petitioner college deposited the processing fee of Rs. 50,000 and the affiliating fee of Rs. 30,000 with the Additional Secretary, Haryana State Board of Technical Education (Respondent No. 2) vide Annexure P-5. Thereafter, respondent No. 1-B constituted a 3 member inspection committee consisting of experts for verifying the availability of infrastructure and instructional facilities in the petitioner college vide letter dated 19.6.2012 (Annexure P-6). On 14/15.7.2012, the inspection committee inspected the petitioner college and on being satisfied

with the availability of the said facilities in the college recommended for grant of affiliation. It is alleged that on 13.8.2012, the petitioner college was verbally informed about the rejection-of its application for grant of affiliation on the basis of the letter dated 12.4.2012 of the respondent No. 1-B (Annexure P-7). On 13.8.2012, the petitioner college submitted a representation to the Respondent No. 2, requesting him to communicate the decision taken on the application filed for grant of affiliation (Annexure P-8). Surprisingly, the said representation did not evoke any response from the respondents. It is also alleged that the petitioner college has all the infrastructural and instructional facilities for the courses approved by the AICTE and as such it is entitled for grant of affiliation. It is further alleged that the petitioner college is the only Muslim minority college in Haryana imparting diploma courses and the impugned action of the respondents in not granting affiliation to the petitioner college for the courses approved by the AICTE is clearly violative of the educational rights guaranteed under Article 30(1) of the Constitution.

The petition has been resisted by the respondent on the ground that the petitioner's application for grant of affiliation was rejected on the ground of non-availability of infrastructural facilities in accordance with the norms prescribed therefor by the AICTE vide

order dated 14.8.2012 (Annexure R-1). It is also alleged that the application submitted by the petitioner was incomplete as being violative of Clause 3.6 of Approval Process Handbook issued by the AICTE. It is further alleged that the respondent had constituted a committee of experts from PEC University of Technology, Chandigarh, Kurukshetra University, Guru Jambheshwar university of Science and Technology, Hissar, YMCA University of Science and Technology, Faridabad, National Institute of Technical Teachers Training and Research, Sector 26, Chandigarh and MDU Rohtak for verifying whether the petitioner college has fulfilled the conditions mentioned in the approval letter issued by the AICTE. The Committee inspected the petitioner institution and found certain deficiencies as per norms prescribed by the AICTE vide report (Annexure R-2). It is further alleged that on the basis of the report of the Expert Committee, the respondent rejected the petitioner's application for grant of affiliation. It is alleged that the AICTE has not taken into consideration of the policy decision of the State Government (Annexure R-5) before granting approval to the petitioner college for starting diploma courses. It is further alleged that since the existing intake capacity of the petitioner institution has not been fully utilized and there is no need for further increase in intake capacity as per the admission chart issued by the Haryana

State Counseling Society, the present petition is liable to be dismissed on this count alone.

At the outset we make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The statement of objects and reasons accompanying the Bill clearly shows the object for constitution of this Commission and it was specifically mentioned therein that the Commission shall have jurisdiction to decide the disputes relating to affiliation of colleges covered under Article 30(1) of the Constitution. At this juncture, we may usefully excerpt the Statement of Objects and Reasons of the Bill, which are as under :-

“In one of the Sections of the National Common Minimum Programme, there is a provision to establish a Commission for Minority Educational Institutions (hereinafter referred to as the National Commission) that will provide direct affiliation for minority professional institutions to Central Universities. This long felt demand of the Minority communities was also underscored in a series of meetings held by the Ministry of Human Resource Development with educationists, eminent citizens and community leaders associated with the cause of Minority education. Among the various issues

raised by the representatives of the Minority communities was the difficulty faced by them in establishing and running their own educational institutions despite the Constitutional guarantees accorded to them in this regard. The major problem was the issue of securing affiliation to a university of their choice. The territorial jurisdiction of the State Universities, and the concentration of minority populations in some specific areas invariably meant that the institutions could not avail the opportunity of affiliation with the universities of their choice.

2. Subsequently, in a meeting of the National Monitoring Committee for Minority Education held on August 27, 2004, similar views were voiced by many experts. Participants from the various minority communities affirmed the need to provide access to such affiliation in view of the often restrictive conditions imposed by the existing statutes of the Universities, relating to the affiliation of such institutions. They felt that these conditions affected the rights granted to them on account of their Minority status. The fact that there was no effective forum for appeal and quick redressal only aggravated the sense of deprivation of the minority communities.

3. in view of the commitment of the Government in the National common Minimum Programme, the issue of setting up of a

National Commission was a matter of utmost urgency. As the Parliament was not in session and in view of the considerable preparatory work that would be involved to make the national commission's functioning effective on and from the next academic session, recourse was taken to create the national Commission through promulgation of the national commission for Minority Educational Institutions Ordinance, 2004 on 11th November, 2004.

4. The salient features of the aforesaid ordinance are as follows:-

- (i) It enables the creation of a National Commission for Minority Educational Institutions;
- (ii) It creates the right of a minority educational institution to seek recognition as an affiliated college to a Scheduled University, notwithstanding anything contained in any other law for the time being in force;
- (iii) It allows for a forum of dispute resolution in the form of a Statutory Commission, regarding matters of affiliation between a minority educational institution and a Scheduled University and its decision shall be final and binding on the parties;

- (iv) The Commission shall have the powers of a civil court while trying a suit for the purpose of discharging its functions under it, which would provide the decisions of the Commission the legal sanction necessary for such purpose; and
- (v) it empowers the Central Government to amend the Schedule to add in, or omit from any University.

5. The Bill seeks to replace the above Ordinance.”

The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the Statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation and the evil which the statute was sought to remedy. However, judicial notice can be taken of the factors mentioned in the Statement of Objects and Reasons and of such other factors as must be assumed to have been within the contemplation of the Legislature when the Act was passed. If the provisions of the National Commission for Minority Educational Institutions Act, 2004 (for short

the Act) are interpreted keeping in view the background and context in which the Act was enacted and the purpose sought to be achieved by this enactment, it becomes clear that the 'Act' is intended to create a new dispensation for expeditious disposal of cases relating to grant of affiliation by the affiliating universities, violation/deprivation of educational rights of the minorities enshrined in Article 30(1) of the Constitution, determination of Minority Status of an educational institution and grant of NOC etc. This Commission is a quasi-judicial tribunal and it has been vested with the jurisdiction, powers, and authority to adjudicate upon the disputes relating to grant of affiliation to the colleges covered under Article 30(1) of the Constitution and the rights conferred upon the minorities under the Act without being bogged down by the technicalities of the Code of Civil Procedure. Thus, the Commission enjoys all trappings of a Court.

Article 30(1) of the Constitution gives the minorities a fundamental right to establish and administer educational institutions of "their choice". The rationale behind Article 30(1) of the Constitution is to give protection to minorities to run educational institutions of their choice. These rights are protected by a prohibition against their violation and are backed by a promise of enforcement. The prohibition is contained in Article 13, which bars the State from

making any law or rule or regulation abridging or limiting any of the fundamental rights guaranteed under Chapter III of the Constitution and threatens to veto any law, rule or regulation found inconsistent with.

In the case of Ahmedabad St. Xavier's College Society Vs. State of Gujarat AIR 1974 SC 1389, their lordships of the Supreme Court attributed the real reason for Article 30(1) of the Constitution "to the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separated. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole."

In Re: Kerala Education Bill (supra) S.R. Das C.J. observed as under:

“The key to the understanding of the true meaning and implication of the article under consideration are the words ‘of their choice’. It is said that the dominant word is ‘choice’ and the content of that article is as wide as the choice of the particular minority community may make it.”

In St. Stephens College Vs. University of Delhi (1992) 1 SCC 558, the Supreme Court has observed that “the words ‘of their’ ‘choice’ in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes.”

At this juncture, it would be useful to excerpt the following observations of their Lordships of the Supreme Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) :

“.....The object underlying article 30(1) is to see the desire of minorities being fulfilled that their children should be brought up properly and efficiently and acquire eligibility for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering public services, educational institutions imparting higher instructions including general secular education. Thus, the twin objects sought to be achieved by Article 30(1) in the interest of minorities are:

- i) To enable such minority to conserve its religion and language, and ii) to give a thorough, good general education to the children belonging to such minority. So long as the institution retains its minority character by achieving and continuing to achieve the above said two objectives, the institution would remain a minority institution.”

The right to establish educational institutions “of their choice” must, therefore, mean right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions (See AIR 1958 SC 956). At present, the situation is such that an educational institution cannot possibly hope to survive and function effectively without recognition, nor can it confer degrees without affiliation to a university. Although minorities establish and run their educational institutions with a view to educate their children in an atmosphere congenial to the conservation of their language or culture, yet that is not their only aim. They also desire that their students are well-equipped for useful career in life.”

Article 30(1) is intended to enlist confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institutions of their choice. Article 30(1), though styled as a right, is more in the nature of protection for minorities and it was enacted as a guarantee to the

minorities. No Government can destroy the said fundamental right under the garb of a policy decision.

It is beyond the pale of controversy that the petitioner college is a minority educational institution covered under Article 30(1) of the Constitution and it is the only college of Engineering and Technology of the State of Haryana established by the Muslim Community. It is also undisputed that the petitioner college has been approved by the AICTE and is affiliated to the Maharishi Dayanand University, Rohtak, Haryana; that in the month of October, 2011, the AICTE announced online approval process for extension of approval, increase intake, grant of diploma courses in second shift in existing engineering colleges by issuing approval process Handbook 2012-13, that in the approval process, the AICTE allowed existing Engineering Colleges to start two divisions of Diploma courses of 60 students each; that on 3.1.2012, the petitioner college applied online to the AICTE for starting of diploma courses in second shift in Mechanical and civil engineering; that the AICTE had granted approval to the petitioner college for starting diploma courses in the second shift in Mechanical Engineering with an intake capacity of 60 seats and in civil engineering also with intake capacity of 60 seats vide letter of approval dated 10.5.2012 (Annexure P-3); that pursuant to the said approval letter the petitioner college applied to

respondent No. 1B and respondent No. 2 for grant of affiliation for the aforesaid courses on 31.5.2012; that the petitioner college had deposited the processing fee of Rs. 50,000 and the affiliation fee of Rs. 30,000 with the respondent No 2 for grant of affiliation vide Annexure P-5; that on 14/15th July, 2012 the Inspection Committee constituted by the respondent No. 1 B inspected the petitioner college and that on 10.8.2012, the application of the petitioner college for grant of affiliation was rejected .

It is apt to note here that pursuant to the approval granted by the AICTE for starting diploma course in the second shift, the petitioner college applied to the respondents No. 1B and 2 for grant of affiliation. It is undisputed that the AICTE is the regulatory authority for technical education and in such a case the role of the university or affiliating authority is limited to the extent of granting affiliation on the basis of the approval granted by the AICTE for starting the diploma course in the second shift. The university or the affiliating authority cannot sit over the judgment of the AICTE. None of the said authority can assume the role of the controlling authority of the AICTE. In the instant case respondents No. 1-B and 2 have attempted to transgress their jurisdiction. As the factual narration further unfolds, after receiving the petitioner's application for grant of affiliation, respondent No. 1-B constituted a committee consisting of

experts for evaluating the order of the AICTE granting permission for starting diploma courses in the second shift in accordance with the intake capacity mentioned therein. This is legally impermissible as respondent No. 1-B has attempted to overreach the AICTE which is the only regulatory authority for technical education.

It is also relevant to mention here that the petitioner college has specifically pleaded that on inspection, the said committee was fully satisfied with the infrastructural and instructional facilities for the diploma course approved by the AICTE. The respondents No. 1-B and 2 have denied the said fact. It is alleged that on inspection, the committee noted certain deficiencies as per report Ex.P-2 and on the basis of the said report, the petitioner's application for affiliation was rejected.

It needs to be highlighted that Annexure R-2 is not the report of the Expert committee appointed by respondent No. 1-B. On the contrary, the Annexure R-2 is the letter of the Financial Commissioner and Principal Secretary to the Government of Haryana addressed to the Chairman AICTE. In the instant case arguments were heard on 20.9.2012 and the case was reserved for judgment. Today the Reader produced a letter dated 21.9.2012 of the respondent No. 2 enclosing a xerox copy of the inspection report

of the expert committee. It needs to be highlighted that the committee has reported that all essential requirements including time table are available. In view of the said report the contention of the respondents relating to some deficiencies alleged to have been found by the expert committee has to be rejected. The report of the expert committee clearly records that all the infrastructural and instructional facilities are available. In view of the said report there was no justification for the respondents to reject the application of the petitioner college for grant of affiliation. That being so, we find and hold that the petitioner college has all the infrastructural and instructional facilities for starting diploma courses in mechanical and civil engineering in accordance with the letter of approval issued by the AICTE.

It is undisputed that the petitioner college had deposited Rs. 50,000 as processing fee and Rs. 30,000 as affiliation fee. At this juncture, learned counsel for the petitioner has contended that the impugned action of the respondents would not only reflect the non-concern for a minority educational institution, whose fundamental right under Article 30(1) has been violated, but the manner in which its application for affiliation has been rejected clearly exhibits the imprudent perception and the heart of stone of the State. As demonstrated above, the AICTE had granted approval for starting

diploma course in mechanical and civil engineering in second shift on the basis of availability of infrastructural and instructional facilities in the petitioner college and the respondents had arbitrarily rejected its application for grant of affiliation on a non-existent ground. Although Article 30(1) of the Constitution does not speak of the conditions under which the minority institutions can be affiliated to a university or statutory authority yet the Article by its very nature implies that where an affiliation is asked for, the authority concerned cannot refuse the same without sufficient proven reasons. It has been held by the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka (2002) 8 SCC 481 that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. It is well settled that any law or executive direction which infringes the substance of the right guaranteed under Article 30(1) is void to the extent of infringement. This is the mandate of Article 13 of the Constitution. The fundamental right guaranteed under Article 30(1) is intended to be effective and should not be whittled down by any administrative exigency. In the instant case, the petitioner's application for affiliation has been rejected arbitrarily on a non-existent ground and the manner in which it has been rejected clearly reflects the deliberate insensitive approach to the entire fact situation. The impugned action of the respondents in rejecting the petitioner's application for

grant of affiliation completely destroys the institutional autonomy and the very objective of establishment of the petitioner college.

For the reasons stated above, the impugned order dated 10.8.2012 is hereby set aside and the respondents are directed to grant affiliation to the petitioner college for the diploma course approved by the AICTE. This case be included in the Report of the Commission to be placed on the floor of both the Houses of the Parliament.

JUSTICE M.S.A. SIDDIQUI
CHAIRMAN

DR. MOHINDER SINGH
MEMBER

DR. CYRIAC THOMAS
MEMBER

ZAFAR AGHA
MEMBER

27 September 2012