

2017 (3) ALT 224 (D.B.)

HIGH COURT OF JUDICATURE AT
HYDERABAD FOR THE STATE OF
TELANGANA AND THE STATE OF
ANDHARA PRADESH

V. RAMASUBRAMANIAN and
Ms. J. UMA DEVI, JJ.

Writ Petition No.1879 of 2017 –
Decided on 06-04-2017.

Joseph Sriharsha and Mary Indraj
Educational Society, rep. by its
Hon. Chairman and Correspondent,
Dr. Rev. K.V.K. Rao and others

v.

Union of India, Ministry of Human
Resource Development, New Delhi rep. by
its Secretary and others

ALL INDIA COUNCIL FOR
TECHNICAL EDUCATION ACT, 1987,
Section 10 (1)(i) — Norms and standards
laid down under Section 10 (1)(i) of the
Act — Case of petitioners, many
institutions not able to comply with 100%
of the norms stipulated by the regulatory
agencies and seek approvals by
submitting incorrect information and,
therefore, they seeking issuance of a writ
of *mandamus* to declare the norms and
standards laid down by AICTE as
arbitrary and illegal offending Articles
14 and 30 (1) of the Constitution — Held,
what is prescribed by AICTE is bare
minimum that every institution is
supposed to fulfill — If they cannot fulfill
the same on account of financial
incapacity, those institutions have no right
to exist — The insistence of the AICTE
for filling up the faculty for the 2nd, 3rd
and 4th years of the course of study, even
when there are unfilled divisions in the
1st year, cannot be taken exception to —
Students admitted to the 1st year join the
course on the strength of the promises

held out by the educational institutions
that they have the required faculty in
possession — This Court cannot expect
the students to join the first year of the
course of study with the mere hope and
expectation that, as and when they move
to the 2nd, 3rd and 4th years of the course of
study, the managements will fill up the
vacancies — Similarly, the fixation of
student-teacher ratio and the prescription
of faculty cadre ratio are all matters of
policy determined by experts in the field
of education — The determination of such
norms and standards by an expert body
cannot be interfered with by this Court,
merely on the ground that such strict
norms will lead to the financial
bankruptcy of some institutions — This
Court finds no legally sustainable ground
of challenge to the norms and standards
statutorily laid by AICTE — Writ petition
dismissed. (Paras 13 to 15)

Quotable points: (1) *AICTE prescription –
What is prescribed by AICTE is bare minimum
that every institution is supposed to fulfill.*

(2) *No right to exist – If they cannot fulfill
the same on account of financial incapacity,
those institutions have no right to exist.*

(3) *Fixation of student-teacher ratio – The
fixation of student-teacher ratio and the
prescription of faculty cadre ratio are all matters
of policy determined by experts in the field of
education.*

(4) *Determination of norms and standards
– The determination of such norms and
standards by an expert body cannot be
interfered with by this Court, merely on the
ground that such strict norms will lead to the
financial bankruptcy of some institutions.*

CASES REFERRED:

1. TMA Pai Foundation v. State of Karnataka:
AIR 2003 SC 355. (Para 11)

2. Islamic Academy of Education v. State of Karnataka: (2003) 6 SCC 697. (Para 11)
3. P.A. Inamdar v. State of Maharashtra: 2005 (5) ALT 1 (SC). (Para 11)

Mr. Sricharan Telaprolu, Counsel for the Petitioner.

Mr. K. Ramakanth Reddy, Counsel for Respondent No.2.

Mr. T. Rajashekara Rao G.P. for Higher Education for (Telangana) for the Respondent No.3.

Mr. A. Abhishek Reddy, Counsel for Respondent Nos.5 and 6.

ORDER

(Per V. Ramasubramanian, J.)

A group of minority institutions offering professional and other courses have come up with the present writ petition challenging the norms and standards laid down by the All India Council for Technical Education, under Section 10(1)(i) of the AICTE Act, 1987.

2. Heard Mr. Sricharan Telaprolu, learned counsel for the petitioner. Mr. K. Ramakanth Reddy, learned counsel takes notice for the 2nd respondent, Mr. T. Rajasekhara Rao, learned Government Pleader for Higher Education takes notice for State of Telangana and Mr. A. Abhishek Reddy takes notice for respondents 5 and 6.

3. The grievance of the petitioner, as seen from the averments contained in the affidavit filed in support of the writ petition appears to be that due to the norms and standards for course curriculum, physical and infrastructural facilities, staff patterns, staff qualifications, quality instructions, assessment and examinations laid down by the AICTE under Section 10(1)(i) of the AICTE Act, 1987, the Educational Institutions across the India are facing lot of

problems and resorting to unethical practices for securing various approvals and that these institutions are under constant threat of surprise inspections, random inspections and complaint inspections by the regulatory agencies. The case of the petitioner is that many institutions are not able to comply with 100% of the norms stipulated by the regulatory agencies and that therefore these institutions seek approvals by submitting incorrect information. Therefore, the petitioners have come up with the above writ petition seeking to issue a writ of Mandamus to declare the norms and standards laid down by AICTE as arbitrary and illegal offending Articles 14 and 30(1) of the Constitution. The petitioners also pray for certain other reliefs. Instead of extracting in their own language, the reliefs sought by the petitioners in the writ petition, it would be better, for easy appreciation, to present in simple terms, the reliefs sought by the petitioners as follows:

(a) To declare the norms and standards laid down by the AICTE uniformly for all institutions without prescribing norms commensurate with the fee fixed by the Admission and Fee Regulatory Committees of the States as illegal and arbitrary;

(b) To direct AICTE to fix the norms depending upon the cost and tuition fee prescribed by taking into consideration the paying capacity of the majority population of the country;

(c) To declare as illegal, certain prescriptions contained in Appendix 7 and 8 of the Approval Process Hand Book 2017-18, relating to (i) the faculty for 2nd, 3rd and 4th years of B.Tech/B.Pharmacy, 2nd and 3rd years of Polytechnic and MCA and 2nd year of M.Tech/MBA; (ii) Teacher student ratio of 1:15 for certain courses and 1:12 for

certain courses; (iii) faculty cadre ratio of 1:2:6 for Undergraduate courses and 1:2 for Post Graduate Courses; and (iv) exorbitant pay scales and service conditions for teaching and non-teaching staff without taking into account the fee fixed by the State Level Committees;

(d) To grant consequential reliefs of approval/extension of approval without insisting on the prescriptions contained in Appendix 7 and 8.

4. From the reliefs sought by the petitioners, in the back ground of the averments contained in the writ petition, it is clear that the petitioners are finding it economically unviable to run the educational institutions imparting higher professional education. The grievance of the petitioners in simple terms is that since the fee that could be charged by the institutions, is regulated by the Admission and Fee Regulatory Committee, it is impossible for the educational institutions to maintain the prescribed norms including the cadre strength of faculty even for the 2nd, 3rd and 4th years of the course of study, for the unfilled approved divisions of the 1st year. The petitioners also contend that it is impossible for them to maintain the teacher student ratio as prescribed by AICTE and also the faculty cadre ratio of 1:2:6 for Under Graduate courses and 1:2 for Post Graduate courses.

5. Though the petitioners have extensively referred to the observations of the Supreme Court in various cases and have also referred to the situation prevailing in various State-run universities, we do not think that we need to undertake a journey through all that. This is for the simple reason that what is under challenge before us is a set of norms and standards laid down by

AICTE, in exercise of the power conferred by Section 10(1)(i) of the AICTE Act, 1987. Therefore, the challenge to the exercise of a power conferred by the statute, should be confined only on limited grounds.

6. It is needless to point out that All India Council for Technical Education was originally set up even before independence, in the year 1945, but only as a National Expert Body for advising the Governments for ensuring coordinated development of technical education in accordance with the approved standards. But after more than 35 years of experience with the working of the Council, a need was felt that the Council should be vested with statutory powers to maintain standards of technical education. Therefore a National Working Group was set up in November, 1985. The Committees recommendations came at a time when the National Policy on Education, 1986 was also promulgated. Therefore, the Parliament enacted the All India Council for Technical Education Act, 1987. The statement of objects and reasons for the Act shows that the Act sought to provide statutory powers to AICTE to ensure;

- (i) proper planning and coordinated development of the technical education system throughout the country,
- (ii) promotion of qualitative improvement of technical education in relation to planned quantitative growth, and
- (iii) regulation of the system and proper maintenance of norms and standards.

7. The preamble to the Act also reiterates that the Act was intended to confer powers upon the Council for the regulation and proper maintenance of norms and standards in the technical education.

8. Even admittedly the Council has the power, nay, duty, to ensure coordinated and

integrated development of technical and management education and maintenance of standards, as seen from Section 10(1). For the purpose of performing the functions under the Act, the AICTE is vested with the powers listed in clauses (a) to (v) of subsection (1) of Section 10. Clause (i) relates to laying down of norms and standards for courses, curricula, physical and instructional facilities, staff pattern, staff qualifications, quality instructions, assessment and examinations.

9. The validity of Section 10(1) of the Act is not under challenge before us. It is admitted by the petitioners that AICTE has the power statutorily conferred upon them to lay down norms and standards.

10. Once it is conceded that there was a power and that what was done by the 2nd respondent was validly done in exercise of such a power and that the procedure for the exercise of such power was followed, then the area of judicial scrutiny available for this Court to examine every one of those norms, is extremely circumscribed. Keeping this limited scope available for us to test the validity of the norms and standards laid down by the AICTE, if we come back to the grounds of challenge, it is seen that the only ground on which the petitioners assail the norms and standards is that they cannot be uniformly fixed for all types of institutions located at all places, without taking note of regional imbalances, non-availability of faculties and the restrictions with regard to the fees that could be charged from the students. In other words, the challenge is on the ground of economic unviability. But we do not think that educational institutions can now challenge the statutory prescriptions on the ground of economic unviability, since the educational institutions have already taken a position that the right to run the

educational institutions is traceable to Article 19(1)(g) of the Constitution. Once the educational institutions, by a conscious choice, have chosen to treat what they are doing as akin to trade, commerce or industry, it will not be open to them to challenge the regulatory measures imposed by law as making the institutions unviable economically.

11. The Admission and Fee Regulatory Committees constituted by the State Governments of Telangana and Andhra Pradesh are in pursuance of the directions issued by the Honble Supreme Court in *TMA Pai Foundation v. State of Karnataka* (1) AIR 2003 SC 355, *Islamic Academy of Education v. State of Karnataka* (2) (2003) 6 SCC 697 and *P.A. Inamdar v. State of Maharashtra* (3) 2005 (5) ALT 1 (SC) = (2004) 8 SCC 139. It is not as though the Admission and Fee Regulatory Committees fix the fees unilaterally for all educational institutions. Every educational institution is given an opportunity to present its case and it is only based upon the material produced by each institution, the fee to be charged by every institution is fixed by the Committee.

12. Our experience shows that to some extent, the Fee Regulatory Committees, at least in respect of engineering courses, have become redundant. Thousands of seats in some disciplines in engineering colleges go begging every year without takers. Therefore, even if the institutions offer these courses free of cost, it may not be possible for them to catch the students. Eversince the educational institutions converted education into a big business venture, market forces themselves have put them in place. Therefore, economic unviability can never be a basis for challenging the fixation of norms.

13. The arguments based upon Article 14 are stated only to be rejected. What is prescribed by AICTE is bare minimum that every institution is supposed to fulfill. If they cannot fulfill the same on account of financial incapacity, those institutions have no right to exist. It is a strange argument to say that norms and standards of education should vary depending upon the fees allowed to be charged.

14. The insistence of the AICTE for filling up the faculty for the 2nd, 3rd and 4th years of the course of study even when there are unfilled divisions in the 1st year, cannot be taken exception to. Students admitted to the 1st year join the course on the strength of the promises held out by the educational institutions that they have the required faculty in possession. We cannot expect the students to join the first year of the course of study with the mere hope and expectation that as and when they move to the 2nd, 3rd and 4th years of the course of study, the managements will fill up the vacancies.

15. Similarly, the fixation of student teacher ratio and the prescription of faculty cadre ratio are all matters of policy determined by experts in the field of education. The determination of such norms and standards by an expert body cannot be interfered with by this Court, merely on the ground that such strict norms will lead to the financial bankruptcy of some institutions. Therefore in fine, we find no legally sustainable ground of challenge to the norms and standards statutorily laid by AICTE. Hence the Writ Petition is dismissed.

16. As a sequel, the miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

2017 (3) ALT 228

HIGH COURT OF JUDICATURE AT
HYDERABAD FOR THE STATE OF
TELANGANA AND THE STATE OF
ANDHRA PRADESH

U. DURGA PRASAD RAO, J.

C.C.C.A. No.57 of 1999 –
Decided on 28-02-2017.

Seelam Mallaiah (died) per LRs. and others

v.

**P. Narasinga Rao (died) per LRs.
and others**

**SPECIFIC RELIEF ACT, 1963,
Section 9 — Suit (O.S. No.630 of 1988)
for specific performance of agreement of
sale — Case of plaintiffs, defendant is the
absolute owner of suit schedule property;
he entered into an agreement of sale
(Ex.A-1) with them in respect of suit
schedule property for total consideration
of ₹ 1,80,000/- and received ₹ 1,40,000/-
towards advance, agreeing to receive
balance amount of ₹ 40,000/- at the time
of registration — Defendant evicted the
tenants and delivered physical possession
of the suit schedule property to the
plaintiffs — Since then, plaintiffs are in
possession and enjoyment of the same —
Defendant tried to alienate the suit
schedule property to third parties —
Plaintiffs issued a notice to the defendant
asking him to execute a registered sale
deed stating that they were ready and
willing to pay the balance sale
consideration at the time of registration
— But, there was no response from the
defendant — When the defendant tried
to dispossess them from the suit premises,
they filed O.S. No.901 of 1995 for
perpetual injunction and also filed I.A.
No.275 of 1988 for interim injunction,
which was granted — Despite injunction**