

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.15859 of 2023

**CALCUTTA INSTITUTE OF ENGINEERING AND MANAGEMENT
SOCIETY AND ANOTHER**

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioners : Mr. Abhratosh Majumdar, Adv.,
Mr. Nilotpal Chatterjee, Adv.,
Mr. Samim Ahammed, Adv.,
Mr. Arka Maiti, Adv.,
Ms. Gulsanwara Parvin, Adv.

For the State : Mr. Santanu Kr. Mitra, Adv.,
Mr. Amartya Pal, Adv.

For the University : Ms. Nandini Mitra, Adv.,
Mr. Sakya Maity, Adv.

Hearing concluded on : 28.08.2023

Judgment on : 15.12.2023

Kausik Chanda, J.:-

The petitioners have challenged a communication dated June 22, 2023, issued by the Inspector of Colleges of Maulana Abul Kalam Azad University of Technology, West Bengal (hereinafter referred to as “the University”). By the said letter, the petitioners were apprised that the University, following a hearing held on June 13, 2023, had recommended for non-renewal of affiliation of the College run by the petitioners, namely Calcutta Institute of Science and Management (College Code-299) from academic year 2023-2024.

2. The pertinent antecedents leading to the order impugned in this case transpired as outlined below.

3. On April 30, 2002, the State granted a lease in respect of a land measuring about 5.08 acres in favour of the petitioners, following their application for setting up a Degree Engineering college.

4. Clause 12 of the said lease deed, *inter alia*, provided that the lessee would not permit any other person to use the demised land or any part thereof for a purpose other than the one for which it was leased.

5. In the year 2003, the University accorded affiliation to the petitioners’ College namely Calcutta Institute of Engineering and Management for conducting three-year Bachelor of Business Administration and three-year Bachelor of Computer Application courses. The University also granted affiliation to the said College for Engineering courses based on the approval

of the All India Council of Technical Education (hereinafter referred to as “AICTE”). The University also accorded affiliation to the College for conducting a Master in Business Administration course.

6. The University allotted separate codes, namely College Code-165 for conducting AICTE courses and College Code-299 for non-AICTE courses. By a letter dated March 17, 2022, the University directed the petitioners to change the analogous name/ nomenclature of non-AICTE College in order to avoid confusion amongst the stakeholders, following which the petitioners adopted a resolution that the name of non-AICTE College would be “Calcutta Institute of Science and Management” and informed the University accordingly. It is also important to note that the University accorded affiliation for the academic year 2022-2023 in favour of said Calcutta Institute of Science and Management for conducting the courses like Bachelor of Business Analytics, Bachelor of Computer Application, B.Sc. in Data Science and B.Sc in Medical Lab Technology.

7. By the impugned letter dated June 22, 2023, the Inspector of Colleges of the University informed the petitioners that on the basis of a complaint received from the Chairman, Board of Governors, Calcutta Institute of Engineering and Management that the non-AICTE College, namely Calcutta Institute of Science and Management (College Code-299) has been established in gross violation of the use of land as given in the Government lease deed executed on April 30, 2022. A “non-admission”

status was imposed on the College from the academic year 2023-24 till such time the very purpose of the lease deed was amended by the State.

8. Appearing for the petitioner, Mr. Abhratosh Majumdar, learned senior advocate, has submitted that in the year 2003, the University recognised both AICTE College and non-AICTE College with full knowledge of the terms and conditions of the lease deed and allotted two distinct and separate College code. For approximately two decades, the University allowed the petitioners to operate both AICTE and non-AICTE College on the leasehold land. The University is, therefore, precluded from questioning the authority of the petitioners to run a non-AICTE College on the leasehold land after nearly about twenty years. Mr. Majumdar has argued that the action of the University implies active assent. By placing reliance upon a judgment reported at **(2022) 2 SCC 301 (Chairman, State Bank of India v. M.J. James)**, it has been argued that the University has waived its right to raise the issue of violation of conditions of the lease deed. It has been further submitted by Mr. Majumdar that the alleged violation of the terms of the lease deed could not have formed the basis for refusing renewal of affiliation.

9. Ms. Nandini Mitra, learned advocate appearing on behalf of respondent nos.2,3 and 4, on the other hand, has submitted that the preamble of the lease deed dated April 30, 2002 unequivocally indicates that the petitioners had applied for the lease to set up a Degree Engineering

College on the said land and not for any other purpose. Imposing “no admission status” is not punitive in nature as the University is willing to withdraw the status, the moment, the petitioners get the condition of the lease changed by the State to run a non-AICTE College on the relevant land.

10. Ms. Mitra has argued that the letter of renewal granted for the academic year 2023-2024 explicitly stated that “the institution shall not conduct any non-technical courses in the same premises/campus under any circumstances. In case a violation is detected, appropriate penal action including withdrawal of affiliation may be initiated against the institution.” The University is well within its right to invoke “non-admission status” to non-AICTE College till such time the conditions of the lease are altered by the lessor. Ms. Mitra has further argued that in the instant case, the complaint of violation of the lease has come from the Chairman, Board of Governors, the lessee, and the University has merely acted on the basis of the complaint received. In the instant case, renewal of affiliation is granted from year to year. Therefore, this is a case where violation of the terms of the lease is continuing from year to year. Ms. Mitra has submitted that an illegality cannot be allowed to perpetuate, by placing reliance upon a judgment reported at **(2013) 14 SCC 81 (Basak Raj v. Special Land Acquisition Officer)**.

11. The decision of the University to impose non-admission status and not to renew the affiliation of the College, namely Calcutta Institute of Science and Management cannot be sustained. In my view, the University is clearly estopped from raising the issue of violation of clause 12 of the relevant lease deed.

12. Estoppel is a legal principle that prevents a party from asserting a fact or a right or from taking a particular position, if their previous actions or statements contradict that assertion. It is a way to prevent unfairness or injustice in legal proceedings by discouraging inconsistencies.

13. The relevant part of the lease deed dated April 30, 2002, is quoted below:

“12.The Lessee shall not use nor permit any other persons to use the demised land or any part thereof for a purpose other than that for which it is leased or in a manner which renders it unfit for use for the purposes of the tenancy.

...

22.On breach or non-observance of any of the foregoing covenants, terms or conditions rendering the demised land unfit for use for the purpose of the tenancy, the Lessee shall be liable to ejectment in accordance with the provisions of the law for the time being in force, but without prejudice to any other right or remedy of the Lessor that may have accrued hereunder.”

14. The aforesaid conditions of the lease deed unambiguously delineate that only the State holds the prerogative to initiate ejectment proceedings

against the lessee in the event of breach or non-observance of the terms and conditions of the lease deed. When the State did not assert any violation with regard to the user of the land by the petitioners, the University had no occasion to decline affiliation on the said ground.

15. The elucidated facts affirm that the University, since 2003, granted affiliation to the non-AICTE College operated by the petitioners, with full knowledge of the conditions of the lease deed as quoted above. At the instance of the University, the petitioners changed the name of its non-AICTE College to “Calcutta Institute of Science and Management.”

16. The University raised no objection whatsoever with regard to the violation of conditions of the lease deed and allowed the petitioners to run the said non-AICTE college for about two decades. The petitioners could not have run the non-AICTE college without the approval and consent of the University. The University having the right to decline the affiliation, and being fully aware of the terms of the lease deed, induced a reasonable belief in the petitioners that the University has consented to operate the non-AICTE College. The university has no right to question the running of non-AICTE College nearly twenty years after its establishment premised on the alleged violation of the conditions of the lease deed.

17. Accordingly, the decision of the University to impose “non-admission” status for the academic year 2023-24 to the Calcutta Institute of Management (College Code-299) is set aside. Consequently, the University

is directed to renew the affiliation of the non-AICTE College of the petitioners for the year 2023-2024 in accordance with law.

18. Accordingly, **W.P.A. No.15859 of 2023** is allowed.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)