

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 03.07.2024

+ **LPA 535/2022, CM Nos. 40651/2022, 40652/2022 & 17426/2023**

YASHPAL SINH JADEJA

..... Appellant

Versus

**ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION (AICTE) & ANR.**

..... Respondents

Advocates who appeared in this case:

For the Appellant : Appellant in-person.

For the Respondent : Mr. Anil Soni, CGSC and Mr. Devvrat Yadav, Advocate.

Mr. Tanveer Ahmed Ansari, Sr Panel Counsel for UOI.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MS JUSTICE TARA VITASTA GANJU****JUDGMENT****VIBHU BAKHRU, J**

1. The appellant has filed the present intra-court appeal impugning an order dated 04.07.2022 (hereafter *the impugned order*) passed by the learned Single Judge whereby the writ petition filed, *inter alia*, by the appellant being [W.P.(C) No.4059/2019] captioned *Yashpal Singh Jadeja & Ors. v. All India Council for Technical Education (AICTE) & Anr.*, was dismissed. The appellant and five other similarly placed



individuals (hereafter referred to as *the petitioners*) had filed the aforementioned writ petition, *inter alia*, impugning a public notice dated 31.10.2017 being Advt. No. P&AP/10(04)/2017 (hereafter *the impugned public notice*) published by respondent no.1 – All India Council for Technical Education (hereafter *AICTE*) – publicizing its decision to recognize equivalence to technical courses conducted by various professional bodies / institutions, which are duly recognized by Government of India, Ministry of Human Resource Development [*MHRD* – now Ministry of Education (*MoE*)] upto 31.05.2013.

2. In a subsequent application filed in the aforesaid writ petition, the petitioners had also impugned a Circular dated 23.11.2020 clarifying that AICTE's decision to recognize the qualifications in respect of students enrolled in institutions prior to 31.05.2013 was based on the decision of the MHRD in this regard.

FACTUAL CONTEXT

3. The petitioners state that the Institution of Engineers (India) (hereafter *IEI*) was set up in the year 1920 to promote and advance engineering and technology. In the year 1928, IEI started a non-formal engineering programme in India and started conducting Sections A and B Examinations in core engineering disciplines. IEI was granted Royal Charter in 1935 for promoting the general advancement of engineering and engineering science and their application in India, and to facilitate exchange of information and ideas on those subjects. For the aforesaid purpose, IEI could establish colleges, schools and other educational establishments for the students to obtain education and training in the



subject of engineering. The Government of India, Ministry of Education and Social Welfare (Department of Education) Notification No.F.18-4/78-T.7 dated 16.08.1978 and Notification No.F.24-6/2002-TS.III dated 16.01.2006 had recognized fifteen courses of Sections A and B examinations conducted by IEI (hereafter *AMIE Courses*) as equivalent to a degree in engineering for the purpose of recruitment and promotion in the Central Government.

4. AICTE was set up in the year 1945 by a government resolution as an expert body to advice the Central and State Governments for ensuring co-ordinated development of technical education in India. AICTE was granted the statutory status by enactment of the All India Council for Technical Education Act, 1987 (hereafter *the AICTE Act*).

5. On 10.07.2012, the MHRD issued an Office Memorandum bearing F.No.11-15/2011-AR(TS.II) regarding recognition of the AMIE Courses – fifteen courses in Sections A and B examinations - conducted by IEI. The Government of India communicated its decision that a review of the curriculum, mode of delivery of the programme and its duration would be carried out by the concerned Regulator and till the review is complete, the institutions with permanent recognition were directed not make fresh admissions. The said Office Memorandum (hereafter also referred to as *the OM dated 10.07.2012*) is set out below:

“Shastri Bhawan, New Delhi-110115
Dated the 10th July, 2012

To

Hony Secretary,



Institution of Engineers (India)
8 Gokhale Road, Kolkata (West Bengal)

Subject: Regarding recognition of 15 courses of Section A & B examination conducted by Institution of Engineers (India), 8 Gokhale Road, Kolkata.

Sir,

Please refer to this Ministry's notification 24-6/2002-Ts.III dated 16.01.2006 and further notification of even number dated 10.12.2007 regarding recognition of 15 courses of Section A & B examination conducted by Institution of Engineers (India), 8 Gokhale Road, Kolkata. It has been decided that a review of the curriculum, mode of delivery of the program, its duration, etc. would be carried out by the concerned Regulator and until such a review is complete, the institutions with permanent recognition will not make fresh admissions. Alternatively, the institution has the option of realigning its curriculum with the National Vocational Educational Qualification Framework (NVEQF) and proceed further.

This issue with the approval of competent authority.

Yours faithfully,

sd/-

(R.K. Maheshwari)

Under Secretary to the Government of India"

6. The petitioners state that it was not feasible for IEI to align its curriculum with the National Vocational Educational Qualification Framework (NVEQF) as it did not offer vocational training courses. IEI thus made representation to the MHRD requesting it to withdraw the OM dated 10.07.2012 or in the alternative to amend the same. The appellant also states that similar representations for withdrawal of the aforesaid notification were also made by other persons.



7. Thereafter, on 06.12.2012, the MHRD issued another Office Memorandum withdrawing the OM dated 10.07.2012. It also specified that all students who were enrolled with the institutions with permanent recognition upto 31.05.2013 would be eligible for consideration, in accordance with the MHRD's Office Memorandum / order in force pertaining to their course or equivalence, in Central Government jobs but the said orders would cease to have an effect from 01.06.2013. The Office Memorandum dated 06.12.2012 (hereafter also referred to as *the impugned OM*) is set out below:

“Shastri Bhawan, New Delhi-110115
Date: 06.12.2012

OFFICE MEMORANDUM

In modification of Order F. No. 11-15/2011-AR (TS.II) dated 10.07.2012 and to facilitate the institutions during transition period, following decision has been taken in the Ministry:

- (i) Above order dated 10.07.2012 regarding cases of recognition in perpetuity for equivalence in Central Government job, stands withdrawn.
- (ii) All those students who are enrolled with the institutions with permanent recognition upto 31.05.2013 would be eligible for consideration in accordance with MHRD office memorandum/ order in force pertaining to their course for equivalence In Central Government jobs. However, these concerned orders will cease to have effect from 01.06.2013 onwards.
- (iii) After 31.05.2013, based on the review by the regulator i.e. AICTE, a decision on continuation of the certification of equivalence of degree/ diploma shall be taken by statutory regulator.



(iv) Statutory regulators should review the fresh proposals/ extension as per their statute and regulations.

2. In case, the institution desires to opt for realigning curriculum with NVEQF, it is advised to use this transition period upto 30.05.2013 for necessary action in this regard.

This issues with the approval of the Competent Authority.

(R.K. Maheshwari)

Under Secretary to the Government of India”

8. Aggrieved by the impugned OM, IEI filed a writ petition before this Court being W.P.(C) No.3790/2013 assailing the impugned OM. By an order dated 31.05.2013, the learned Single Judge stayed the operation of the impugned OM in respect of the deadline of 31.05.2013 in respect of the petitioneSr in that case (IEI). However, the same was subject to the final outcome of the case. The operative part of the order dated 31.05.2013 passed by the learned Single Judge in W.P.(C) No.3790/2013 is set out below:

“1. Learned counsel for the petitioner submits that the present petition is identical to W.P.(C) 3334/2013 and W.P.(C) 945/2013 wherein while issuing notice in the said matters this Court had directed that OM dated 6.12.2012 qua the petitioners only with respect to the deadline of 31.5.2013 shall remain stayed till the next date and further admissions which are to be made would be subject to final orders, which may be passed in the writ petition.

2. Issue notice to show cause to the respondents as to why petition be not admitted. Notice in the application as well. Learned counsel for respondents no. 1 and 2 accept notice. Learned counsel for respondent no.2 submits that respondent no.3 is not in existence and UGC is the necessary and proper party in this matter. Accordingly, as prayed respondent no.2 is deleted from



the array of parties. Let an amended memo of parties be filed by petitioner. Let appropriate steps be taken by the petitioner to implead UGC as a party in the present proceedings.

3. Till the next date of hearing, O.M. dated 6.12.2012 qua the petitioner only with respect to the deadline of 31.5.2013 shall remain stayed till the next date of hearing, however, it is made clear that the admissions, which are made, will be subject to final orders, which will be passed in the writ petition.

4. List on 6.8.2013, when W.P.(C) 3334/2013 and W.P.(C) 945/2013 are stated to be listed.

5. Let a copy of this order be given DASTI to counsel for the parties under the signature of Court Master.”

9. The appellant states that he joined the course in Electrical Engineering in the year 2013 (one of the AMIE course) and completed the same in the year 2018. He also asserts that approximately 16000 persons (including the petitioners in W.P.(C) No.4059/2019) had enrolled in the AMIE courses with IEI subsequent to 31.05.2013.

10. Whilst the petition being W.P.(C) No.3790/2013 filed by IEI in this Court was pending, AICTE published the impugned public notice. In terms of the impugned public notice, AICTE disseminated information regarding the decision taken by the Council in its 52nd Emergent Meeting to assign recognition of equivalence to the qualifications only to persons who were enrolled with the technical institutions that were granted permanent recognition upto 31.05.2013. The impugned public notice is reproduced below:

**“PUBLIC NOTICE
(For Professional Bodies / Institutes**



Imparting Technical Education)

Whereas MHRD, Govt. of India, through an order (vide OM no.11-15/2011-AR (TS.II) dated 06.12.2012) withdrew the recognition granted to all certificate / qualifications awarded by professional bodies / institutions in the field of technical education. The MHRD further stipulated that from 01.06.2013 onwards the courses for equivalence will cease to have effect for employment in Central Government and the decision on the continuation of the certification of equivalence of degree/diploma would be taken by the statutory regulator (AICTE) after review.

Accordingly, the Council in its 52nd Emergent Meeting held on August 03, 2017 decided to recognize equivalence for all purposes including Higher Education & Employment to Technical Courses conducted by various Professional Bodies / Institutions which were duly recognized by MHRD with permanent recognition upto 31st May 2013. Thus, all those students who were enrolled with these Institutions with permanent recognition upto 31.05.2013, stand recognized.

Advt. No.P&AP/10(04)/2017

Member Secretary”

11. The petitioners being aggrieved by the said impugned notice filed a petition [being W.P.(C) No.4059/2019] in this Court assailing the impugned public notice as discriminatory and arbitrary. The petitioners (including the appellant) *inter alia* prayed that directions be issued for quashing the deadline of 31.05.2013. In addition, they also prayed that directions be issued to the respondents to recognize the AMIE courses undertaken by them as equivalent to a degree for the purpose of their employment.

12. Whilst the said petition was pending, the Supreme Court rendered a decision in the case of *Institution of Mechanical Engineers (India)*



*v. State of Punjab*¹, dismissing the appeal preferred against the decision of the Hon'ble Punjab & Haryana High Court holding that a Membership Certificate granted by the Institution of Mechanical Engineers (India) was not equivalent to a degree in engineering. Although the Supreme Court dismissed the appeal, it granted limited relief to the students enrolled with the Institution of Mechanical Engineers (India) prior to 31.05.2013 by referring to the impugned OM and the impugned public notice.

13. The learned Single Judge following the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab*² dismissed the petition [being W.P.(C) No.4059/2019] filed by the petitioners by the impugned order.

14. The appellant has filed the present appeal, *inter alia*, seeking that the impugned order be set aside. In addition, the appellant also challenges the impugned public notice as well as the Circular dated 23.11.2020.

SUBMISSIONS

15. The appellant appeared in person and advanced the oral submissions. He assails the impugned order mainly on two grounds. First, he submitted that the learned Single Judge had erred in holding that the decision of the Supreme in *Institution of Mechanical Engineers*

¹ (2019) 16 SCC 95

² (Supra)



(*India*) v. *State of Punjab*³ covers the challenge raised in the writ petition [W.P.(C) No.4059/2019]. He submitted that IEI was not a statutory body and therefore, the Certificate of Membership issued by it was not recognized as equivalent to a degree in engineering. He also referred to the judgment in *Kartar Singh v. Union of India & Others*⁴ whereby the Punjab & Haryana High Court had observed that the membership of the Institute of Mechanical Engineers (India), Mumbai could not be said to be at par with members of IEI, which was established under a statute. He submitted that the decision in the case of *Institution of Mechanical Engineers (India) v. State of Punjab*⁵ was delivered by the Supreme Court in connection with the certificate awarded by the said appellant, which was not established under a statute and was not at par with the IEI. He submitted that mere reference to the impugned OM and the impugned public notice could not be construed as the Supreme Court upholding the same.

16. Second, he submitted that the impugned OM (Office Memorandum dated 06.12.2012), to the extent of placing a deadline of 31.05.2013, was inoperative by virtue of the stay order dated 31.05.2013 passed by the learned Single Judge in W.P.(C) No.3790/2013. He claimed that he as well as several other persons had joined the engineering courses on the strength of the said stay order and therefore, the qualification secured by them was necessarily required to

³ (Supra)

⁴ 2012 SCC OnLine P&H 21066

⁵ (Supra)



be treated at par with an engineering degree. He also submitted that the impugned OM for the period after 31.05.2013 onwards was not the subject matter of appeal before the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*) and therefore reference to the impugned OM in the said case was not relevant.

REASONS AND CONCLUSION

17. At the outset, it is relevant to note the scope of the writ petition [being W.P.(C) No.4059/2019] preferred by the appellant and the other petitioners. The petitioners had challenged the impugned public notice principally on the ground that it was contrary to the stay order dated 31.05.2013. It is contended that by virtue of the stay order, the deadline of 31.05.2013 for ending the equivalence of the AMIE course to a degree in engineering, had been stayed and IEI was not interdicted from admitting students in the AMIE course. The petitioners claim that in the absence of sufficient alternatives for pursuing qualifications in disciplines of engineering, approximately 60000 persons (including the petitioners) had enrolled for the AMIE courses pursuant to the stay order dated 31.05.2013 granted in W.P.(C) No.3790/2013. The petitioners claim that they were shocked to come across the impugned public notice, whereby the recognition of equivalence to the certification granted to the AMIE course was confined to only those students who had enrolled with IEI prior to 31.05.2013. They claim that the impugned public notice is in direct conflict of the order dated 31.05.2013 passed by the Court.



18. The petitioners are employed with Public Sector Undertakings and they claim that the impugned public notice would adversely affect their prospects of employment and promotion. They also claim that a distinction between the students enrolled prior to 31.05.2013 and those enrolled thereafter, is discriminatory as the students enrolled after 31.05.2013 have also undergone the same course, which was undergone by students enrolled prior to 31.05.2013, as the curriculum has not been revised.

19. Thus, essentially, there are three questions to be addressed. First, whether by virtue of the interim order dated 31.05.2023 passed in W.P.(C) No.3790/2013, the petitioners are entitled to recognition of their qualification of Associate Member of Institution of Mechanical Engineers (hereafter *the AMIE*) as equivalent to a degree in engineering. Second, whether the denial of equivalence of qualification to the petitioners (and other persons) enrolled after 31.05.2013 is discriminatory and violative of Article 14 of the Constitution of India. And third, whether the qualification of the AMIE could be considered as equivalent to a degree in engineering notwithstanding that AICTE has not been granted any such equivalence, post 31.05.2013.

20. The learned Single Judge had concluded that the issues raised in the petition were covered by the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*). As noted above, the appellant has assailed the said conclusion, principally on the ground that the Institution of Mechanical Engineers



(India) could not be considered at par with IEI as IEI was established by a Royal Charter.

21. As noted above, the appellant had also contended that the reference to the impugned OM in the said judgment could not be construed to mean that the Supreme Court had upheld the same.

22. The said contention appears to be unmerited. A plain reading of the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*) indicates that the said decision rested on an examination of the role of AICTE and the powers of the MHRD to award equivalence of qualifications to degrees.

23. In *Orissa Lift Irrigation Corporation Limited v Rabi Sankar Patro & Ors. : (2018) 1 SCC 468*, the Supreme Court had referred to Clause 4 of the AICTE [Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes (the 1994 AICTE Regulations)] and held that AICTE was the sole authority that could lay down the parameters of qualitative norms for “technical education”.

24. In *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*) the Supreme Court had reiterated the said legal position, as is apparent from Paragraph nos.36,37,38,39 and 40 of the said decision. The same are set out below:-

“36. On its own showing, the appellant “does not impart any education but merely conducts bi-annual examinations and awards certificates”. The compilation referred to in para 31



hereinabove also makes the position clear that the appellant “does not recognise, allow or conduct any coaching classes or local centres helping the candidates appearing in the examinations”.

37. In *Orissa Lift Irrigation Corpn. case [Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro & Ors., (2018) 1 SCC 468]* two questions were posed for consideration in para 45 of the said decision and the first of those two questions was as under : (SCC pp. 532-33)

“A. Whether the deemed to be universities concerned in the present case, could start courses through distance education in subjects leading to award of degrees in Engineering:

(a) Without any parameters or guidelines having been laid down by AICTE for conduct of such courses in technical education through distance education mode?

(b) Without prior approval under the AICTE Act?”

The discussion in that behalf appearing in paras 46 and 48 of the decision was: (SCC pp. 533-35)

“46. The definition of “technical education” in Section 2(g) of the AICTE Act shows that the emphasis is on the programmes of education, research and training in Engineering Technology in general and the idea is not limited to the institutions where such programmes of education, research and training are to be conducted or imparted. However, the definition of “technical institution” in Section 2(h) leaves out an institution which is a university. The distinction between the broader concept of “technical education” and the limited scope of “technical institution” is clear from Section 10 of the AICTE Act where certain functions concern the broader facets or aspects of technical education which by very nature must apply to every single institution (whether university or not) where such courses are conducted or imparted. At the same time, certain functions are relatable to technical institutions alone, which by



definition are not applicable to universities. For example, functions in clauses (a), (b), (d), (e), (f), (l) and (n) are concerned with broader facets of technical education, while functions in clauses (k), (m), (p) and (q) deal with matters concerning technical institutions and thus may not apply to universities, whereas there are certain functions as set out in clauses (g) and (o) which apply to both “technical institutions” and “universities” imparting technical education. Clauses (c), (d) and (f) of Section 10 deal with subjects, inter alia, coordination of the technical education in the country at all levels; promoting innovation, research, development, establishment of new technologies, generation, adoption and adaptation of new technologies to meet the developmental requirements; and promoting and effecting link between technical education and systems and other relevant systems. AICTE is thus the sole repository of power to lay down parameters or qualitative norms for “technical education”. What should be course content, what subjects be taught and what should be the length and duration of the courses as well as the manner in which those courses be conducted is a part of the larger concept of “technical education”. Any idea or innovation in that field is also a part of the concept of “technical education” and must, as a matter of principle, be in the exclusive domain of AICTE.

48. Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory under the watchful eyes of demonstrators or lecturers. Face-to-face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals, thus, constitute an integral part of the



technical education system. If this established concept of imparting technical education as a qualitative norm is to be modified or altered and in a given case to be substituted by distance education learning, then as a concept AICTE ought to have accepted it in clear terms. What parameters ought to be satisfied if the regular course of imparting technical education is in any way to be modified or altered, is for AICTE alone to decide. The decision must be specific and unequivocal and cannot be inferred merely because of absence of any guidelines in the matter. No such decision was ever expressed by AICTE. On the other hand, it has always maintained that courses leading to degrees in Engineering cannot be undertaken through distance education mode. Whether that approach is correct or not is not the point in issue. For the present purposes, if according to AICTE such courses ought not to be taught in distance education mode, that is the final word and is binding—unless rectified in a manner known to law. Even National Policy on Education while emphasising the need to have a flexible pattern and programmes through distance education learning in technical and managerial education, laid down in Para 6.19 that AICTE will be responsible for planning, formulation and maintenance of norms and standards including maintenance of parity of certification and ensuring coordinated and integrated development of technical and management education. In our view, whether subjects leading to degrees in Engineering could be taught in distance education mode or not is within the exclusive domain of AICTE. The answer to the first limb of the first question posed by us is therefore clear that without the guidelines having been issued in that behalf by AICTE expressly permitting degree courses in Engineering through distance



education mode, the deemed to be universities were not justified in introducing such courses.”

38. The role of AICTE in technical and management education was emphasised in National Policy of Education, published by the Government of India in 1986, which was noted by this Court in *Orissa Lift Irrigation Corpn. case [Orissa Lift Irrigation Corpn. Ltd. v. Rabi Sankar Patro, (2018) 1 SCC 468]*. The Regulations concerned issued by AICTE in the year 1994 were also considered under which no course or programme could be introduced by any technical institution except with the approval of AICTE. Paras 23.2 and 23.3 of the decision had extracted relevant portions of the National Policy of Education and the Regulations concerned of AICTE as under : (SCC pp. 497-98)

“23.2. In 1986, National Policy on Education was published by the Government of India, Part VI of which dealt with Technical and Management Education, Paras 6.6, 6.8 and 6.19 of the Policy were—

‘6.6. In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to technical and managerial education, programmes through a distance learning process, including use of the mass media will be offered. Technical and management education programmes, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counselling service will be provided.

6.8. Appropriate formal and non-formal programmes of technical education will be devised for the benefit of women, the economically and socially weaker sections, and the physically handicapped.

6.19. The All India Council for Technical Education, which has been given statutory status, will be responsible for planning, formulation and



maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring the coordinated and integrated development of technical and management education. Mandatory periodic evaluation will be carried out by a duly constituted Accreditation Board. The Council will be strengthened and it will function in a decentralised manner with greater involvement of State Governments and technical institutions of good quality.’

23.3. The AICTE (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programmes and Approval of Intake Capacity of Seats for Courses or Programmes) Regulations were issued in 1994 (“the 1994 AICTE Regulations”, for short). Clause 4 of these Regulations was to the following effect:

‘4.0. Requirement of grant of approval

4.1. After the commencement of these Regulations,

(a) No new Technical Institution or University Technical Department shall be started; or

(b) No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or College or;

(c) No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma courses or programmes;

(d) No approved intake capacity of seats shall be increased or varied;

Except with the approval of the Council.’”

39. It was laid down in the said decision that AICTE is the sole repository of power to lay down parameters or qualitative norms for “technical education” and that it was within the exclusive domain of AICTE to consider whether subjects leading to degrees in Engineering could be taught in distance education



mode or not. The issue whether courses leading to degrees in engineering could be taught through distance education learning was dealt with in extenso. It was laid down that by very nature, practical training would be an essential and integral part of engineering courses and that until and unless a clear policy was laid down by AICTE, no courses in engineering could be taught or imparted through distance education mode. It was held that in the absence of any guidelines having been issued by AICTE expressly permitting courses leading to degrees in Engineering through distance education, no such courses could be introduced. The consistent stand taken by AICTE was also noted in the said judgment.

40. The point in question was again dealt with in the order dated 22-1-2018 [*Orissa Lift Irrigation Corpn. Ltd. v. Rabi Sankar Patro*, (2018) 1 SCC 468] in paras 23 and 24 and it was stressed that conferral of degrees in Engineering through distance education mode was never approved in principle by AICTE. The appellant does not even claim to be imparting any education through distance education mode and only conducts bi-annual examination and awards certificates to those who qualify such examination. Considered in the light of the decision of this Court in *Orissa Lift Irrigation Corpn. case* [*Orissa Lift Irrigation Corpn. Ltd. v. Rabi Sankar Patro*, (2018) 1 SCC 468], the learned Amicus Curiae is right in his submission that the case of the appellant would be on a footing lower than the cases of deemed to be universities as dealt with in that decision.”

25. Clause(s) (g), (h) and (i) of Section 2 of the AICTE Act are relevant as they define the terms “technical education”, “technical institution” and “university”, respectively. The same are reproduced as below:-

“(2)(g) "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare;



(h) "technical institution" means an institution, not being a University which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions;

(i) "University" means a University defined under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956) and includes an institution deemed to be a University under section 3 of that Act."

26. IEI is not a University within the definition of Section 2 (i) of the AICTE Act. It is not the appellant's case that IEI is a university as defined under Section 2(f) of the University Grants Commission Act, 1956 or is an institution deemed to be a university under Section 3 of that Act.

27. It is also not the petitioners case' that IEI has been recognized by the University Grants Commission as a university and a declaration to that effect has been made by the University Grants Commission. Thus, AICTE is well within the broad definition of 'technical institution' as defined in the AICTE Act.

28. In *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*), the Supreme Court had, in the aforesaid context, held that the MHRD would have no powers to grant equivalence of any qualification acquired from a technical institution as equivalent to a degree. This was because there was no statutory provision, which conferred such powers to the MHRD.



29. The relevant extract of the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*) is set out as under:-

“41. The consistent stand of the appellant has been that it is not covered under any of the Acts viz. the UGC Act; the Indira Gandhi National Open University Act, 1985 and the AICTE Act. However, since it offers courses or programmes of technical education, as rightly held by the High Court, the appellant comes within the definition of “technical institution” as defined in the AICTE Act. Neither does the appellant, on its own grant degrees in Engineering nor does it, in its capacity as an affiliated institution to a recognised university, prepare students in courses leading to degrees in Engineering. Though it does not impart any instructions either in theory or in practical, it holds an examination, on satisfactory clearance of which it awards certificates of membership to candidates. The question is whether such certificate could, as a matter of law, be recognised as equivalent to a degree in Mechanical Engineering from a recognised Indian University? Nothing is clear as to under what statutory regime or under which legal provision can such equivalence to the certificate issued by the appellant be granted or conferred. No statutory provision has been pressed into service or relied upon to suggest that given the particular circumstances and/or, on satisfaction of certain parameters the appellant would be entitled to conferral of such equivalence or status.

42. In terms of Section 22(1) of the UGC Act, right to confer degrees can be exercised only by a university established or incorporated by or under a Central Act, a Provincial Act or a State Act or by an institution deemed to be a university under Section 3 of the UGC Act or by an institution specially empowered by an Act of Parliament to confer or grant degrees. The idea appearing in sub-section (1) of the said Section 22 is made emphatically clear by sub-section (2) which stipulates:

“Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree”.



The intent of Parliament is clear that it is only that body which is referred to in sub-section (1) of Section 22, that is competent to confer or grant degrees. The appellant does not fall under any of these categories enumerated in Section 22(1) of the UGC Act.

43. In *Orissa Lift Irrigation Corpn. Ltd. v. Rabi Sankar Patro*, (2018) 1 SCC 468, it also arose for consideration whether a deemed to be university, without taking appropriate prior permission could start courses leading to degrees in Engineering through open distance learning. That aspect of the matter does not arise in the present case and it is also not the case of the appellant, that it is entitled to award degrees in Engineering. Its submission however is, having been conferred the status of being equivalent to degrees in Engineering in respect of certificates awarded by it, the appellant is entitled to continue having such benefit or advantage. There is nothing on record either in the form of any statutory provision or any statutory regulations or any scheme under which such equivalence could be granted by MHRD. It appears that claims made by various institutions like the appellant were considered on case-to-case basis and equivalence was granted by MHRD. The first of those communications was of the year 1976 when the AICTE Act was not in force. If the mandate of Section 22 disentitles any authority or person other than those specified in Section 22(1) to award degrees, there is no power or authority in anyone including MHRD to award such equivalence.

46. In the present case, the communication dated 26-5-1976 under which the certificate issued by the appellant was recognised to be equivalent to a degree in Mechanical Engineering from a recognised Indian University, does not indicate any statutory provision under which such equivalence could be granted or conferred. This point becomes more crucial, as after the enactment of the AICTE Act, the entirety of the field concerning “technical education” is kept in the domain of AICTE by Parliament. Section 10 of the AICTE Act entitles AICTE not only to lay down norms and standards for courses, curriculum and such other facets of “technical education” but also entitles it under clause (1) to advise the Central Government in respect of grant of charter to any professional body or institution in the field of technical



education conferring powers, rights and privileges, etc. Going by the width of the power, after the enactment of the AICTE Act, even such privileges could be conferred only after express advice of AICTE and within the confines of various statutory provisions.

47. Consequently, neither can the appellant claim, as a matter of right to be entitled to confer any degree nor can it claim that certificate awarded by it must be reckoned to be equivalent to a degree in Mechanical Engineering.”

30. Further, the Supreme Court held that the mandate of Section 22(1) of the University Grants Commission Act, 1956 is to confine the power to award degrees to only those institutions specified therein, cannot be circumvented by awarding “equivalence” to a certificate issued by a technical institution. Paragraph no.45 of the said decision is mentioned as under:-

“45. If a degree can be awarded only by those institutions which satisfy the description given in sub-section (1) of Section 22 of the UGC Act, the mandate of a parliamentary legislation cannot be circumvented or nullified by awarding equivalence to a certificate issued and awarded by the appellant. What is the value of that certificate will be considered by each employer as and when the occasion arises. The appellant would certainly be entitled to award certificate of membership to its members. What weightage the certificates must have is for the individual employers to consider in a given case. The employer concerned may attach due importance to such certificates while considering the worth and ability of the candidates concerned but to say that the certificates are equivalent to a degree and as such all the candidates who hold such certificates are entitled to derive the advantages which a degree-holder can, is completely a different issue.”



31. The Supreme Court concluded that the MHRD could not grant any declaration of equivalence of an engineering degree. Nonetheless, the Supreme Court, granted relief to those students who were enrolled with the appellant in the said case, by referring to the impugned OM. Paragraph no.49 of the said judgment reads as under:-

“49. However, the fact remains that the equivalence to the certificates awarded by the appellant was granted by the MHRD in consultation with AICTE up to 31-5-2013 as is evident from Notification dated 6-12-2012 issued by the Central Government and Public Notice issued by AICTE in August 2017. These communications also indicate that all those students who were enrolled up to 31-5-2013 would be eligible for consideration in accordance with MHRD office memorandum/order in course. Though we have laid down that the certificates issued by the appellant on successful completion of its bi-annual examination to its Members cannot be considered to be equivalent to a degree, an exception needs to be made in favour of students enrolled up to 31-5-2013 and benefit in terms of the Notification dated 6-12-2012 and Public Notice as aforesaid ought to be extended to such candidates. The candidates had opted to enrol themselves so that they could appear at the examinations conducted by the appellant under a regime which was put in place by the Central Government itself and the course content as well as the curriculum were reviewed by AICTE. However, the aforementioned Notification and Public Notice were clear that after 1.06.2013 the orders concerned granting equivalence would cease to have any effect.”

32. It is also material to note that the Supreme Court had noted the fact that the impugned OM was a subject matter of challenge in Writ



Petition before this Court and interim orders had been passed⁶. Thus, the Supreme Court was also aware that the impugned OM was a subject matter of the challenge before this Court. After noting the above, the Supreme Court proceeded to authoritatively hold that the MHRD did not have any powers to declare the qualification of “technical institution” as equivalent to a degree.

33. It is amply clear that the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*) squarely covers the issues as raised in the Writ Petition filed by the petitioners.

34. In absence of any authority with the MHRD to declare the equivalence of qualification granted by a technical institution as a degree in engineering, the question of extending such ‘equivalence’ by staying the operation of the deadline as set out in the impugned OM or the impugned public notice does not arise.

35. The contention that the grant of benefit to students enrolled with a technical institution that had been granted permission /recognition prior to 31.05.2013, but denial of the said benefit to students who were enrolled thereafter is discriminatory, is also clearly unmerited. It is well settled that there is no concept of negative equality. The MHRD has no authority to grant such equivalence, nonetheless, the Supreme Court had extended the benefits to the students who were enrolled with IEI

⁶ Paras no.19 & 20 of the decision in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*)



prior to 31.05.2013. Obviously, the same benefit cannot be extended to students enrolled thereafter as they had joined the courses being clearly aware of the decision of the MHRD to not extend the recognition of equivalence to students enrolled after 31.05.2013. The appellant cannot derive any benefit from the interim orders granted by the High Court in W.P.(C) No.3790/2013 as the same was subject to the final outcome. The challenge raised by the appellant to the impugned public notice is covered by the decision of the Supreme Court in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*). Thus, the conclusion of the learned Single Judge cannot be faulted with.

36. The learned Single Judge also noted that the petitioners had filed an application before the Supreme Court seeking certain directions predicated on the basis that challenge to the impugned OM survived the decision in *Institution of Mechanical Engineers (India) v. State of Punjab* (*supra*)⁷. However, the Supreme Court dismissed the same by an order dated 21.08.2020, which reads as under:-

“In this Miscellaneous Application No.1439 of 2020, following directions are prayed for:

“(a) Allow the present application and direct the Hon’ble High Court of Delhi to adjudicate the writ petitions impugning the Office Memorandum dated 06.12.2012 & AICTE public notice on its merits for the period subsequent to 31.05.2013 because the office memorandum dated 06.12.2012 & in AICTE’s public notice was not a subject matter of challenge at this Hon’ble Court whereas in writ petition pending at

⁷ Misc. Appl No.1439/2020 in Civil Appeal No.17922/2017 captioned Institution of Mechanical Engineers (India) v State of Punjab & Ors.



Hon'ble High Court of Delhi since 2013 the office memorandum dated 06.12.2012 & AICTE's public notice are subject matter of challenge.

(b) Direct Hon'ble Delhi High Court to decide on the students who got enrolment subsequent to 31.05.2013 pursuant to stay & admission granted by Hon'ble Delhi High Court to the Institution of Engineers (AMIE) based on merits."

With the assistance of the learned counsel for the applicant, we have gone through the petition and the documents appended thereto.

We do not see any reason to entertain this Miscellaneous Application. The Miscellaneous Application is dismissed.

Pending applications, if any, also stand disposed of."

37. In view of the above, we find no merit in the present appeal. The same is, accordingly, dismissed. Pending applications also stand disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 03, 2024

'gsr'