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(1997) 10 PAT CK 0035

Patna High Court

Case No: C.W.J.C. No. 4025 of 1996 (R)

Chas Bokaro Vikas Samitee and Another		APPELLANT
	Vs	
The Union of India (UOI) and Others		RESPONDENT

Date of Decision: Oct. 24, 1997

Acts Referred:

- Bihar State Engineering and Pharmacy Educational Institutions (Regulation and Control) Act, 1982 - Section 11, 3, 5
- Constitution of India, 1950 - Article 254, 372

Citation: (1998) 1 PLJR 138

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Anil Kumar Sinha and A.K. Sahni, for the Appellant; Indrani Sen Choudhury, for State and M.S. Anwar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

The Petitioners have moved this Court second time by filing this writ petition seeking appropriate directions to the University concerned, namely, Vinoba Bhave University (hereinafter to be referred to as ''the University'' for short) to grant affiliation to the Petitioners'' college (hereinafter to be referred to as ''the Institute'' for short) and to conduct examination of the students already admitted in the Institute after conditional approval was granted by the All India Council for Technical Education (hereinafter to be referred to as ''the AICTE'' for short). A further prayer has been made for quashing the order passed by the Respondent State through its Science and Technology Department and communicated vide Letter No. 1142 dated 20.6.1995 issued by the Secretary of the said Department, the refusal of the Govt. to

grant "No Objection" certificate to the Institute for establishing and running the Institute and for imparting technical education to the people at large.

2. Petitioner No. 1 is a Society registered under the Societies Registration Act. Petitioner No. 2 is the Institute namely, Bokaro Institute of Technology established by the Petitioner-Society for imparting education and providing opportunity to the public at large for their higher education. Petitioners'' case is that Petitioner No. 1 1-Chas Bokaro Vikas Samittee in its meeting held on 16.3.1992 decided to establish an Engineering College in the name and style of Bokaro Institute of Technology in Bokaro (hereinafter to be referred to ''B.I.T. Bokaro'' for short). In order to co-ordinate between the Institute, Management of Bokaro Steel Plant including the authorities of the Steel Authority of India Ltd. (hereinafter to be referred to as ''the SAIL'' for short) on the one hand and the University and the Union of India on the other hand constituted a sub-committee. The said Sub-Committee in its meeting held on 24.4.1992 resolved to come out with an advertisement calling for applications for admission in different faculties of engineering in B.I.T. Bokaro. It is stated that on 28.1.1981 an Ordinance viz, Bihar State Engineering and Pharmacy Educational Institutions (Regulation and Control) Ordinance, 1981, was promulgated, which was subsequently enacted in the year 1982. In terms of the aforesaid Act, the Institute submitted application before the Respondent-State of Bihar on 30.7.1992 for granting permission for establishing B.I.T. Bokaro. In response to the application dated 30.7.1992, the Respondent-State of Bihar from its Science and Technology Department issued a letter dated 5.11.1992 advising the Petitioners to submit the application in the prescribed proforma for granting permission to establish B.I.T. Bokaro. Pursuant to the aforesaid letter dt. 5.11.92 the Institute submitted application in the prescribed proforma before the Science and Technology Department, Government of Bihar. However, no order granting permission to establish the Institute was issued by the State of Bihar. It appears that the Petitioners'' application was forwarded to AICTE, Eastern Regional Committee'', Calcutta which in its turn vide letter dated 26th August, 1992, informed the Petitioners that AICTE is the statutory Body established by an Act of Parliament and is empowered to grant permission to establish a new Institute and further to accord approval for conducting course in different faculties of engineering and technology. In the year 1987, the All India Council for Technical Education Act, 1987 was enacted and the same was published in the All India Gazette (Extra Ordinary) on 28.3.1988. Under the said Act the Central Government has been vested with the power to establish a Council and to grant affiliation/approval for setting up a new technical institution and for Introduction of new courses of degree in consultations with the Agencies. The Petitioners further case is that on 5.10.1992 the Managing Director of Bokaro Steel Plant issued a letter to the Chief Secretary of the Government of Bihar, seeking permission to establish an Institute and giving assurance therein that required assistance shall be provided to the Institute by the Management of Bokaro Steel Plant. Meanwhile, the Secretary of B.I.T. Bokaro submitted a letter dated

12.10.1992 before the Director of Science and Technology, Government of Bihar requesting therein to recommend the case of the Petitioners Institute to the AICTE, New Delhi for granting approval to it. In response to that letter, the State of Bihar informed the Petitioner that the State Government has constituted a Committee to inspect the Petitioners Institute. Meanwhile, the AICTE vide its letter dated 24.11.1992 called upon Petitioner No. 2 to submit the application in the prescribed proforma for obtaining its approval in the matter of B.I.T. Bokaro. On 18.12.1992 the Expert Committee constituted by the State of Bihar from its Science and Technology Department, inspected the Institute and held discussions with the management of the Bokaro Steel Plant. The said Expert Committee submitted its report to the Government in the month of January, 1993, recommending the case of the Petitioners Institute for grant of approval by the Government. It is further stated that on 1.7.1993 the Management of Bokaro Steel Plant again issued a letter to the Government of Bihar reiterating its commitment to give all possible assistance to B.I.T. Bokaro in the event permission is granted by the State of Bihar and approval is granted by the AICTE.

The Respondent-State of Bihar from its Science and Technology Department vide letter dated 8.7.1993 requested the AICTE, Eastern Regional Committee, Calcutta to get BIT Bokaro inspected by an Expert Committee as per the prescribed norms. A copy of that letter is Annexure 10 to this writ petition. It is stated that letter dated 8.7.1993 was issued by the State of Bihar on the basis of the report and recommendation of the Expert Committee duly constituted by the State of Bihar and thereby Respondent-State of Bihar recommended the case of the Petitioners Institute for its approval by the AICTE. It is further stated that ignoring the letter dated 8.7.1993, the AICTE vide letter dated 15th July, 1993, informed the Petitioners Institute that the Expert Committee of AICTE will not be set up until the recommendation/viability report from the State Government is received and the consent of the affiliating University is received. A copy of that letter dated 15th July, 1993, has been annexed as Annexure 11 to this writ petition. Accordingly, the Respondent-State of Bihar vide letter dated 28.7.1993 called for an opinion and advise from the Bokaro Steel Plant as to what support and assistance shall be extended by it to B.I.T. Bokaro, as the question of granting ''No Objection Certificate'' was under the consideration of the State Government. On 7.8.1993, the Principal, B.I.T. Bokaro issued a letter to the Vice Chancellor of the Respondent-University requesting therein to affiliate the Institute even temporarily and to conduct examination of the students already admitted in the Institute without any financial liability. A copy of the said letter dated 7.8.1993 is Annexure 13 to this writ petition. On 5.10.1993, the Government of Bihar from its Science and Technology Department issued a letter to the Managing Director, Bokaro Steel Plant to handover the resources, and the grants which it wants to give to the Institute so that the Institute may treat the same as its own income and property and should better its prospects in obtaining favourable recommendation of the Government. A

copy of the letter dated 5.10.1993 is Annexure 14 to the writ petition. The Registrar of the University vide its letter dated 22.11.1993 informed the AICTE that the University has no objection if BIT, Bokaro, is granted approval. A copy of the said letter dt. 22.11.1993 is Annexure 15 to this writ petition.

On the basis of the applications received pursuant to the advertisement, altogether 323 students were admitted in different faculties of engineering in B.I.T. Bokaro in 1992 and at present the strength of the students is 226. The Petitioners'' case is that as the students already admitted in the Institute completed their first year course, the Principal of the Institute requested the State of Bihar to recommend and direct the Respondent-University to conduct examination of the Institute for 1992-93 session, but no action was taken by the State of Bihar. Meanwhile, on 5.2.1994 the Expert Committee of AICTE, Eastern Regional Committee, Calcutta, inspected the Institute and submitted its report to the AICTE, Eastern Regional Committee, Calcutta. The Petitioners learnt that the Expert Committee has possibly recommended the case of the Petitioners'' Institute for according approval by the AICTE, New Delhi. The report submitted by the Expert Committee was placed before the AICTE, which considered the same and vide its letter dated 31.3.1994 accorded conditional approval to BIT Bokaro for conducting the degree courses with annual intakes as shown therein. A copy of the letter dt. 31.3.1994 is Annexure 16 to this writ petition. One of the conditions imposed by the AICTE was that the Institute will not take fresh admission till the approval of the Government of Bihar and a formal consent of the Bokaro Steel Plant was received by the Institute to provide the facilities mentioned in the report. However, the AICTE allowed and approved the students already admitted in the Institute in 1992-93 session to appear in the first year examination to be held in June, 1994 and it was specified that these students would be treated as students for 1993-94 session.

The Petitioners having received the letter dated 31.3.1994 from the AICTE approached the Respondent State of Bihar and requested it to allocate/nominate the students from amongst the students who had appeared in the combined engineering entrance examination for taking admission in 1994-95 session. However, the Government did not allocate/nominate the students. Consequently not a single candidate could be admitted in the Institute in the year 1994-95. The Principal of the B.I.T. Bokaro after receiving approval from the AICTE vide letter dated 12.9.1994 requested the Vice Chancellor of the University to conduct periodical examination of the students of the 1st year engineering. However, neither the Institute was granted affiliation by the University, nor examination was conducted. It is stated that after granting conditional approval the Expert Committee again visited the Institute to inspect the same and it recommended for grant of permanent approval to the Institute.

However, the said Committee insisted for obtaining no objection certificate from the State of Bihar. The above decision was communicated by letter dated 14.9.1994, a

copy of which is Annexure 18 to this writ petition. The Petitioner having received the said letter requested the Chief Minister of Bihar on 19.11.1994 to direct the concerned authorities to issue no objection certificate in the matter of establishment of BIT Bokaro. It is stated that because of the wrong advice the Petitioners approached this Court by filing CWJC 3350 of 1994 (R) praying for issuance of appropriate direction to the State Government to issue no objection certificate. On 20.2.1995 the aforesaid writ petition was disposed of with a direction to the Secretary and Director of Science and Technology Department, Govt. of Bihar to take final decision in the matter of issue of ''No Objection Certificate'' (Annexure 19). The said order was duly communicated to the Respondents-Secretary and the Director aforementioned, but no action was taken within the time fixed by this Court. Consequently a contempt'' petition was filed, being MJC. 182 of 1995 (R). However, the Respondent-State Authorities directed the Petitioners to withdraw the contempt petition, then only their case shall be considered by the State of Bihar. On that assurance the Petitioners withdrew the contempt petition, which was accordingly dismissed.

The Petitioners'' case is that the condition imposed by the AICTE while according approval to the Institute is uncalled for; inasmuch as "no objection" from the State of Bihar is not necessary. It is stated that ''No Objection Certificate'' from the State Govt. is not essential and the AICTE can grant approval to the Institute without imposing any conditions much less the condition of obtaining ''No Objection Certificate'' from the State Government. It is further stated that the actiosn of the State in not granting ''No Objection Certificate'' and also the action of the University in not granting affiliation are illegal and violative of law laid down by the Supreme Court.

3. A counter affidavit has been filed on behalf of Respondent No. 1-AICTE stating, inter alia, that conditional approval was accorded to the Institute vide Council''s letter dated 31.3.1994. It is further stated that the Expert Committee of the All India Council for Technical Education visited the Institute to verify the compliance of the conditions as stipulated in the Council''s approval letter dated 31.3.1994. The Committee then recommended for extension of approval for the session 1995-96. However, no recommendation for permanent approval was made as yet. It has further been stated that the Committee recommended that no new admissions may be made unless and until State Government''s no objection is obtained. Lastly it is stated that the Respondent-AICTE issued guidelines for admission in professional colleges and it is imperative that the State Government issues no objection certificate for establishment of the professional colleges. The Council is fully jusitified in imposing the condition for obtaining no objection from the concerned State Government in the interest of the planned and co-ordinated development of technical education in the country.

4. A separate counter affidavit has been filed on behalf of Respondents 2 and 3, wherein it, has been stated that before establishment of any Technical Institute, prior permission of AICTE, "No Objection" of the State Government concerned and of the affiliating University is required. It is also stated that the AICTE is the final authority regarding granting of permission for opening up/setting up a Technical Institute. However permission/cannot be granted until and unless the State Government and the affiliating University do not issue "No Objection" or recommendation to the said Institute. Besides referring various provisions of the Bihar State Engineering and Pharmacy Educational Institutions (Regulation and Control) Act, 1982, and the Regulations. It is stated that the Central Task Force shall consider the recommendation of the State Level Committee and send its recommendation to the member-Secretary of the Council and thereafter the Council shall decide the question of granting of approval. According to the Respondents, the Institute has been established without taking any permission from the AICTE and recommendations of the State Government and of affiliating University and for the same the Institute has still not applied properly in prescribed form. It has further been stated that the State Government vide its Resolution dated 15.12.1992 constituted a Committee for inspection of the said Institute at Bokaro and the said Committee will make an inspection of the Institute and will submit its report within one month to the Department. It was observed in the report of the said Committee, which Inspected the Institute on 18.12.1992, that the Institute does not fulfil the norms laid down by the AICTE, as such permission for the opening of the Institute can be granted subject to fulfilment of certain conditions, mentioned therein. A copy of the said inspection report dated 18.12.1992 has been annexed as Annexure 9 to the writ petition. According to the Respondents, although the Managing Director of the Bokaro Steel Plant vide letter dated 5.10.1992 assured to provide assistance to the Institute subject to the concurrence of the State Government, but the same was not in un-equivocal terms that how much assistance the said Plant would provide to the Institute. Various other facts have also been stated in the counter affidavit, but in the nutshell the case of the Respondents is that since the Institute did not fulfil the conditions and as the Council has not granted permanent approval for starting the Institute, the Petitioner has to obtain approval from the AICTE in accordance with the Regulations.

5. I have heard Mr. Anil Kumar Sinha, learned Sr. Counsel for the Petitioners, Mrs. Indrani Sen Choudhury, learned Standing Counsel No. 1 and Mr. Sohail Anwar, learned Counsel for the Respondents.

Mr. A.K. Sinha made two fold submissions. Firstly, he submitted that when the Central Government has granted approval/affiliation for setting up a new Technical Institution, then the State Government is not supposed to refuse grant of ''No Objection''. According to the learned Counsel even ''No Objection'' from the State Govt. is not necessary to be obtained; inasmuch as it is within the exclusive jurisdiction of the AICTE to grant permission or affiliation for establishment of

Technical Institution. Learned Counsel secondly submitted that the impugned letter dated 30.6.1995 issued by the Secretary of the Department of Science and Technology, Government of Bihar, refusing to issue ''No Objection'' certificate is absolutely illegal, arbitrary and wholly without jurisdiction. Learned Counsel submitted that although in the earlier writ petition, this Court specifically directed the State Government to pass reasoned order on the question of issuance of ''No Objection'', but from the impugned order it will appear that no reason has been assigned by the Respondent-State while refusing to grant ''No Objection'' certificate.

On the other hand, Mrs. Sen Choudhury submitted that the Petitioners as a matter of right cannot claim issuance of ''No Objection'' certificate for establishment of Technical Institution. According to her, the Petitioners are required to follow the procedures provided under the Act and the Regulation and unless all the conditions prescribed therein are fulfilled, the State is not bound to issue ''No Objection'' certificate to the Petitioners. Learned Counsel then submitted that even the Petitioners failed to furnish the details of infrastructure and the sources of finance for running the Institution.

Mr. Anwar, learned Counsel for the Respondent-University, took the stand that even if necessary approval and permission is granted by the AICTE and the State Government for establishment of Technical Institution, the Petitioners have to apply to the University for grant of affiliation and unless that is done, the students cannot be allowed to sit in the examination and the University shall not be responsible for conducting the examination of the students of that Institution. Mr. Anwar further submitted that the Petitioners have not still applied to the University for grant of affiliation according to the prescribed procedure.

6. Before appreciating the rival contention of the parties, it would be useful to first examine the relevant provisions of law in this regard. So far the State legislation is concerned, the Government of Bihar enacted Bihar State Engineering and Pharmacy Educational Institutions (Regulation and Control) Act (Act 62 of 1982) (hereinafter to be referred to as ''the Act of 82'') for the purpose of regulation and control of the indiscriminate opening of Engineering Colleges, Polytechnics and Pharmacy Colleges in the State of Bihar. According to Section 3 of the said Act of 82, the Governing Body/Organising Committee or any kind of Body or Institution, intending to start a degree in Pharmacy and Engineering shall apply to the State Govt. furnishing certain informations for grant of permission for opening of the aforesaid Technical Institutions. According to Section 5 of the said Act, the State Govt. shall cause an inspection to be made by the AICTE by, the Inspector appointed by the State Govt. to see the Institution and also to ascertain whether the conditions laid down by the AICTE or by the Central or the State Government have been fulfilled. Various other provisions have also been made under the aforesaid Act for the purpose of granting affiliation/permission for establishment of Technical Institutions. The Parliament also enacted the law in this regard in the year 1987,

namely, All India Council for Technical Education Act, 1987 (Act 52 of 1987) (hereinafter to be referred to as "the Act of 87"). The object of this Act is to provide for the establishment of AICTE with a view to proper planning and coordinated development of Technical Education System throughout the country and their improvement and planned growth with proper maintenance of norms and Technical Education System. Under this Act provisions have been made for making rules and regulations to carry out the purpose of the Act. Accordingly, a Regulation has been framed, namely, All India Council for Technical Education (Grant of approval for starting new technical Institutions, introduction of courses or programmes and approval of intake capacity of seats for the courses, programmes) Regulations, 1994. Under the Regulations various conditions have been incorported which are required to be fulfiled by the person intending to establish a Technical Institution.

7. In view of the two enactments, one by the Parliament and another by the State Legislature, the question arises as to which one of the Act will prevail. This question has no longer been res-integra.

The Central Act of 87 falls under Entry 66, List I and Entry 25, List III. While the State Act of 82 falls under Entry 25 List III of the VIIth Schedule of the Constitution of India. This matter came before the Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, . In that case the question fell for consideration was with regard to repugnancy of Central Act of 87 and Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules made thereunder. It would be useful to refer the following observations made by the Apex Court, before appreciating further:

The aforesaid provisions of the Act including its preamble make it abundantly clear that the Council has been established under the Act for co-ordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such edcation in relation to planned quantitative growth. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further to evolve suitable performance appraisal system incorporating such norms and mechanisms in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed. This duty and responsibility cast on the Council implies that the norms and standards to be set should be such as would prevent a lopsided or an isolated development of technical education in the country. For this purpose, the norms and standards to be prescribed for the technical education have to be such as would on the one hand ensure development of technical educational system in all part of the country uniformaly; that there will be a co-ordination in the technical education and the education imparted in various parts of the country and will be capable of being

integrated in one system; that there will be sufficient number of technically educated individuals and that their growth would be in a planned manner; and that all institutions in the country ate in a position to properly maintain the norms and standards that may be prescribed by the Council. The norms and standards have, therefore, to be reasonable and ideal and at the same time, adaptable, attainable and maintainable by institutions throughout the country to ensure both quantitative and qualitative growth of the technically qualified personnel to meet the needs of the country. Since the standards have to be laid down on a national level, they have necessarily to be uniform throughout the country without which the coordinated and integrated development of the technical education all over the country will not be possible which will defeat one of the main objects of the statute, country as is well known, consists of regions and population which are at different levels of progress and development or to put it differently, at differing levels of backwardness. This is not on account of any physical or intellectual deficiency but for want of opportunities to develop and contribute to the total good of the country. Unnecessarily high norms or standards, say for admission to the educational institution or to pass the examinations, may not only deprive the vast majority of the people of the benefit of the education and the qualification, but would also result in concentrating technical education in the hands of the affluent and elite few and in depriving the Courtry of a large number of otherwise deserving technical personnel. It is necessary to bear this aspect of the norms and standards to be prescribed in mind, for a major debate before us centred around the right of the States to prescribe standards higher than the one laid down by the Council. What is further necessary to remember is that the Council has on it representatives not only of the States but also of the State Universities. They have, therefore, a say in the matter of laying down the norms and standards which may be prescribed by the Council for such education from time to time. The Council has further the Regional Committess, at present, at least in four major geographical zones and the constitution and functions of the Committees are to be prescribed since the Council has the representation of the States and the professional bodies on it which have also representation from different States and regions, they have a says in the constitution and functions of these Committees as well. What is further important to note is that the subject covered by this statute is fairly within the scope of Entry 66 of List I and Enty 25 of List III. Further, these regulations along with other regulations made by the Council and the rules to be made by the Central Government under the Act are to be laid down before the Parliament. Hence, on the subjects covered by this statute, the State could not make a law under Entry 11 of List II prior to Forty-second Amendment nor can it make a law under Entry 25 of List III after the Forty-second amendment. If there was any such existing law immediately before the commencement of the Constitution within the meaning of Article 372 of the Constitution, as the Madras University Act, 1923, on the enactment of the present Central Act, 1923, on the enactment of the present Central Act, the provisions of the said law if repugnant to the provisions of the Central Act would

stand impliedly repealed to the extent of repugnancy. Such repugnancy would have to be adjudged on the basis of the tests which are applied for adjudging repugnancy under Article 254 of the Constitution.

8. In order to make the factual position clear it would be appropriate to refer some of the paragraphs of the counter affidavit filed by the Council- AICTE and the State of Bihar, Department of Science and Technology. In the counter affidavit filed by the Council categorical statements have been made in paragraphs 5, 7 and 9 which are quoted hereinbelow:

5. That with regard to the statement made in paragraph-30 of the writ application, it is stated and submitted that the All India Council for Technical Education based on the recommendations of the Task Force, accorded conditional approval to Bokaro, Institute of Technology, Bokaro with certain conditions vide Council''s letter dated 31.3.1994.

7. That with regard to the statement made in paragraph 35 of the writ application, it is stated and submitted that the expert committee of the All India Council for Technical Education visited the institute to verify the compliance of the conditions as stipulated in the Council''s conditional approval letter of 31.3.94. The committee recommended for extension of approval for the session 1995-96. No such recommendation for permanent approval was made as contended by the Petitioner. Further, the committee also recommended that no new admissions may be, made unless State Government No-Objection is obtained

9. That with regard to the statement made in paragraph 44 of the writ application, it is stated and submitted that All India Council for Technical Education accorded conditional approval to B.I.T., Bokaro with the stipulation that further admission shall be made by the competent authority i.e. State Government. All India Council for Technical Education has also issued guidelines for admission in professional colleges vide GSR 476 (E) (copy enclosed. For the competent authority to make admissions in Private Unaided-Professional colleges, it is imperative that the State Government issued No-Objection certificate for the establishment of the professional colleges. The Council is fully justified in imposing the condition of obtaining No-Objection from the concerned State Government in the interest of the planned and coordinated development of technical education in the country as per the mandate given to the Council through the All India Council for Technical Education Act of 1987.

9. From perusal of the statements made in the aforementioned paragraphs, it is clear that the Council has no objection in granting approval to the Petitioner''s Institute. The only stand taken by the Council is that as per the guidelines Issued by the Council for admission in professional colleges it is imperative that the State Government issues no objection certificate for the establishment of the professional colleges and the Council is justified in imposing the condition and obtaining no

objection from the councerned State Govt. in the interest of the planned and co-ordinated development of technical education in the country.

10. Similarly in the counter affidavit filed by Respondents 2 and 3, Department of Science and Technology, Govt. of Bihar, it has been categorically and specifically admitted that it is the AICTE alone who is competent to grant approval for establishment of the Technical Institution. Paragraphs 20, 26 and 27 of the counter affidavit are worth to be quoted hereinbelow:

20. That from the aforesaid fact it is apparent that the final and competent authority for granting permission for opening/setting up of a new technical institution, is A.I.C.T.E. alone, who inter alia, amongst others, after considering the recommendations of the State Government as well as of the affiliating University accords permission for setting up of a technical Institution either by Registered Society/Trust or by Government or Government aided Institutions or by University Department.

26. That meanwhile, State Government vide its resolution dated 15.12.1992, constituted a Committee for the inspection of the said Institute at Bokaro. The Committee consisted of following members:

(i) Dr. M.K.P. Mishra-Joint Director (Technical) - Chairman.

(ii) Dr. Z. Ahmed, Deputy Director (Technical) - Member.

(iii) Sri Ganesh Pd. Singh, Assistant Director - (Science) Member.

It was stated that the aforesaid Committee will make an inspection of the Institute and will submit its report within one month to the Department.

A copy of the aforesaid resolution was also given to the Secretary, Bokaro Institute of Technology for information and necessary action in this regard.

27. That the said Committee made an inspection of the Institute at Bokaro on 18.12.1992 and submitted its report to the Government.

It was observed that the Institute does not fulfil the norms laid down by the A.I.C.T.E. as such permission for the opening of the Institute can be granted subject to the fulfilment of certain conditions mentioned therein

11. From perusal of the inspection report of the Committee dated 18.12.1992 which has been annexed as Annexure G to the counter affidavit it appears that the Committee has recommended the case of the Petitioners for grant of permission on certain conditions. Relevant portion of the report is re-produced hereinbelow:

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�ii� Nk=ksa dk ukekadu jkT; dh izos''k ijh{kk ;k ch- vkbZ- Vh- esljk dh izos''k izjh{kk ds ek/;e ls gksxk A blds vfrfjDr tks yksx vuqnku nsrs gSa muds fy, �jkf''k ds eqrkfcd� dqN lhVsa vkjf{kr jgsxh A ;g rc rd tkjh jgsxh tc rd laLFkku fo�kh; fLFkfr ls vkRe fuHkZj ugha gks tkrk gS A

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�5� cksdkjks LVhy dk inkf/kdkjh ''kklh fudk; dk la;qDr lfpo gksxk A iSls dk ysu nsu lfpo ,oa la;qDr lfpo ds la;qDr gLrk{kj ls gksxk vkSj ''kklh fudk; esa foKku ,oa izkoSf/kdh foHkkx dk Hkh izfrfuf/kRo jgs A

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g- vLi"V           g- @ vLi"V         g- @ vLi"V
19-12-92             1-1-93             29-12-92
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12. As noticed above, the Petitioners moved this Court earlier also by filing CWJC No. 3350 of 1994 (R) seeking appropriate direction upon the State Govt. to issue no objection certificate. In the said writ petition, the grievance made by the Petitioners was that it made an application seeking No-Objection from the State Government in terms of the provision of the 82 Act on the ground that the Expert Committee constituted by the Department of Science and Technology, Govt. of Bihar, inspected the Institute and submitted report in January, 1993 itself, but the State Govt. sat tight over the matter and did not pass any order. Despite several adjournments given in that case no counter affidavit was filed by the State Govt. and ultimately the writ petition was disposed of by order dated 20.2.1995 directing Respondents 2 and 3, Deaprtment of Science and Technology, Govt. of Bihar, to dispose of the application of the Petitioners for granting. No-Objection within two months from the date of production of a copy of that order. It appears that pursuant to the direction, the impugned order was passed by the Respondent-State which was communicated by the Secretary, Department of Science and Technology, Govt. of Bihar, vide Memo No. 1142 dt. 30.6.1995. This gist of the order is quoted hereinbelow:

Sir,

With reference to the above mentioned subject I am directed to say that the proposal of issuing No objection certificate in favour of Bokaro Institute of Technology was under consideration of the State Govt. The said Institution has filed a writ petition in the High Court, Patna praying to direct the State Govt. to issue "No Objection" certificate. The Hon''ble Court in its judgment dated 21.2.95 directed the

State Govt. to decide the matter within two months from the date of issuing this judgment.

The State Govt. has carefully examined the all aspects of the said institution and decided not to issue No objection certificate in favour of Bokaro Institute of Technology, Chas, Bokaro (Dhanbad).

Yours faithfully
Sd/- Secretary.

From bare perusal of the order quoted above, it is manifest that no reason has been assigned nor anything has been disclosed as to why and for what reason the Institute is not entitled to get "No Objection" certificate for running of the Institution. It is also manifest from the order that the intention of the State Government in the department of Science and Technology is not fair; rather it is arbitrary, capricious and un-reasonable. It does not appear from the order that the State Govt. is encouraging the private, sectors in establishment of educational institutions for providing facilities in higher education. At this juncture it would be more appropriate to refer the observations made by the Apex Court in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , which runs as follows:

Therefore, as on today, it would be unrealistic and unwise to discourage private initiative in providing educational facilities, particularly for higher education. The private sector should be involved and indeed encouraged to augment the much needed resources in the field of education, thereby making as much progress as possible in achieving the constitutional goals in this respect. It could be concluded that the private colleges are the felt necessities of time. That does not mean one should tolerate the "so called colleges" run in thatched huts with hardly any equipment, with no or improvised laboratories, scarce facility to learn in an unhealthy atmosphere far from conducive to education. Such of them must be put down ruthlessly with an iron hand irrespective of who has started the institution or who desires to set up such an institution. They are poisonous weeds in the field of education. Those who venture are financial adventures without morals or scruples. Their only aim is to make money, driving a hard bargain, exploiting eagerness to acquire a professional degree which would be a passport for employment in a country rampant with unemployment They could be even called pirates in the high seas of education.

13. As noticed above, no reason has been given by the State Govt. while refusing to issue "No Objection" certificate to the Petitioners for running the Institution. However, in the counter affidavit filed by the State Govt. in the Department of Science and Technology, it is stated that the Department of Science and Technology, Govt. of Bihar by several letters asked the Managing Director of the Bokaro Steel Plant to inform him as to what amount of assistance it will render to the Institute so

that the same may be incorporated in the recommendation, but the Bokaro Steel Plant never stated anything in un-equivocal terms regarding the financial assistance which they want to provide to the Institute in question. It is further stated that the Managing Director of the Bokaro Steel Plant vide letter dated 1.7.1993 addressed to the Secretary Department of Science and Technology, Govt. of Bihar, only stated that the proposed college being set up in Bokaro Steel City will have patronage and assistance from the Bokaro Steel Plant as many of the children of the Bokaro Steel Ltd. employees would avail the opportunity of studying. The letters written by the Bokaro Steel Plant to the Government of Bihar, Department of Science and Technology have been annexed as Annexures 6 and 24 to the writ petition and reply to the counter affidavit respectively. From Annexure 6, which is letter dated 5.10.1992, it appears that the Bokaro Steel Plant agreed to provide assistance in the establishment of the Institute if permission is accorded by the State Government. Annexure 24 is the another letter written by the acting Managing Director of the Bokaro Steel Plant dated 20.12.1996 assuring the Secretary, Science and Technology, Govt. of Bihar that the Bokaro Steel Ltd. is ready to extend all help to the Institute, if No Objection certificate is issued by the Government of Bihar and approval of Board of Steel Authority of india Ltd. has been obtained in this regard. The Director, Science and Technology Department, Govt. of Bihar, was, therefore, requested to expedite the issuance of "No Objection" certificate. In view of these letters, it is evident that the stand taken by the State in the counter affidavit cannot be a ground for not issuing "No Objection" certificate.

14. As noticed above, during the pendency of this writ petition, the Respondent-AICTE extended approval to the Petitioner''s Institute for the year 1997-98 on the basis of the observations made by the Monitoring Committee and recognition of the Northern Regional Committee of AICTE and the same was communicated to the Secretary, Department of Science and Technology, Government of Bihar vide Memo No. 59-65 dated 21.4.1997, a copy of which has been annexed as Annexure 2 to the reply to the counter affidavit. By the said Memo the Secretary, Department of Science and Technology was further informed that the extention was given to the Institute on certain conditions and subject to the result of this writ petition. Finally, the Secretary of the Department of Science and Technology, Government of Bihar, was requested to take appropriate action to implement the decision of the AICTE and communicate the same to the Northern Regional Committee of the Council. From the aforesaid letter it is evident that the Council which is the appropriate authority is satisfied with the requirements and its intention is to grant approval, but because of the technicality of non-grant of no objection by the State Government final approval has still been kept pending.

I have given my anxious consideration on the provision of the Central Act and the State Act and also gone through the proposed interpretation given by the Supreme Court in the case of State of Tamil Nadu v. Adhiyaman Educational and Research Institute and Ors. (supra). The very preamble of the Central Act shows that the Act

has been enacted to provide for the establishment of the AICTE with a view to proper planning and coordinated development of the technical education system throughout the country, promotion of qualitative improvement of such education in relation to planned quantitative growth, regulation and proper maintenance of norms and standards in the technical education system.

Section 11 provides for inspection to be caused by the Council, of any department or departments of a technical institution or University for the purposes of ascertaining the financial needs of such institutions or a University or standards of teaching, examination and research. It also provides for inspection as well as for communicating the results of such inspection to such institution or University with a view to recommending to it the action to be taken as a result of such inspection. The Apex Court in the aforesaid case observed that so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central Act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc. will have to be uniform throughout the country. The Apex Court in the aforesaid case after considering the scope and object of the Central Act vis-a-vis the State Act has laid down the following proposition of law:

....

(i) The expression ''coordination'' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make ''coordination'' either Impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State Legislation is in conflict with the Central Legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State

legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally.

15. As noticed above, the State Government in the department of Science and Technology has not come with a clear stand that because of non-fulfilment of certain conditions it was not desirable to issue "No Objection" to the Institute despite approval is accorded by the AICTE. The impugned order quoted hereinabove will show that the order was passed mechanically without giving any reason for refusal to permit the Institute to flourish the technical education in the State of Bihar. There is no material on the record to show that the standard and the requirement prescribed by the Government are such that the Institute complying with them are unable to conduct relevant courses. Even assuming that there is some deficiencey in the fulfilment of the conditions by the Petitioners, the State Government can at any time take up the matter with the Council and get the deficiency removed. As noticed above under the Central Act the State Governments have representation on the Council and have a say in laying down the standards and requirements for starting and running technical institutions. Even otherwise, it is always open to the State Government to bring to the notice of the Council the inadequacies of the requirement laid down by it, but as found above, the State Government cannot arbitrarily refuse to grant "No Objection" without assigning any reason or without asking the Petitioners to remove the deficiency. As I have held above, in my opinion, non-issuance of "No Objection" by the State Government cannot and shall not be a ground for the Council to wait for grant of final approval to the Institute for imparting technical education.

16. So far grant of affiliation/recognition of the Institute by the concerned University, namely, Vinoba Bhave University, is concerned, it appears to me that the University never took any serious objection against the grant of affiliation/recognition. In 1993 itself, the Registrar of the University by letter dated 22.11.1993 (Annexure 15) addressed to the Member Secretary to the Eastern Regional Committee of the AICTE expressed that the University shall have no objection in granting affiliation. The relevant portion of the letter is quoted hereinbelow:

However, as far as the question of All India Council for Technical Education granting approval to Bokaro Institute is concerned, our University should have, at this stage, nothing against it. If the State Government issues its "No Objection Certificate" and, if subsequently, the Institute passes through the inspection and other rules of this University affiliation, we should have no objections to this Institute being approved by A.I.C.T.E.

17. It further appears that the Petitioners have approached the University for grant of formal affiliation and in response to that the Registrar of the, University vide letter dated 12.8.1993 requested the Principal of the Institute to re-approach the State Government in this regard, as the University was not in a position to take any step without clearance of the State Government.

18. From the facts stated hereinabove, it is evident that it is only because of the hurdle put by the State Government, the University although was reluctant was not taking any step for granting affiliation/recognition to the Institute.

19. From the materials brought on record, it is further evident that the State Government in the Department of Science and Technology took up the matter in 1992 itself and vide letter dated 5.11.1992 (Annexure 3) the Institute was directed to submit necessary papers for taking necessary action in the matter of grant of ''No Objection''. Since 1992 the Institute has been submitting all the necessary informations and papers as and when required by the State Government. It further appears that the Joint Secretary-cum-Director of the Department of Science and Technology vide letter dated 8.7.1993 requested the Member-Secretary of the Eastern Regional Committee of the Council and to favour a report at an earliest. One important letter of the State Government is dated 28.7.1993 (Annexure 12) addressed to the Managing Director of Steel Authority of India Ltd., Bokaro Steel Plant informing that the Expert Committee inspected the Institute and recommended favourably if Bokaro Steel Plant is prepared to give substantial assistance then the State Government may give its approval to the establishment of the Institute. By the said letter, it was further informed that the question of grant of ''No Objection'' certificate is at present under the consideration of the State Govt. The department of Science and Technology then took another plea by writing letter to the Managing Director of the Steel Authority of India Ltd., Bokaro Steel City by Memo No. 3065 dated 5.10.1993 to the effect that the State Govt. shall send

necessary approval to the AICTE for grant of approval after the Bokaro Steel Plant provides necessary finance to the Institute. It is interesting to note that in the said letter the State Govt. admitted that the Steel Authority of India Ltd. had agreed to provide all financial assistance to the Institute. I have already referred hereinabove the relevant letters issued oy the Bokaro Steel Plant giving assurance to the State Govt. that it shall provide all necessary financial assistance to the Institute. Despite the above, after keeping the matter under consideration for about 3/4 years the State Govt. in the Department of Science and Technology refused to grant ''No Objection'' without disclosing any reason. From the manner in which the Department of Science and Technology, Govt. of Bihar, dealt with the case of the Petitioner in the matter of grant of its approval, it is mainfest that the action and the conduct of the department is not fair and in the interest of public at large. However, as I have already Held above that once the requirements laid down under the Central Act are fulfilled to the satisfaction of the AICTE for grant of approval the question of further approval from the State Govt. on extraneous consideration does not arise and in such circumstances the Court would be constrained to exercise jurisdiction.

20. A similar question arose in the case of Patna Educational Development Trust v. The State of Bihar (CWJC No. 122 of 1996) whereby prayer was made for issuance of appropriate direction to the State Government for allotment of candidates of Combined Engineering Entrance Examination to the Petitioner-Institute for taking admission in various disciplines of engineering courses. In that case, this Court took notice of the fact that the AICTE had already granted approval and that the State Govt. was only required to take a decision in the matter of nominating the students to the Institute based on the result of the competitive entrance examination. This Court further took notice of the fact that the AICTE informed the State Government that the Expert Committee had recommended the Institute for conduct of technical programme in engineering and technology. On these facts, the wit petition was allowed in terms of the order dated 13.2.1996 following the judgment of the Apex Court in the case of Unnikrishnan J.P. and Ors. (supra) and directed the State Government and the University to take necessary steps in this regard. The Petitioner of that writ petition namely, Patna Educational Development Trust again moved this Court in CWJC No. 8126 of 1996 against the order of the Vice Chancellor of Magadh University refusing to grant affiliation on the ground of certain short-comings shown in the inspection report submitted by the team appointed by the University. This Court following the judgment in the case of State of Tamil Nadu (supra) held that the State cannot prescribe standards and requirements higher than those prescribed by the Central Act for technical education and also the University cannot refuse the grant of affiliation on the vague grounds and further that the conditions that may be prescribed by the University for grant of affiliation shall have to be in conformity with the norms and guidelines prescribed by the Council in respect of the matters entrusted to it u/s 10 of the Central Act.

21. Having regard to the facts and circumstances of the case and the discussions made above, this writ petition is allowed and the impugned order dated 20.6.1995 issued by the Secretary, Department of Science and Technology, Govt. of Bihar, refusing to grant ''No Objection'' is quashed and held it as redundant. It is further held that Respondent No. 1-AICTE shall proceed for grant of permanent approval without waiting for any ''No Objection'' certificate from the State Govt. Respondent No. 4 is directed to take all necessary steps for grant of affiliation to the Institute and to conduct examination of the students already admitted in the said Institute on the basis of the conditional approval granted by the Council. Such grant of affiliation by the University shall be taken as expeditiously as possible and within a period of two months from today keeping in mind that the delay in affiliation will jeopardise the career of the students. Respondent-State is consequently directed to allocate/nominate the students from amongst the students appearing in the Combined Engineering Extrance Examination for taking admission in different disciplines of engineering in the Institute for the respective session. In the facts and circumstances of the case, there shall be no order as to costs.