

(1998) 10 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 15631 of 1998

A.M. Kannappa Mudaliar and Jambulinga Mudaliar Trust

APPELLANT

Vs

All India Council for Technical Education and University of
Madras

RESPONDENT

Date of Decision : 26-10-1998

Acts Referred:

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 or Programmes) Regulations, 1994 — Regulation 8, 8(3)
Madras City Municipal Corporation Act, 1919 — Section 3(9)
Tamil Nadu Town and Country Planning Act, 1971 — Section 2(23)

Citation : (1998) 10 MAD CK 0114

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; R. Santhanam, Addl. Central Govt. Standing Counsel for RR.1 and 2 and V.R. Gopalan for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of certiorarified mandamus, calling for records comprised in the proceedings of 2nd Respondent dated 17.9.1998 in F. No. 38-242/98/SRO/8909 and quash the same and consequently direct Respondents 1 and 2 and also the third Respondent to forthwith consider and grant permission affiliation respectively to the Petitioner, to start Engineering College "Sastha Institute of Engineering and Technology" at Porur, Chennai (Chembarampakkam), by accepting the land documents already submitted and considering the application of the Petitioner in the light of the compliances sought for in the letter of Viability dated 20.8.1998, with effect from the Academic Year 1998-99 in respect of four Courses, viz. (i) Electronics and Communication Engineering; (ii) Computer Science and Engineering; (iii) Electrical and Electronics Engineering and (iv) Information Technology with an annual intake of 60 students each, totalling 240 students, within such time as this Court may

prescribe, and pass such further or orders as this Court may deem fit and proper in the circumstances of the case.

2. Petitioner is a Trust. It wanted to start an Engineering College, to be named as "Sastha Institute of Engineering and Technology". For the said purpose, the Trust acquired lands in Survey Nos. 153/1, 153/2, 153/10, 153/12 Part, etc. situate in Chembarambakkam Village, Poonamallee, Tiruvellore Taluk and District, admeasuring an extent of 5.22 acres, situated within the jurisdiction of Chennai Metropolitan Development Authority and coming under the urban agglomeration of Chennai City. Petitioner, as per the All India Council for Technical Education (Grant of Approval for starting new technical institutions, introduction of courses for programmes and approval of intake capacity of seats for the courses or programmes) Regulations, 1994, as amended in the year 1997 (hereinafter referred to as "The Regulations") applied before the said Authority, for issuance of Letter of Viability on 15.10.1997. Simultaneously applications were also made for getting No Objection Certificate from State Government and University of Madras. As per the Regulations, inspections have been conducted by the Director or Technical Education to enable the State Government to issue a No Objection Certificate. But there was long delay on the part of the Government in issuing the Certificate, which compelled the Petitioner herein to come to this Court in W.P. 2524 of 1998, seeking direction against the Government of Tamil Nadu and also the Director of Technical Education to pass orders on the application filed by the Petitioner. Subsequently, a No Objection Certificate was issued by the Government. A similar Certificate was also issued by the University of Madras, which was intimated to the second Respondent herein. On receipt of the abovesaid No Objection Certificate from the State Government, and letter of Viability from the University, 2nd Respondent AICTE also, by its communication dated 20.8.1998, issued a letter of Viability to the Petitioner, for starting the new Institution with effect from the Academic Year 1998-99. Petitioner was requested to furnish certain particulars which included a registered sale deed indicating the ownership of the proposed land in the name of Petitioner-Trust, a land use certificate from the concerned authority and furnishing of a Fixed Deposit for Rs. 50 lakhs in a Nationalised Bank in the joint names of Trust and Regional Office of Respondents 1 and 2 for a period of 10 years, apart from other conditions. Petitioner complied with all the conditions mentioned in the Letter of Viability. The land documents were also sent to the second Respondent along with a Certificate obtained from the Member-Secretary, C.M.D.A. that the area comes within Metropolitan Area, and that it comes within its jurisdiction. On receipt of the same, second Respondent issued the impugned letter dated 17.9.1998 wherein it is said that the permission cannot be granted since the area of the land is only 5 acres and 22 cents, which is not within the City or Chennai or within the State Capital. Petitioner was directed to produce document to show that it owns 25 acres since it is included in a rural area. Petitioner, thereafter made a further representation on 21.9.1998 to the Respondents, stating that the reasons for rejecting permission are not proper. Petitioner wanted

reconsideration of the same. No orders have been passed on the representation, and it is under these circumstances, Petitioner has come to this Court for the aforementioned relief.

3. Respondents 1 and 2 have filed a detailed counter affidavit, on receipt of notice of motion ordered by this Court.

4. The only contention raised in the counter-affidavit is that, the Petitioner wanted to start a College within the Chennai City or State Capital. The Government as well as the University of Madras has given permission. But the fact that the land is situated at Chembarambakkam village, Poonamallee, was made known only later, and when it was found that it was not within the City of Chennai or within the State Capital, permission was refused. The application made by Petitioner was for starting an Engineering College only at the State Capital. Now, the Petitioner wants to establish a college outside the State Capital, and so permission was refused. It is further said that Metropolitan Area is not the same thing as Metropolitan City or State Capital. In a Metropolitan Area, Municipality, Village, Panchayat Council will be included. But, that cannot be taken into consideration for the purpose of granting permission for starting an Engineering College. The requirement of land depends upon the location or where it has to be established, rural area or metropolitan city or State Capital.

5. I heard learned Counsel for all the parties.

6. First Respondent has framed Regulations on 11.4.1997 for the purpose of grant of approval for starting new technical institutions, introduction of courses for programmes and approval of intake capacity of seats for the courses or programmes. As per the said amended Regulations of 1997, Regulation 8 provides for scrutiny of applications. The application is filed in Form No. 6. In the said application, as per Column 9, the applicant has only to declare whether the land is owned by it, and the extent of the same. A declaration is also to be made whereby the applicant undertakes to produce the documents showing the land as per norms laid down by the Council, in the name of the Society, Trust or Applicant and such matters. (Emphasis). A reading of the Declaration makes it clear that along with the Application, copies of documents need not be sent. All these details are necessary only after the Viability Letter is issued. It is only this application that is sent to the University as well as to the State Government. As per Regulation 8, on receipt of a copy of the application submitted to the Council for obtaining a letter of viability, the concerned University or the Directorate of Technical Education, having jurisdiction in the area in which the new technical institution is to be started, shall make arrangements for scrutiny and verification of the information contained therein. If the University or the Directorate of Technical Education, as the case may be, desires to have a local inspection of the site, it may constitute its Local Inspection Committee (LIC) and under intimation to the applicant, make such inspection of site. On receipt of the report of the Local Inspection Committee or after verification of the particulars contained in the application to the satisfaction of the University or the Directorate of Technical

Education, as the case may be, or by such other means as it may deem proper, it shall give its recommendations to the respective State Government or the University Grants Commission with a copy to the Council. On receipt of the report containing the recommendations of the University or the Directorate of Technical Education, as the case may be, under Sub-regulation (3), the State Government or the University Grants Commission, as the case may be, shall forward the report and its recommendations to the Council specifically dealing with the viability of the proposal having regard to the following requirements:

(a) Requirement of land: The application shall identify suitable land for starting the new technical institution. The minimum requirement of such land shall be as indicated in Table I below:

Degree Level Diploma Level

1. Rural area 10 Hectares for Degree Level & 8 Hectares for Diploma Level
2. Taluk or District Headquarters 4 Hectares for Degree Level & 4 Hectares for Diploma Level
3. Metropolitan Cities or State Capitals. 2 Hectares in Degree level & 2 Hectares in Diploma Level

A Note is also appended that the applicant need not show the ownership or title of the land proposed to be utilised for starting the new technical institution, at the stage of application. Ownership or title shall be required only after issuance of Letter of Viability.

7. In this case, along with the application, copies were also sent to the State Government as well as University of Madras, and, in the letter dated 20.4.1998, sent by Secretary to Government, addressed to second Respondent herein, it is said that the All India Council for Technical Education, New Delhi had forwarded a proposal to the Government for their comments, for the opening of a New Self-Financing Engineering College by the Petitioner. It is also stated therein that the Director of Technical Education had constituted an Inspection Committee, which, after inspection of the said Institution, submitted its Report. The Director of Technical Education has forwarded the said report of the Inspection Committee to the Government, for consideration. It is further said that the Government has examined the report of the Inspection Committee and decided to accept the same. Thereafter, it is said that the Government has no objection for the establishment of a new self-financing Engineering College by name "Sastha Institute of Engineering and Technology", Poonamallee High Road, Porur, Chennai, by Petitioner-Trust. The University of Madras has also stated that they have no objection for the Petitioner establishing a College, as per letter dated 30.4.1998. On receipt of the recommendations from the State Government as well as University of Madras, Respondent No. 1 - AICTE, as per letter dated 20.8.1998, informed the Petitioner to furnish documents showing the ownership of the proposed land in the name of the applicant, as per AICTE Regulations. In

the last portion of the Order, it is further said that if the applicant is not able to fulfill any of the requirements as mentioned in that letter, it shall forfeit its claim for further consideration of the proposal during 1998-99. The norms of the AICTE in respect of land and funds are also appended to the Annexure. Regarding norms in respect of lands and funds, the requirement as stated in the Regulation is reiterated. After getting the Letter of Viability, Petitioner submitted the documents to the Respondent - AICTE. As per the impugned letter, the AICTE found that it was not acceptable, and hence permission was refused. The only reason given by the AICTE is that the area of the land is not sufficient for starting an engineering college, since it is situated outside the State Capital or Metropolitan City.

8. Learned Counsel for Petitioner contended that the area where the College is to be established is within the Metropolitan Area and that satisfies the requirements of the Regulations. Learned Counsel relied on the definition given for the words "Madras Metropolitan Planning Area", in Section 2(23-a) of the Tamil Nadu Town and Country Planning Act, 1971, which reads thus:

"Madras Metropolitan Planning Area" means the City of Madras and such contiguous area of such City as the Government may, from time to time, specify by notification, in the Tamil Nadu Government Gazette.

Learned Counsel argued that this Act has overriding effect over the Chennai City Municipal Corporation Act wherein u/s 3(9), "City of Chennai" has been defined thus:

"City of Madras" or "City" means the area declared by the State Government by notification to be the City of Madras but excludes Fort St. George with the glacis.

Learned Counsel also relied on Chapter II-A for the said purpose, which was newly inserted in the Town and Country Planning Act, 1971 by way of amendment in 1974. Learned Counsel also argued that the Member-Secretary of C.M.D.A. has certified that the land in question comes within the jurisdiction of Metropolitan Development Area. He further submitted that the Metropolitan City or State Capital has not been defined. It was further argued by learned Counsel on the basis of the Letter of Viability, issued by second Respondent, constructions have been already put up and huge investment has been made, and so, when they have acted on the representation, 2nd Respondent is not entitled to withdraw from the commitment. Therefore, the impugned Order is illegal.

9. As against the said contention, learned Standing Counsel for Respondents 1 and 2 - AICTE brought to my notice the application form filed by the Petitioner. In Column of the application, Petitioner has stated that he wants to establish the College in Tamil Nadu State Capital. It is this application that was submitted to the 2nd Respondent and the same was placed before the State Government and the University of Madras. If it is outside the State Capital, they are entitled to refuse permission.

10. Therefore, the only question that requires consideration is, whether there is any vagueness in the requirement of land in the Regulations and whether 5-22 acres of land in Chembarampakkam Village, Tiruvellore District, will meet the requirements of the Regulation.

11. I have already extracted the relevant portion of the Regulation. Applications are sent only to the AICTE. Before issuing a Letter of Viability, second Respondent will send copies of the applications to the State Government as well as to the University of Madras for their comments. Regulation 8 provides for the procedure. When the application is received by the State Government, it is sent to the Director of Technical Education for necessary action. If he desires to have an inspection, he may do so with notice to the applicant. The Director of Technical Education again reports back to the State Government with his comments and the State Government has to pass an order either objecting to the establishment or issuing a No Objection Certificate. While submitting a Report, the Director of Technical Education has also to comply with the norms of the AICTE and he has to inform the State Government taking into consideration those norms also. As I said already, along with the application, norms regarding the land and funds are also appended to the Annexure. When it is received by the State Government, it is also bound to consider the norms even in regard to the land, for issuing the Certificate. In the letter dated 20.4.1998, by the Secretary to Government, it is stated that the Director of Technical Education had formed an Inspection Committee, and that it inspected the Institution and submitted a Report. No details are given as to whether it found the land within the City or outside. The Government has also not considered this question and it has simply accepted the Report of the Director of Technical Education and forwarded its NOC to the AICTE. When the second Respondent has sent a copy of the application for its comments, naturally, a duty is cast on the State Government also to verify whether the norms are satisfied. When Regulation 8 enables the Director of Technical Education to make a local inspection, verification, etc., a duty is cast on the Director of Technical Education, to verify the details and make a report. In this case, the same is not done. On the basis of the No Objection Certificate issued by the Government, a Letter of Viability has also been issued. In the Letter of Viability itself, it is said that if the applicant has not fulfilled any of its requirements as per the AICTE regulations, it will not be entitled to get permission. If ultimately it is found that the area is not included within the Metropolitan City or State Capital, the stand taken by second Respondent is only to be accepted. As per Town and Country Planning Act, the Madras City is said to have 155 Wards. The details are given in the Act itself. What is Madras Urban Agglomeration, is also specifically stated. It includes the Madras Corporation, various Municipalities, Town, Panchayats and Panchayats, and within the Developed Area are included various villages, and Village No. 76 is Chembarampakkam Panchayat Union. It is also said that it is a local body by itself. When the Town and Country Planning Act itself says that number of villages are included within the Metropolitan Area, it follows that it is something

more than Metropolitan City. Madras City is the Metropolitan City, which is the State Capital. All other Municipalities or villages will either come within the Urban Agglomeration or Madras Metropolitan area. Those areas will be beyond the Metropolitan City or the State Capital. No reliance can be placed on the provisions of Town and Country Planning Act, since that deals only with the development of the localities. For the purpose of AICTE Act and its Regulations, the College will have to be established within the Madras City or the State Capital which has got a very restricted meaning. The State Capital does not extend to Poonamallee Panchayat Union included in Sriperumpudhur Taluk. The contention of learned Counsel for Petitioner is, therefore, to be rejected.

12. The further argument of learned Counsel for Petitioner that on the basis of Letter of Viability, Petitioner has constructed buildings and has invested huge amounts and, therefore, Respondents cannot withdraw consent at this stage, also cannot be accepted. Second Respondent has given a representation that it will permit the Petitioner to start a College even if it violates the AICTE Regulations. The Letter of Viability is very clear that the College must be established strictly in accordance with the AICTE Regulations, and non-fulfilment of the same will be a reason for cancelling the permission. In the Declaration signed at the time of filing the original Application, Petitioner has agreed that it has got ownership of the land as per the norms laid down by the Council. It has to file it after the Letter of Viability is issued. Once that condition is not satisfied, second Respondent cannot be found fault with for issuing the impugned letter. There is no question of any estoppel or acquiescence arising in such case. The Regulation framed by the AICTE has the force of law, and it cannot deviate from its own Regulations. There cannot be any question of estoppel in such cases. Petitioner who has not satisfied the AICTE norms, is not entitled to question the letter issued by 2nd Respondent. Consequently, the Writ Petition is dismissed. No costs; WMP is also dismissed.