

(2019) 07 DEL CK 0288

In the Delhi High Court

Case No : Civil Writ Petition No. 5277 Of 2019

Brahmanand Group Of Institutions

APPELLANT

Vs

All India Council For Technical Education And Ors

RESPONDENT

Date of Decision : 26-07-2019

Acts Referred:

All India Council For Technical Education Act, 1987 — Section 10, 10(k)

Citation : (2019) 07 DEL CK 0288

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Pankaj Kumar, Anil Soni

Final Decision : Disposed Off

Judgement

'''

Jyoti Singh, J",,,,

1. The present writ petition has been filed seeking quashing of the Scrutiny Report dated 13.09.2018, rendered by the All India Council for Technical",,,,

Education (hereinafter referred to as "AICTE") as also the quashing of the extension of approval letter dated 29.04.2019 whereby, the",,,,

respondent No. 1 has disallowed the intake of any seat in the course of Bachelor of Pharmacy (hereinafter referred to as "B. Pharma") for the",,,,

academic year 2019-2020. A direction is sought to respondent No. 1 to issue extension of approval to the petitioner college for 60 seats in B.Pharma",,,,

for the academic year 2019-2020 and a direction to the University/Respondent No. 2 to provide affiliation for the said course.,,,,

2. The petitioner college has been established under the aegis of Brahmanand Educational and Charitable Trust and its medical college is affiliated to",,,,

Dr. Abdul Kalam Technical University, Lucknow (U.P.).",,,

3. It is the case of the petitioner that the college has been running the course of B. Pharma since 2010 and ever since, the required approvals had been",,,

granted by the respondents year after year. For the academic year 2018-2019, respondent No. 1 permitted an intake of 120 students, whereas",,,

respondent No. 3, which is Pharmacy Council of India (hereinafter referred to as â??PCIâ?), gave permission only for 60 seats. It is averred that",,,

since permission was only for 60 seats, petitioners employed 17 faculty members based on the permitted strength of the students, which was 60.",,,

4. The inspection team of Respondent No. 1 carried out scrutiny of the college on 13.09.2018 and in the Report, it was found that the seats in the",,,

Bachelor of Architect had been reduced by respondent No. 1 to 50% and in the column of B. Pharma, the word, â??NILâ? was mentioned.",,,

Petitioner avers that he understood the word â??NILâ? to mean that there was no reduction in the seats permitted earlier and could not construe it to",,,

mean no intake at all, since in that case, Respondent No. 1 would have given a separate intimation. It is, thus, the averment of the petitioner that he",,,

had no reason to appeal against the Scrutiny Report and hence no appeal was filed.,,,

5. The petitioner further pleads that it was only when an extension of approval letter dated 29.04.2019 was issued, that he learnt that the remark",,,

â??Zeroâ? had been put in the column of proposed intake for B. Pharma for the academic year 2019-2020, and the Petitioner was not permitted any",,,

intake for this year.,,,

6. What the petitioner has pleaded is that, even if, the report of the Scrutiny Committee is to be accepted, the number of faculty was 17. Since the PCI",,,

had only permitted and sanctioned 60 seats, the requirement as per the student faculty ratio was only 16. As against this requirement, the petitioner still",,,

had 17 faculty members and thus there was no reason for the AICTE to have denied the extension of approval.,,,

7. The petitioner then preferred a representation on 07.05.2019 for granting approval and getting no response, he has filed the present petition",,,

impugning the Scrutiny Report as well as the extension of approval letter.,,,

8. Pursuant to the notice issued by this Court, Respondent No. 1 has filed a counter affidavit. The stand of Respondent No. 1 in the counter affidavit is",,,

that AICTE is a Statutory body established by an Act of Parliament, to provide for establishment of an All India Council for Technical Education to",,,

regulate technical education throughout the country. Section 10 of the AICTE Act provides the functions of the Council, which, amongst others is to",,,

take steps to ensure coordinated and integrated development of Technical education and maintenance of standards. Section 10(k) of the Act,,,

empowers the AICTE to grant approval for starting new Technical Institutions and introduction of new courses. To carry out these functions,",,

Regulations have been framed for grant of approval for starting new Technical Institutions, introduction of courses, programmes, intake capacity of",,,

seats etc. The AICTE has also evolved a Handbook for Approval Process (HAP), which details the procedures as well as the minimum conditions",,,

which an Institute must fulfil to seek approval for starting new Institutions or for variation of the conditions in the existing Institutes.,,,

9. It is admitted in the counter affidavit that the petitioner had been running the course of B. Pharma and other courses since 2010 and had the",,,

approval of AICTE, year after year upto the academic year 2018-2019. For the academic year 2018-2019, the AICTE had approved an intake of 120",,,

students for B. Pharma. It is pointed out that as per decision of the Council, it was decided that a scrutiny be conducted in respect of the Institutes",,,

having less than 30% of the approved intake consistently for the last 5 years. Therefore, on 13.09.2018, a scrutiny was conducted in respect of the",,,

petitioner Institute. The Scrutiny Committee observed certain deficiencies which are detailed in the Report of 13.09.2018. Based on this, the",,,

Committee recommended â??NILâ? intake for the B. Pharma course for the academic year 2019-2020. It is also pleaded that the Report was",,,

uploaded on the portal of the AICTE for information and necessary action.,,,

10. In the affidavit, it is further stated that though the petitioner did not appeal against the Report, yet in order to be fair, it was decided to place the",,,

matter before the Standing Appellate Committee (hereinafter referred to as â??SACâ??) and the petitioner was asked to appear before the Committee,,,

on 02.02.2019. The petitioner, however, chose to absent himself on the date of hearing, and therefore, the AICTE, keeping in view the",,,

recommendations of the SAC, the Regulations etc., issued an order on 29.04.2019 specifying â??Zeroâ? against the intake for B. Pharma for the",,,

academic year 2019-2020. In fact, it is also pointed out that a Speaking Order was also passed by them on 15.05.2019.",,,

11. On merits, it is averred in the affidavit that the Scrutiny Report clearly reflects that a remark "NIL" was given in the column, which had a",,,

heading "proposed intake 2019-20". It was thus clear that the answering respondent had informed that there will be no intake for the said",,,

academic year and there was no ambiguity.,,,

12. On merits, it is also averred that under Appendix VII of the HAP 2019-2020, the ratio of faculty to student for Pharmacy is 1:15 and hence for an",,,

approved intake of 120 students for the earlier year of 2018-2019, the Institute should have employed a faculty of 32. It is also pleaded that the Apex",,,

Court, in the case of Parshavanath Charitable Trust vs. All India Council for Technical Education (2013) 3 SCC 385, has set out the timelines for",,,

admission to Technical Institutions and the last date for giving approval is the 30th April of an academic year and therefore the answering Respondent,,

is in no position to consider the case of the petitioner at this stage.,,,

13. Learned counsel for the petitioner contends that no doubt that AICTE had granted permission for intake of 120 students in the academic year,,

2018-19 and even for the earlier years but respondent No. 3 had given permission only for 60 seats for the first time in the year 2018-2019. Since the,,

permission was only for 60 seats the petitioner had engaged a faculty of 17 on the basis of 60 seats and there was no reason why the faculty should,,

have been engaged for 120 seats.,,,

14. The next contention of the learned counsel for the petitioner is that a perusal of the Scrutiny Report in the column of recommendations would,,

show that under the heading, "proposed intake 2019-20" for the B.",,,

Architecture course where 50% was mentioned, it was also specified that this was on account of "reduction", but for B. Pharma, only the word",,,

Name of the Course,Level,Approved Intake 2018-19,"Proposed Intake 2019-20

(% Reduction/Closure of

Course

B. Arch.,Degree,80,50% (Reduction)

B. Pharma,Degree,120,NIL

24. No doubt, there is weight in the submission of respondent No. 1 that the

petitioner should have appeared for the hearing before the SAC, but the",,,

question that arises is that if the Scrutiny Committee has given a wrong report as regards the number of faculty required and the word "NIL" has,,,

been correctly understood by the petitioner then merely because the petitioner did not appear before the SAC would he be disentitled to raise his,,,

grievance before this Court. In my view, the answer to the question is a clear "NO". Surely, if the petitioner would have appeared before the",,,

SAC, it may have been to its advantage and he could have put his point forth or sought a clarification, but only because he has not appeared before an",,,

Appellate Committee, cannot be a ground which can persuade me to hold that the petitioner cannot be heard by way of this petition.",,,

25. Insofar as the argument of the petitioner that the impugned decision is unreasoned or non-speaking, in my view, the same deserves to be rejected.",,,

The Scrutiny Committee Report has given the reason for rejection being under deployment of the faculty members and no further reasons were,,,

required to be given.,,,

26. Having therefore examined the entire issue, I am of the view that the petitioner has been wrongly denied the intake of students for B. Pharma",,,

course for the Academic Year 2019-20. The action of the respondents in declining the approval on the ground that the petitioner should have had a,,,

faculty of 32 members is illegal and arbitrary. With a sanction of 60 seats by the PCI, the petitioner was well justified in having a faculty of 17, which,",,

in fact, was more than the required ratio of having 16 faculty members. I, therefore, hold that the action of the respondent No. 1 in denying the",,,

extension of approval to the petitioner in the B. Pharma course for the academic year 2019-20 is illegal and the Scrutiny Report as well as the said,,,

letter dated 29.04.2019 are hereby quashed and set aside.,,,

27. The judgment in the case of ACM College of Pharmacy (supra) and the Children's Academic Society (supra) of the Division Benches of this,,,

Court relied upon by the learned counsel for the respondent are on two propositions viz., (a) the conditions of recognition and the Regulations for",,,

admission process have to be strictly followed, (b) the schedule and the time lines laid down by the Apex Court in the case of Parshavanath (supra)",,,

cannot be varied by the AICTE. The two judgments therefore are relevant to the present case to the extent of deciding the relief that can be granted,,,

to the petitioner at this stage, when the deadline of 30.4.2019 is over and the AICTE has no power or jurisdiction to even entertain any request for",,, approval.,,,

28. There is no doubt in my mind that the judgments relied upon by learned counsel for the respondent are binding not only on the AICTE but on the,, petitioner as well as this Court.,,,

29. The important question that now arises thus is as to what relief can be granted to the petitioner in view of the judgment of the Apex Court as well,, as the two judgments of the Division Benches of this Court. The letter of denial of extension of approval was issued on 29.04.2019. The petitioner,,,

approached this Court after 30.04.2019. The Apex Court in the case of Parshavanath (supra) has in clear terms laid down the Schedule and strict,,,

timelines for granting admission for Technical Institutions. Admittedly, in the present case, the last date for grant of approval by the AICTE in terms of",,,

the judgment of the Apex Court has expired on 30.04.2019 and therefore, the AICTE has no power or jurisdiction to vary the dates of admission and",,,

neither can this Court direct the AICTE to exercise the power and jurisdiction to grant approval beyond the deadline fixed by the Apex Court. At the,,,

same time, I cannot shut my eyes to the fact that the petitioner Institution has been wronged and the extension of approval has been illegally denied.",,,

Thus the only relief that can be granted to the petitioner at that stage is that if the petitioner applies for approval in the next Academic session of 2020-,,,

2021, the application will be considered by the AICTE without taking into consideration the Scrutiny Report for the current year and without being",,,

influenced by the denial of approval for the Academic year 2019-20.,,,

30. In my opinion, the interest of the petitioner has been jeopardized due to the wrongful action of the respondent No. 1. Not only has the petitioner",,,

lost out on running the B. Pharma course for this academic year, but this has also impacted the larger public interest as 60 seats in B. Pharma course",,,

have been wasted out. In matters of Educational Institutions, the Authorities, in my view, should act carefully and cautiously so that Academic",,,

sessions are not lost.,,,

31. The reliefs sought in the present petition cannot be allowed and the petitioner cannot be permitted to start the B. Pharma course for the Academic,,,

year 2019-20 as the deadline for approval has passed. However, in the facts of

this case, I award a sum of Rs.25,000/- to the petitioner as",,,
compensation. The said amount would be paid by respondent no. 1 within a
period of two weeks from today.,,,

32. The writ petition is accordingly disposed of in above terms.,,,

C.M. APPL. No. 23377/2019 (for ex-parte ad interim stay),,,

33. Since the present petition is disposed of, this application stands dismissed as
being infructuous.",,,