

(2008) 08 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 5809 of 2008

Dr. D.Y. Patil Educational Academy and Dr. D.Y. Patil College
of Engineering

APPELLANT

Vs

The Director of Technical Education, Government of
Maharashtra, State of Maharashtra and All India Council for
Technical Education

RESPONDENT

Date of Decision : 29-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Universities Act, 1994 — Section 83(6)

Citation : (2008) 6 ALLMR 15 : (2008) 110 BOMLR 3006 : (2009) 1 MhLj 192

Hon'ble Judges : Swatanter Kumar, C.J.;A.P. Deshpande, J

Bench : Division Bench

Advocate : Vikas Singh, Udit Singh and Navdeep Vora, instructed by N. Vora and Associates, for the Appellant; V.S. Masurkar, Government Pleader and Beena Menon, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, C.J.—In this Petition under Article 226 of the Constitution of India, Petitioner No. 1 Academy prays that the Respondents in the Writ Petition be directed to include the name of Petitioner No. 2 Dr. D.Y. Patil College of Engineering in the list of eligible colleges for allotment of students for the academic year 2008-2009 for Engineering courses through Centralised Admission Process being monitored and implemented by the Director of Technical Education, Government of Maharashtra. As a necessary corollary to this relief, it is further prayed that Petitioner No. 2 college be permitted to give admissions to the students for an intake of 240 students for the present academic year in accordance with the letter of approval issued by the All India Council for Technical Education dated 31st July 2008.

2. These reliefs are claimed on the premise that Petitioner No. 1 is an educational academy imparting education through its various institutions including

Engineering college at Ambi, Talegaon- Dabhade, Taluka Maval, District Pune. Petitioner No. 2 is stated to be one of the colleges managed and run by Petitioner No. 1. Petitioner No. 1 applied to the University of Pune to recommend the establishment of the Engineering college. University of Pune informed the Petitioners vide their letter dated 3rd January 2008 that the University had recommended to the State Government i.e. Director of Technical Education, for establishment of Petitioner No. 2 college. Thereafter, Petitioner No. 1 also submitted a proposal for establishment of the Engineering college to the All India Council for Technical Education, New Delhi, who in turn vide their letter dated 18th January 2008 required the authorities to be present for personal hearing on 1st February 2008. In furtherance to which, the Petitioners were informed by Letter of Intent that they are required to furnish documents and satisfy other requirements stipulated by them vide letter dated 1st February 2008. In the Letter of Intent, various documents were asked for and the Petitioners were required to satisfy the requirements stated in the said letter and furnish among others, inter alia, joint fixed deposit receipts, etc. and it was also stated that the Petitioners may indicate the readiness for Expert Committee visit within a period of two months for further consideration of the case. The matter remained pending because of certain non-compliance and as per the Petitioners for want of proper persuasion by the All India Council for Technical Education. However, vide letter dated 27th June 2008, the All India Council for Technical Education clearly stated that the letter of approval cannot be issued due to following deficiencies:

The site of construction of the new Engg. College building is not matching with the approved building plan Workshop, Civil work is incomplete.

3. It was also stated in the said letter that as per Approval Process Handbook (2008), they could avail the opportunity of reconsideration of the proposal. No correspondence or facts have been averred as to what transpired between 27th June 2008 and 31st July 2008 when the letter of approval for establishment of the Engineering college in all 240 seats was issued by the All India Council for Technical Education. This letter did not indicate as to for which academic year the approval was issued. The approval was granted subject to various terms and conditions and the Petitioners were required to comply with all the conditions. In terms of Clause 17, it was stated that in the event of non-compliance with regard to the guidelines, norms and conditions, action for withdrawal would be taken.

4. After the Petitioners received this letter of approval, the Petitioners without approaching the State Government through Director of Technical Education as well as the affiliating University, filed the present Writ Petition seeking the above reliefs and for appropriate steps to be taken for grant of permission to commence the courses in the Institution and affiliation to the University.

5. When the Writ Petition was filed, the Petitioners had also not impleaded All India Council for Technical Education as a Respondent. However, on oral request of the learned Counsel appearing for the Petitioners, leave to amend was granted and the All India Council for Technical Education was added as Respondent No. 3

where after the All India Council for Technical Education appeared in the present Petition.

6. The learned Counsel appearing for the Petitioners vehemently argued that after the grant of approval by the All India Council for Technical Education, the Director of Technical Education and the affiliating University has hardly any role to play and thus there was no need to approach them for any permission. It is also contended that the College has complete infra-structure. The fourth round of counselling is to be held by the centralised agency between 25th and 28th August 2008. Therefore, the Respondents are liable to be directed for inclusion of the name of Petitioner No. 2 in the list of colleges and they are obliged to allocate students for admission to the said college. In the larger interest, it is also contended that the seats will go waste and no prejudice would be caused to anybody if the students are allocated to the college and the college commence its Engineering courses. In support of its contention, reliance is placed upon the judgments of the Supreme Court in the case of Medical Council of India Vs. Madhu Singh and Others, , Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, and Mridul Dhar (Minor) and Anr. v. Union of India and Ors. (2005) 13 SCC 65 and an order of the Division Bench of this Court in the case of The Shetkari Shikshan Mandal v. State of Maharashtra and Ors. passed in Writ Petition (Lodging) No. 1826 of 2008 decided on 1st August 2008.

7. Because of shortage of time and persistent request of the Petitioners that the matter be heard expeditiously, no reply could be filed on behalf of All India Council for Technical Education. However, the reply on behalf of the State of Maharashtra was filed and the prayers of the Petitioners were strictly opposed. It has been averred on behalf of the State that if the permission is granted to the Petitioner Institution to commence the courses at this juncture, it will defeat the merit and it will be unfair to higher and meritorious candidates for picking up college of their choice. According to the State, it will be serious breach of the golden rule of merit cum preference. It is averred that in the advertisement given by All India Council for Technical Education on 24th September 2007, much prior to the time when the application was submitted on behalf of the Petitioners, that the applications for establishment of new institutions for technical programmes received after 30th June shall not be valid for the current academic year but shall be valid for next two academic years. Thus, the Petitioner Institute does not have a valid and existing approval for the current academic year i.e. 2008-2009. It was argued with some emphasis that number of other colleges have not been considered for the current year on the same basis and if the Petitioners are permitted to be included in the list now, it will result in patent discrimination by the State inasmuch as other colleges who have been granted approval after 30th June have not been included in the list on the same analogy and clear direction and rule made by the All India Council for Technical Education. It will be useful to refer to some portions of the reply filed on behalf of the State, which reads as under:

...Moreover it is pertinent to note that in the State of Maharashtra 'The Director of Technical Education' is appointed as the Competent Authority by the State of Maharashtra to conduct the admission process of various educational institutions conducting technical education courses. I say that the Director of Technical Education has prescribed a specific schedule for conduct of admissions to various Engineering courses in the State of Maharashtra. Hereto annexed and marked as EXHIBIT 'A' is the copy of the Notification issued in this regard on 9th June, 2008 by the aforesaid Director.

9. I say that in as much as the provisions of the Maharashtra Universities Act, 1994 (for the sake of brevity, hereinafter referred to as 'the said Act') are concerned, Sub-section 6 of Section 83 of the said Act makes it abundantly clear that no student shall be admitted by the Petitioner College/Institution unless the first time affiliation has been granted by the University to the Petitioner College/Institution. I say that in view of this clear unequivocal mandate of the Legislature, it is impermissible for the Petitioner to admit even a single student in absence of such first time affiliation from the concerned University.

10. However, I will hasten to add that the State Government cannot permit at this stage grant of even a single admission at the Petitioner Institution. The reasons for the same are more particularly set out in the aforesaid paragraphs. In short, I say that the Petitioner Institution does not have affiliation and therefore, it is just not possible to permit the Petitioner to admit even a single student at the Institution/college. It is worthwhile to note that in the advertisement given AICTE on 24/09/2007 vide Advt. No. AICTE/Legal/09 (04)/2007, it is clearly mentioned in category - I under serial No. 4 of "APPLICATION FOR ESTABLISHMENT OF NEW INSTITUTIONS FOR TECHNICAL PROGRAMMES" such as "The letter of Approval issued after 30th June shall not be valid for the current academic year but shall be valid only for next two Academic years". The AICTE has issued the Letter of Approval (LOA) to the Petitioner's Institute vide letter dated 31/07/2008 which is already annexed at page No. 19 of the petition. Therefore the Petitioner's Institute is not valid for the current academic year i.e. 2008-2009 but shall be valid only for next two Academic years....

12. If to obviate the aforesaid situation the Petitioner College is offered to all the students who have been already admitted, the entire admission process will get unsettled. Allowing shifting of an already admitted single student from one college to another college, sets in chain reaction that unsettles all the admissions so far settled. In other words, allowing admissions to the Petitioner college at this stage, will amount to re-opening of the entire admission process. This is certainly against the public interest and will be counter productive from the point of view of student community and starting of educational activities of the present academic year. As per this Hon'ble Court Order s passed in W.P. No. 3916 of 2001 and W.P. No. 1647 of 2007, the Respondent No. 1 and 2 have not considered the petitioner's institute for admission during the academic year

2008-09. At the same time as per the Order passed by this Hon'ble High Court, Mumbai Full Bench on 08/08/2008 in Writ Petition No. 8849 of 2007 along with other Petitions and as the AICTE has issued the Letter of Approval (LOA) to the Petitioner's Institute vide letter dated 31/07/2008 the Petitioner's Institute is not entitled to fill in seats for the current academic year i.e., 2008-2009 and shall be valid for next two academic years. Hereto annexed and marked as EXHIBIT 'B' is the copy of the above mentioned Order delivered on 08/08/2008.

8. It is argued on behalf of the Respondents that the consistent and uniform stand of the Respondent authorities is that the approvals granted post the cut off date (i.e. 30th June 2008) will be valid only for the next academic year and not for the current academic year. Furthermore, the courses have already started and even the last date for admission is over. (To verify) It will be inappropriate and unjust now to make the admissions in undue haste as it would cause serious prejudice to the meritorious students, commencement of the courses and would introduce an inevitable element of arbitrariness as many other colleges which have already been excluded on this ground would be deemed to have been treated unfairly.

9. The main emphasis which has been placed by the parties and particularly by the Respondents is on the Handbook and the Advertisement issued by the All India Council for Technical Education. Under both these documents, the stipulation with regard to the issuance of letter of approval on and after a particular date has been clearly stated. In the advertisement which was issued by the College for the current academic year on 9th April 2007 and even published subsequently on 24th September 2007, the relevant clause reads as under:

3. SUBMISSION OF APPLICATION

The application can be submitted "any time" round the year. However, the applications complete in all respects received up to 31st December shall be considered for the following academic year. Application received after 31st December shall be considered for the next academic year.

...

4. APPROVAL PROCESS

* "Letter of Intent (LOI)" issued will be valid for "3 years from the date of issue".

* "Letter of Approval (LOA)" issued will be valid for

2 academic years from the date of issue.

* The decisions of grant of approval or otherwise shall be communicated "throughout the year". However, the letter of Approval (LOA) for the current academic year shall be issued by 30th June for completed application received by 31st December of the previous calendar year which have fulfilled norms and standards prescribed by the Council for establishment of new institutions. LOA

issued on or before 30th June shall be valid for Two academic years including the current academic year for obtaining affiliation with the respective Universities and fulfilling concerned State Government requirement for admission.

* The Letter of Approval issued after 30th June shall not be valid for the current academic year but shall be valid only for next two Academic years.

* The Applicant institutions, whose cases have been rejected for grant of Letter of Approval (LOA) may submit compliance for reconsideration or may prefer to appeal by 30th May. The requests for reconsideration or appeal received after 30th May will not be considered for LOA for the current academic year but only for next two academic years. The Applicant shall have only one opportunity for reconsideration or/for making an appeal for issue of LOA for the current academic year. The applicant may submit requests for reconsideration or prefer an appeal after 30th June for consideration for issue of LOA for subsequent academic years.

10. The All India Council for Technical Education is a statutory body with the obligation to maintain proper standards relating to technical education in the entire country. Once the Council in exercise of the statutory powers frames out a policy or issues guidelines, then such guidelines are binding on all concern and should essentially be adhered to. The Handbook issued by the All India Council for Technical Education is a legal and binding document issued for information of the concerned parties i.e. Students and Institutions and other public. Authorities cannot be heard contrary to the specific language of the Notifications issued by the Council in exercise of its statutory power. No doubt it is a settled proposition of law that the All India Council for Technical Education enjoys supremacy in regard to grant of approval for technical courses. Once the approval is granted, the University or the other authority like Director of Technical Education cannot sit in judgment over the grant of approval but their function is not so ministerial that it has no significance in the field of education whatsoever. The Director of Technical Education is required to grant permission for commencement of courses and allot students by central counselling strictly in accordance to the merit and preference of the student. The University is expected to grant affiliation subject to satisfaction of the conditions. What they cannot do is to interfere with the approval granted by the All India Council for Technical Education or its compliance. In terms of Maharashtra University Act, 1994, the students can be admitted to the course only when the institution is affiliated to the University in terms of Section 83(6) of the Act. The Petitioners did not even care to approach these authorities for taking appropriate action in accordance with law. The attempt on behalf of the Petitioners was to completely by pass the process required to be followed on the ground that All India Council for Technical Education has granted approval. We are unable to accept this contention as every authority, no matter how formal is its function, is expected to act in accordance with the prescribed procedure. It is for the University and the Director of Technical Education to examine various aspects and then to grant or

decline permission or affiliation in accordance with law. Of course, they may be expected to act with expeditiousness, but certainly their role cannot be wiped out entirely and that too contrary to law.

11. We may also notice that in the meanwhile, the Full Bench of this Court has also pronounced the judgment in the case of Mahatma Gandhi Missions Institute v. The State of Maharashtra and Ors. (Writ Petition No. 8847 of 2007 alongwith other connected matters), wherein these principles have been reiterated and the Full Bench has issued the following directions:

(a) As far as all colleges of the petitioner institutions/trusts for the academic year 2007-2008 are concerned, the students who were admitted in furtherance to orders of the court against variation in intake of seats duly approved by the Council, their admissions would not be disturbed.

(b) The colleges/institutions shall ensure that in the courses already undergone by them, there is no deficiency. If the students have joined their respective courses late, they shall be required to make up the deficiency.

(c) For the current academic year 2008-2009, we see no reason to interfere with the notification issued by the All India Council of Technical Education or Directorate of Technical Education. The said courses shall commence strictly in accordance with the schedule and no institution which is not duly approved by the AICTE with the concurrence of opinion by the Directorate of Technical Education and the affiliating University as per the requirements of law upto 30th June, 2008 shall admit any students. However, as per the stand taken by the AICTE after completing the requisite formalities and satisfying the authorities concerned in regard to infrastructure and educational standards, such seats would be available to have for the next academic year. The AICTE and other authorities are permitted to adhere to the schedule notified by them. In fact, it is directed that henceforth, there shall be strict adherence to the schedule specified in the law and hand-book printed by AICTE in exercise of its statutory powers.

(d) The AICTE and all other concerned authorities are hereby directed to communicate to every applicant institution, university or trust about refusal and/or grant of approval of their proposal by 15th June of every academic year where the applications have been received in terms of its brochure upto 31st December of the previous year, regarding admissions for the academic year.

12. As held by the Full Bench judgment of this Court in Mahatma Gandhi Missions Institute v. The State of Maharashtra and Ors. (Writ Petition No. 8847 of 2007 alongwith other connected matters), we cannot find any fault in the stand of the All India Council for Technical Education in its attempt to adhere to the notified schedule. It is also a correct stand that adherence to the prescribed standards, cut-off dates and grant or refusal of approval has a direct nexus to the performance of its duties in terms of the Act. The Council cannot grant approvals in a mechanical manner. It is expected to adhere to its schedule and conduct inspections in accordance with its policy and provisions of the All India Council

for Technical Education Act. The stand of the All India Council for Technical Education is that the approval is for the next academic year as it was granted subsequent to the notified date of 30th June, 2008. This fact is not in dispute even before us. Not only this, even the application for approval was moved by the petitioner subsequent to the cut-off date for that purpose i.e. 31st December, 2008 as it was moved on 8th January, 2008. Thus, there is substance in the argument of the State that Petitioners do not have any valid and proper sanction for the current year. Furthermore, the approval is subject to the compliance of the conditions stipulated in the approval letter. Vide their letter dated 27th June, 2008 which was just three days prior to the cut-off date of 30th June, 2008, the Council had clearly stated that there were deficiencies including the deficiency in regard to the infrastructure i.e. College building was not in accordance with the approved building plans and the workshop and civil work is incomplete. The college was also clearly informed that the college could avail the opportunity of reconsideration of proposal. These substantial compliances could hardly be completed for the current academic year. In the letter of approval dated 31st July, 2008, there is nothing to state that those deficiencies had been made good. The letter of approval dated 31st July, 2008 had also informed the college in no uncertain terms "You are required to submit compliance report as per AICTE's requirements by 31st August, 2008." There is nothing on record to show that such compliance was made by the college even till date. All these events clearly indicate that the entire process was for the next academic year and not for 2008-2009. The college cannot drive any benefit for the reason that they claimed to have engaged certain staff members, teachers for the current academic year. The college cannot take advantage of its own wrong as the AICTE had put them to a notice by virtue of notification and hand-book that application submitted subsequent to 31st December and approvals granted subsequent to 30th June, 2008 would be for the next academic year and not the current academic year. The Letter of Approval dated 31st July, 2008 opens with the language that the regulations notified by the Council, norms and standards and conditions prescribed by Council from time to time would be applicable. It is not even the case of the petitioners that they had not submitted the application in furtherance to such hand-book and notification. By 31st August, the date for compliance of counseling is expected to be completed and courses are expected to commence as per the calendar. Another aspect which cannot be ignored by the court is that the petitioners did not even care to approach either the University or the Director of Technical Education, State of Maharashtra for their affiliation and permission respectively. The University, in fact, has not even been impleaded as respondent in the present petition. The Court cannot, in these circumstances, take unto itself compliance of the requirements of affiliation and permission to commence the courses by deeming fiction. The grant of approval by All India Council for Technical Education is a principal permission which was granted conditionally and as already noticed, there is not even a document on record to show that compliance report was submitted by 31st August, as stated by the Council. No matter how formal is the requirement of the University granting affiliation and

Director of Technical Education, State of Maharashtra granting permission to commence the courses but the law in that regard has to be essentially followed by the petitioners and he ought to have approached these authorities for appropriate action in accordance with law. The petitioners have none else to blame except its own conduct for the present situation.

13. Full Bench of this Court in Mahatma Gandhi Missions Institute (supra) has directed strict adherence to notified schedules and cut-off dates, ensure implementation of merit-cum-preference principle and not to shorten the length of the courses in professional education. If the relief prayed for by the petitioner is granted at this stage, it would directly or indirectly have the effect of infringing these principles. Even in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, , relied upon by the petitioners, the Supreme Court unequivocally stated the principle in relation to desirability of commencement and completion of courses according to schedule and in paras 22 and 23 of the judgment stated that if any student is admitted after commencement of the course, it would be against the intended object of fixing the time schedule. Further in its conclusion, the court also stated that there is no scope for admitting the students mid-stream and even if seats are unfilled, there cannot be a ground for making mid-session admission. In the case of Mridul Dhar (supra) where the Supreme Court issued certain directions, the court re-emphasised the need to adherence to time schedules in professional colleges, however, required the Medical Council of India and the Central Government to examine the applications for approval. None of these judgments help the petitioners to sustain a claim before the court that in face of clear stipulation of the hand-book and the notification, this Court should compel the All India Council for Technical Education to violate its own rules and issue directions against other respondents including the University (which is not even a party to the writ petition) to grant permission without compliance to their requirements and even to allocate the students for admission to the college. Such expansion of jurisdiction under Article 226 of the Constitution of India would be opposed to the very spirit of law stated in different Acts including All India Council for Technical Education Act, Maharashtra Universities Act and the Notifications issued by the Director of Technical Education. The Full Bench of this Court in Mahatma Gandhi Missions Institute (supra) considered the Division Bench order of this Court in Shetkari Shikshan Mandal v. State of Maharashtra and Ors. and Atharva Institute of Management Studies and Ors. v. Director of Technical Education, Maharashtra State and Ors. The Bench approved the principle stated in the case of Atharva Institute of Management Studies and directed that for the current academic year, the All India Council for Technical Education and Director of Technical Education should adhere to the notified schedule and the colleges whose approvals were granted that too conditionally after 30th June, 2008 were to be included in the list of colleges published for admission for the next academic year.

14. We are unable to find any error of law or element of unfairness in the stand taken by the respondents. Such stand and timely implementation of schedule

would hardly call for any judicial intervention. There is merit in the submission of the State that number of other colleges have not been included in the list as approval of the All India Council for Technical Education subsequent to 30th June, 2008 and there is no reason to treat the petitioners differently and in any case, there are no exceptional or compelling circumstances which would justify grant of relief to the petitioners. Nothing prevented the petitioners from acting timely and submitting their applications prior to 31st December, 2007 and then pursuing the same vigorously to ensure that the approval was granted prior to 30th June, 2008 and their names were included in the list of colleges for allocation of students. Even if they were to be granted any relief today, it would be unfair as firstly, the admission process would be over by that date and secondly, most of the students have already been admitted and they even may not know about the availability of seats in the Petitioners' college. Thus, it would hurt the golden rule of merit-cum-preference and would obviously result in late commencement of courses. It needs to be noticed with some emphasis that the colleges still have to comply with the requirements of letter of approval dated 31st July, 2008 and still have to approach the University and Director of Technical Education for affiliation and grant of permission to commence the courses respectively.

15. For the reasons aforestated, we find no merit in the Writ Petition and the same is dismissed, however, leaving the parties to bear their own costs.