

(2005) 11 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 20466 of 2005

Educate India Society

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Citation : (2005) 125 DLT 151 : (2005) 85 DRJ 271

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : N.K. Kaul, Arvind Chaudhary, Akshay Makhija and Vandana Khurana, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—A copy of the Petition by way of advance notice has been served on the Respondent on 21.8.2005. However, there was no appearance on its behalf when the Petition was listed before Court on 25.10.2005. On that date notice was nevertheless issued to the Respondent to show cause as to why rule nisi be not issued. The Notice was served on the Respondent through the Registry of this Court on 28.10.2005. Even prior thereto, learned counsel for the Petitioner had, by its letter dated 25.10.2005, informed the Respondent of the next date of hearing, that is, 8.11.2005. This letter was received by the Respondent on 26.10.2005. The matter has been passed over once, in order to afford yet another opportunity to the Respondent to enter appearance and make their representation. Even on the second call the Respondent has failed to put in appearance. It is accordingly set ex parte. Rule.

2. In the Writ Petition it has been prayed that a writ, order or direction be issued quashing the decisions of the Respondent dated 6.9.2005 and 17.9.2005; and that a mandamus or order/direction of like nature be issued to the Respondent to grant increased intake of 140 undergraduate students and approval to the Petitioner for starting three postgraduate courses having an intake of 18 students each from the academic year 2005-2006.

3. The case of the Petitioner is that they had filed an application before the Respondent on 25.11.2004 along with relevant information and documents praying for increased intake for the Academic Session 2005-2006 as per the Table below:

-----						S.No.
Discipline	Intake	Current	Proposed	intake	from	2005-06
-----						1
Electronics and Communication Engineering	90	120	120	Engineering	2	Computer Science and
Instrumentation	90	120	3	Mechanical Engineering	60	120
		40			60	4 Electronics and Engineering

----- It has been contended by learned Senior Counsel for the Petitioner that since the Course at Serial No.4 is not an accredited one, the requisite intake was restricted to 60 students only.

4. A Demand Draft in the sum of Rs.45,000/- was dispatched along with the application. In December, 2004 the Petitioner had also applied for introduction of three (3) Postgraduate Degree Courses for the Academic Year 2005-06.

5. The Petitioner asseverates that the Inspection was carried out by the Respondent on 15.1.2005 but nothing further was heard from them till 7.7.2005 when the Petitioner received the Respondent's letter dated 23.6.2005. It has been vehemently emphasised that a dilatory attitude of the Respondent is evident from the fact that no response was received for several months after receipt of the aforementioned Application.

6. Reverting now to the letter dated 23.6.2005, deficiencies in the functioning of the Petitioner were pointed out as per its Annexure. Succinctly summed up, the Respondent had notified that there was a shortfall of 25 teachers in the Faculty; the Director was over-aged etc. The letter clarified that approval would be subject to rectification of deficiencies spelt out in the Annexure latest by 31.8.2005 so as to entitle the Petitioner for extension of approval for the year 2006-07.

7. The Petitioner's case is that it had submitted a Compliance Report dated 24.8.2005 clarifying and elucidating the removal of the deficiencies pointed out by the Respondent. This letter was accompanied by a Demand Draft for the sum of Rs.40,000/-. No response was received by the Petitioner from the Respondent. Annexure P-20 is a copy of the "decision" of the Respondent posted on its Website on 17.9.2005 which reads as follows:

-----						S.No	Name
of the Existing Course	Existing Intake	Total Institution	Automobile for	2005-06			
Revised	Intake		for	2005-06			
-----						11	Institute
of Computer Technology & Engineering	30						90
Institutional Communication Area, Sector-23a, Engg Huda, Gurgaon, Electronics							

& 90 Haryana-122017 Instrumentation Engg Information 40 Technology
 Mechanical 60 Engineering Additional PG courses 60 Electronics Electrical Engg.
 00 Computer Sc. 00 Mechanical Engg. 00 Energy Engg. 00
 ----- Status Quo
 370 -----

8. In response thereto the Petitioner had addressed a letter to the Respondent dated 20.9.2005 reiterating its full compliance with all the deficiencies raised by the Respondent within the stipulated period. A subsequent letter dated 23.9.2005 is in similar vein although it contains more details including the fact that an increase in the intake had been allowed to as many as six educational institutions even in respect of non-accredited courses. Eventually, a letter was addressed by the Respondent to the Petitioner on 6.10.2005, perusal of which would, prima facie, disclose that the Respondent had not given careful attention to the Petitioner's communication dated 24.8.2005, repeated in subsequent letters. Learned Senior Counsel appearing for the Petitioner has assailed the decision of the Appellate Committee of the Council on the ground that there is no provision authorising its functioning and further that documentary proof had been furnished within the stipulated period, that is, August, 2005. It has been explained that the documentary proof referred to by the Respondent as having been filed on 8.9.2005 was a follow-up of the information furnished to the Respondent in August, 2005 and was only incidental and elucidatory thereof. It has been explained that the documents forwarded on 8.9.2005 were merely joining reports of the newly employed Faculty, which remedial action had been taken by the Petitioner in compliance with the deficiencies pointed out by the Respondent. The information was already furnished in August, 2005, within the stipulated time-period.

9. It needs to be emphasised that if decisions are not expeditiously taken, education in general is certain to suffer. Mr. Kaul, learned Senior Counsel appearing for the Petitioner has strongly emphasised that although an Inspection had been allegedly carried out by the Respondent in January, 2005, the Respondent had deliberately delayed so that the increased intake could not be carried out effective for the Academic Year 2005-06. One of the direct results of this delay is that the fee structure could not be revised in a manner favorable to the students. It is explained that if the Petitioner had been permitted to increase the strength of its students, it was more than likely that the tuition fees could have been lowered.

10. AICTE (Respondent) was established with a view to maintain if not improve educational standards. Its functioning, however, has become too bureaucratic. The Respondent should be mindful of the fact that before taking an adverse decision it should afford the concerned party an opportunity of being heard, as has been underscored in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, the relevant portion of which read as follows:-

"13. The learned Additional Advocate General contended that clause 3 of para

7.06 says that the appointment of a District Government Counsel is only professional engagement terminable at will on either side and not appointment to a post under the Government; and the Government has the power to terminate the appointment at any time "without assigning any cause". He contended that this power to terminate the appointment at any time without assigning any cause and the clear statement that the appointment is only professional engagement terminable at will on either side is sufficient to indicate that the relationship is the same as that of a private client and his counsel. In our opinion, this provision has to be read not in isolation, but in the context in which it appears and along with the connected provisions, already referred. The expression "professional engagement" is used therein to distinguish it from "appointment to a post under the Government" in the strict sense. This, however, does not necessarily mean that a person who is not a Government servant holding a post under the Government does not hold any public office and the engagement is purely private with no public element attaching to it. This part of cl. 3 of Para 7.06 means only this and no more. The other part of cl. 3 which enables the Government to terminate the appointment "at any time without assigning any cause" can also not be considered in the manner, suggested by the learned Additional Advocate General. The expression "at any time" merely means that the termination may be made even during the subsistence of the term of appointment and "without assigning any cause" means without communicating any cause to the appointee whose appointment is terminated. However, "without assigning any cause" is not to be equated with "without existence of any cause". It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee. It was held in *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, that the expression "without assigning any reason" implies that the decision has to be communicated, but reasons for the decision have not to be stated; but the reasons must exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, Therefore, against public policy. Cl. 3 of para 7.06 must, Therefore, be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the Government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character; and that the appointment may be terminated even during currency of the term by only communicating the decision of termination without communicating the reasons which led to the termination. It does not mean that the appointment is at the sweet will of the Government which can be terminated at any time, even without the existence of any cogent reason during the subsistence of the term. The construction, suggested on behalf of the State of U.P. of this provision, if accepted, would amount to conceding arbitrary power of termination to the Government, which by itself is sufficient to reject the contention and thereby save it from any attack to its validity."

Similar observations have been recorded in *Bharat Filling Station and Anr. v. Indian Oil Corporation Ltd.*, 104 (2003) DTL 601, which read as follows:-

"18. Thus the Supreme Court held in the aforesaid cases that there may be circumstances where immediate action is required and in such cases pre-decisional natural justice may not be contemplated and purpose can be served by giving post-decisional hearing. However going by the facts and circumstances it cannot be said that the alleged offence was so grave that it was necessary for the respondent No.2 to dispense with the provisions of requirement of observance of show-cause notice before taking drastic action of terminating the dealership agency. Even if the respondent No.2, in such circumstances, it was of the opinion that the kind of irregularity committed by the petitioner is serious, was not remediless and could have resorted to suspension of the dealership pending inquiry by serving show-cause notice. However, the respondent No.2, going by the allegations contained in First Information Report, took the impugned action thereby presuming that whatever is stated in the First Information Report or whatever is the report of inspection is gospel truth and has to be believed without giving any chance to the petitioner to rebut the same. It cannot be treated as fair play or in consonance with the sense of justice. After all, even as per the procedure prescribed by the respondent No.2 show-cause notice only of seven days was required to be given. Thus even if the respondent No.2 had followed the procedure prescribed it would not have taken much time before concluding the hearing and taking action. I may point out at this stage that I am not going into the issue as to whether allegations, contained in the inspection Report and First Information Report are correct inasmuch as learned Counsel for the petitioner has also tried to argue that the allegations made against the petitioner are not correct. It would be a matter for the respondent No.2 to decide after giving proper opportunity to the petitioner. Any observation made by this Court at this stage may have an adverse effect on the petitioner and/or the respondent and that is why, I am refraining from making any such observations. I am only concerned with the manner in which action is taken by the respondent No.2. Once it is found that principles of natural justice were required to be complied with for taking such action and admittedly that is not done the impugned notice/decision dated 13th June, 2001 terminating the dealership of the petitioner cannot be sustained and is hereby set aside.

20. The result of the aforesaid discussion is that this writ petition is allowed. Rule is made absolute. Termination order dated 13th June, 2001 is hereby quashed.

Yet again in *Allied Motors Ltd. v. Bharat Petroleum Corporation Ltd.*, 113 (2004) DTL 599, it has been opined that:-

"34. In my considered view, there is no manner of doubt that the principles of law as applied to the given facts of the present case are squarely covered by judgment of the Supreme Court in *Harbanslal Sahnia's* case (supra) and judgment of learned Single Judge of this Court in *Bharat Filling Station's* case (supra). In *Bharat Filling Station's* case (supra), learned Single Judge very

succinctly set out that once the respondents' own Guidelines prescribed the procedure and civil consequences are likely to flow to the petitioner as a consequence of the action of the respondent before taking such action, principles of natural justice are to be followed. There can be no exclusion in such a case since in its own wisdom, the Government of India and the oil companies have agreed to follow the said Guidelines. Even otherwise, there is no justification placed on record whether there were any peculiar facts of the case as a consequence of which such principles of natural justice were liable to be dispensed with when the said Guidelines itself provided for the same. There was no such urgency which could require the dispensation with the principles."

11. The Respondent should take its decisions at the earliest possible occasion and not at the 11th hour as is manifested in the present case. If an Inspection had been carried out in January, 2005 it ought not to have taken the Respondent more than one month to point out and enumerate the deficiencies that it had observed. Had this been done the Petitioner would have been in a position to take remedial action well in advance of the commencement of the Academic Year 2005-06? Mr. Kaul has contended that the effort of the Respondent is to compel the Petitioner to make a fresh application in the month of November with a view to render the present Petition infructuous and that the dilatory or slothful attitude of the Respondent would again be repeated in the coming year. Keeping the slow movement of the Respondent in perspective this contention appears to have foundation and merit.

12. In the circumstances of the present case the impugned Orders/Decisions dated 6.9.2005 and 17.9.2005 are quashed. This Court is left with no reason to deny the Reliefs prayed for in the Petition. On a consideration of the asseverations in the Petition and a perusal of the documentation available on the record there appears to be no impediment or obstacle in granting the Prayers contained in the Petition. The effect will be that the increased intake as well as commencement of three new Postgraduate Courses shall take effect from the next Academic Year 2006-2007 since its applicability is not feasible at this late stage in respect of the current Academic Year 2005-06. Writ Petition and all pending applications are allowed in these terms.