

(1999) 02 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No's. 20623 and 20624 and W.M.P. No's. 31184 and 31185 of 1998

E.V. Perumalswamy and Padmavathi Educational Trust and
Another

APPELLANT

Vs

All India Council for Technical Education and Another

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1999 Mad 290

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

Bench : Single Bench

Advocate : R. Sureshkumar, for the Appellant; R. Santhanam, A.C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.S. Subramani, J.

In both these writ petitions, the impugned order reads thus :--

W.P. No. 20623/98 :

In pursuance of the Order of Division Bench of High Court of Judicature at Madras dated 21-9-98 in the W.A. No. 1188/98, I am to inform you

that the proposal submitted by you to the Council for increase in intake for the year 1998-99 to EVP Engineering College, Chembarabakkam,

Thiruvallur District-602103 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee Report, the Council has decided not to accord approval for increase in intake to existing

courses during the academic session 1998-99 due to following reasons :

(a) No Senior Faculty member at the level of Professor or Assistant Professor is appointed in entire faculty of 29. This is not in accordance with

prescribed cadre ratio of 1:2:4 Professor, Assistant Professor and Lecturer.

(b) Teaching staff appointed are fresh graduates without any teaching experience and do not qualify to be Lecturer as per AICTE norms.

(c) All the staff members are paid consolidated salary of Rs. 3,000/- p.m. This is in contravention to the pay scales prescribed by AICTE. (d) The

Head of Institution is a retired principal of Polytechnic who just holds AMIE and hence does not possess the minimum qualification prescribed as

per AICTE norms.

Based on the observations made above, the Council regrets to inform you that the proposal stands rejected for the Session 1998-99.

W.P. No. 20624/98 :--

In pursuance of the Order of High Court of Judicature at Madras dated 11-9-98 in the W.A. No. 1187/98, I am to inform you that the proposal

submitted by you to the Council for the establishment of new Institution in name of P.S.R. Engineering College, Silavattam Village, Maduranthagam

Taluk, Kanchipuram district during the academic year 1998-99 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee Report, the Council has decided not to accord approval for starting the Degree

programme mentioned above at your institution during the academic session 1998-99 due to following reasons :

(a) The teaching staff identified are fresh Engineering Graduates without any teaching experience and do not qualify to be Lecturer as per AICTE

norms.

(b) The proposed temporary building lacks light and ventilation and is not suitable for conduct of any academic programme.

(c) The proposed permanent site is in two parts and a high tension line runs in between. It reduces the effective area of useable land and the

presence of a high tension wire in the permanent land is also hazardous.

Based on the observations made above, the Council regrets to inform you that the proposal stands rejected for the session 1998-99.

2. Both these petitioners wanted to start a Technical Institution for which a letter of viability was issued by the respondents. The petitioners

informed the respondents that they have satisfied all the conditions in the letter of viability and they requested them to give permission to start the Institution.

3. It is pursuant to the said request, the impugned orders have been passed rejecting the same. In this connection, it is also to be noted that these petitioners also came to this Court on earlier occasion and directions were given by this Court to the respondent to reconsider the issue within a time frame. It is thereafter, orders have been passed again rejecting the applications.

4. In the various grounds taken in the writ petitions, it is alleged that the impugned order violates the principle of natural justice. The reason for such a contention is that the Expert Committee visited these institutions, they gave the impression that all the conditions have been complied with. But, only when the orders came, they came to know that the report is not in their favour. According to the petitioners, a copy of the Expert Committee Report should have been given to them so that they could have explained how the report is bad.

5. It is also said that it is the practice of the respondents to inform the applicants about the defects in the Institution and a reasonable time is also given to rectify the same. In this case, that practice was put to an end, without any reason. It is also said that none of the reasons in the impugned orders are valid and the same is a result of non-application of mind. Even the records that are placed before the respondents, were not taken into consideration by them and they simply passed the order accepting the report.

6. Respondents have filed a counter-affidavit, disputing the contentions raised in the writ petitions. According to them, the Expert Committee has inspected the site with notice to the petitioners and it is only on the basis of the information given by them, the report has been prepared. Therefore, there is no necessity for submitting a copy of the same to the petitioners. So, the order does not violate the principles of natural justice. It is also said that the petitioners were informed about the inspection by the Expert Committee and they were also directed to produce all documents before them. Since the petitioners failed to produce the necessary data before them, the report was submitted taking into consideration the reality of the situation. They prayed for dismissal of the writ petitions.

7-8. After hearing both sides, I feel that the impugned orders will have to be set aside, and a direction will have to be given to the respondents to

reconsider the request of the petitioners, seeking permission to establish the Technical Institutions.

9. As rightly contended by the Senior Counsel for the petitioners, the petitioners are entitled to have a copy of the Inspection Report. If any

adverse material is to be relied on by the respondents against the petitioners and which is the only basis for the decision, the petitioners should have

been informed about the contents of that document. The petitioners who invested huge amount for establishing a college are entitled to know why

they cannot establish the college for the academic year, especially when they alleged that the members of the Expert Committee gave the

impression to them that they are recommending for the permission.

10. In a batch of Writ Petition in W.P. Nos. 19261, 19622, 20278, 20309 of 1998 etc., dated 3-2-99, I have held that the respondent is bound

to serve a copy of the Expert Committee Report before any order is passed by them. The same principle applies to the facts of this case also.

11. In W.P. No. 20623 of 1998, the first reason that is mentioned is that no Senior Faculty member at the level of Professor or Assistant

Professor is appointed in entire faculty of 29. This is not in accordance with prescribed cadre ratio of 1:2:4 Professor, Assistant Professor and

Lecturer.

12. Learned Senior Counsel submitted that this reason is without any basis and the regulations of the respondents also did not prescribe any ratio.

It is submitted that the respondents also did not inform the petitioners about the same at any point of time.

13. At the time of argument, learned counsel for the respondents placed before me some circulars issued by the Ministry of Human Resource and

Development of the Government of India. It is dated 28-2-1989, with certain enclosures. It also contains another letter of same date i.e., 9-10-

1998. In none of these Circulars that was placed before Court, the ratio as is referred to in the impugned order is mentioned. Even in the counter,

the respondents did not make reference to any circular. At any rate, when the petitioners have not been given notice till now, they cannot be found

fault with them and the applications cannot be rejected for that reason.

14. The second reason mentioned is that the teaching staff appointed are fresh graduates without any teaching experience and do not qualify to be

Lecturer as per AICTE norms. As I said, the respondents placed before me a letter dated 28-2-1989 which contains few enclosures, Annexure

III deals with the qualifications and experience for the appointment of staff. Regarding the appointment of Lecturers, the only requirement I find is a

First Class Bachelor's Degree in appropriate branch of Engineering/Technology or First Class Master's Degree in appropriate branch of study in

the case of teaching posts in Humanities and Sciences. I do not find any stipulation for experience as is now contended in the impugned order.

15. The third reason is that staff members are paid consolidated salary of Rs. 3,000/- p.m. and this is in contravention to the pay scales prescribed

by AICTE. The pay scales prescribed by the AICTE has no application as on date so far as self financing colleges are concerned is conveniently

forgotten by the respondents. In fact, it is not Rs. 3000/- that is paid to the staff members and it is the case of the petitioners that the records were

also produced before the Expert Committee showing that its staff were paid more than Rs. 5000/- per month. Anyway, I find that the reason for

rejecting the application is without any basis.

16. The last reason for rejecting the application is that Head of the Institution is a retired Principal of Polytechnic who just holds AMIE and hence

docs not possess the minimum qualification prescribed as per AICTE norms. It is unfortunate that the respondents have not considered the records

before them. The very application filed by the petitioners in which the Principal of the Institution also signed, the qualifications of the Principal is

also stated therein. He is a Master in Engineering. Regarding the qualification for the Principal, Annexure III says that the qualification is that of a

Professor. Ph.D. with I Class degree at Bachelor's or Master's level in Engineering/Technology, for Ph.D. degree with I Class M.Sc. in

appropriate branch for teaching posts in Humanities and Sciences. It also provides for experience. The respondents have not found fault with the

experience of the Head of the Institution, but only about the qualification. The Principal is a Master in Engineering and it is evident from their own

record.

17. In short, I find none of the reasons mentioned in the impugned letter can be

supported and I feel that the intention of the respondents is only to reject the application for some imaginary reason.

18. In so far as W.P. No. 20624 of 1998 is concerned, ground "a" is regarding the teaching staff. I have already referred to about the

qualifications required for teaching staff as per the AICTE norms. I do not find any teaching experience prescribed for the Lecturers. The second

ground is that the proposed temporary building lacks light and ventilation and is not suitable for conducting any academic programme. The said

reason also cannot stand. Atleast an opportunity should have been given to the petitioners to provide additional amenities to the building if it is

lacking. Hence that is also an imaginary reason.

19. Learned Senior Counsel for the petitioners submitted that the high tension wire is being shifted from that place and alternative arrangements

have also been made. If only an opportunity should have been given to the petitioners, these defects could have been rectified.

20. It seems to be the attitude of the respondents that they have learnt only to reject the application for some reason or other and they have not

considered the legal position, even though the same has been repeatedly informed to them by various decisions of this Court. The approach should

be whether there are minimum facilities available for starting an Institution and whether with that minimum requirements, the Institute can go on. The

approach should not be to reject all the applications on the basis of flimsy grounds. It is unfortunate that the Authorities have failed to follow this,

whenever an application is being filed for seeking permission to establish an Institution. Merely because a permission is required to be sought for,

the Authorities should not think that they are above the law and their action cannot be challenged. Their action should be reasonable. When the

State is not in a position to establish the colleges as is required, private educational institutions are coming forward and take up that responsibility.

When that responsibility is taken up by them, the attitude of the respondents should not be to defeat the good intention of these applicants.

21. In the result, the impugned orders are quashed and there will be a direction to the respondents to reconsider their decision and they are

directed to pass fresh orders on the applications of the petitioners within a period of three weeks from today.

22. I make it clear that it is only because of the delay caused by these respondents, the permission could not be granted till date. While passing fresh orders, they are also not expected to rake up other issues and they also cannot deny permission for academic year 1999.

23. In the result, writ petitions are allowed. No costs. Consequently, W.M.P. No. 31184 and 31185 of 1998 are dismissed.