

(2011) 02 MAD CK 0520

In the Madras High Court

Case No : Writ Petition No. 333 of 2011 and M.P. No"s. 1 and 2 of 2011

Galaxy Educational Health and Charitable Trust

APPELLANT

Vs

All India Council for Technical Education and The Appellate
Committee AICTE

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0520

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, S.C. for A. Jeenasenan, for the Appellant;
A.L. Gandhimathi, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—This writ petition is directed against the impugned order of the first Respondent dated 25.10.2010, by which, the first Respondent has communicated its decision of rejecting the application filed for establishment of new technical institution in the name of Galaxy Institute of Management for the academic year 2010-2011. The reasons adduced for rejection as per the All India Council for Technical Education (Grant of Approval to Technical Institutions) Regulations 2010 are as follows:

- * Internet band with and contention ratio is not ready
 - * Library is not ready in terms of E-Journals and Language Laboratory.
 - * Sanction of electrical load by electric supply provider company is not available.
 - * Telephone connection and Fax at the proposed institution are not ready.
 - * Barrier free environment and toilets for physically challenged is not ready.
 - * Safety provision including fire and other calamities are not ready.
 - * General notice board and department notice boards are not ready.
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* Medical and Counseling Facilities are not ready.

* Class rooms, Tutorial Rooms, Laboratories, Computer Centre, Library, Seminar Halls, Main Office, Principal Office, Central Stores, Maintenance Office, Security Office, Housekeeping room, Pantry for Staff, Examination Control Office, Toilets for Genets/Lad

* Computer Systems and Laboratory Equipments including language laboratory are not ready.

* E-Journals, Reading room seating capacity, and Multimedia P Cs in library are not ready.

2. Admittedly, the application filed by the Petitioner's institution for its approval for the academic year 2010-2011 has been considered under the Regulation 2010 of the All India Council for Technical Education. The Petitioner-institution has filed its application for approval on 10.3.2010 for the academic year 2010-2011. The first Respondent has appointed a Scrutiny Committee on 8.6.2010. The Expert Committee Report was filed on 22.6.2010. The Original Committee considered the recommendations of the Expert Committee on 24.6.2010 and decided not to recommend the Petitioner's institution for approval due to various deficiencies. It was against the order of the first Respondent, the Petitioner has filed an appeal before the Appellate Committee viz., the second Respondent on 6.7.2010. The second Respondent-Appellate Committee has examined the grounds raised by the Petitioner supported by various documents, which are as follows:

1. Certificate from Internet Provider
2. Invoice for e-Journal Subscription
3. Invoice and Installation Report for Language Lab
4. Sanction Letter for Electric Supply
5. Application Forms for Phone and Fax
6. Certificate for First Aid Facility
7. Architect Certificate for Barrier Free Environment
8. Certificate for Safety Provisions
9. Certificate for Notice Boards
10. Certificate for Medical Counseling
11. Facilities Architect Certificate for Reading Room Capacity
12. Architect Certificate for Completion of Construction.

3. The second Respondent-Appellate Committee considered that there has been five deficiencies in respect of Internet, Journals, Telephones, Barrier Free,

Medical Facility and in the order dated 12.7.2010, the second Respondent-Appellate Committee for the purpose of deciding the said five deficiencies, has recommended for re-visit of the Expert Committee. Accordingly, the Expert Committee of the first Respondent has made a re-visit on 12.7.2010. On the re-visit, the Expert Committee has found various other deficiencies, which were not pointed out earlier by it including the various constructions and based on the said re-visit report of the Expert Committee dated 12.7.2010, the impugned order came to be passed by the first Respondent, which has been challenged by the Petitioner on various grounds including that as per the time schedule for the academic year 2010-2011, the first Respondent has not followed scrupulously various dates, even though the applications have been made by the Petitioner on time and it was because of the inordinate delay, the matter has been postponed and by the time, the academic year 2010-2011 has also come to an end. Even the impugned rejection order dated 25.10.2010 has not been served on the Petitioner. It is also the case of the Petitioner that when the re-visit has been made as per the appellate authority's order, which is binding upon the first Respondent, the Expert Committee cannot go on beyond its original report and that itself is against the provisions of the Act.

4. On the other hand, the learned Counsel for the Respondents made submissions on instructions from the first Respondent that at the time of the original inspection itself, there was no compliance, which is evident from the fact that the building has not been constructed, at that time itself. As far as the consideration by the appellate authority is concerned, the appellate authority considered as only on record and there was no possibility for the appellate authority to have been satisfied about the actual physical requirement, which are required to be complied with.

5. Further, it is the case of the Respondents that when the requirements as found by the Expert Committee on re-visit on the directions from the Appellate Committee has been found deficient, it is not open to the Petitioner to have the right of recommendation as a matter of right. If at all, the Petitioner-institution has complied with all the requirements, it has to make a fresh application as per the Regulation.

6. When the matter came up earlier, it was contended by Mr. Muthurkumarasamy, learned senior counsel that on an earlier inspection, there has been some contradiction between the first visit and the second re-visit of the Expert Committee. Even at the time of second re-visit, the deficiencies have been complied with. However, the Committee has not taken note in its proper perspective and therefore, in order to find out as to whether there is any discrepancy between the first visit and the re-visit, this Court has appointed an Advocate Commissioner, who after inspection by giving notice to both sides, has filed a report. In the report filed by the Advocate Commissioner, the Advocate Commissioner has clearly stated that the institution comprises 6 acres of land and the construction of building admeasuring 2517.79 sq. meters and she has

also given the following particulars:

Sl.No.

Room

No.

Room Type

Carpet

Area

(in sq.m)

1.

2

Class Room

174.14

2.

1

Tutorial Room

38.19

3.

1

Seminar Hall

167.64

4.

1

Computer Centre

165.88

5.

1

Library and Reading Room

100.63

6.

1

Board Room

40.19

7.

1

Director Office

30.68

8.

10

Director Office

193.15

9.

1

Office All Inclusive

187.24

10.

1

Stationary Store and Reprography

20.50

11.

1

Placement Office

37.22

12.

1

Language Laboratory

18.49

13.

1

Pantry for Staff

19.80

14.

1

House Keeping

22.85

15.

1

Central Stores

34.41

16.

1

Maintenance

14.88

17.

1

Security

10.98

18.

1

First Aid Cum Sick Room

12.25

19.

1

Examinations Control Office

37.71

20.

1

Boys Common Room

76.27

21.

1

Girls Common Room

75.52

22.

1

Cafeteria

152.33

23.

1

Toilets (Gents and Ladies)

152.82

7. The learned Advocate Commissioner having gone into the every requirement of the deficiencies as per the original visit and the second visit of the Expert Committee found that the requirements have been completely fulfilled. In fact, the Advocate Commissioner has also referred to the various deficiencies pointed out by the Appellate Authority and found that those deficiencies have also been complied with. The learned Advocate Commissioner has also found that there are various contradictions between the report of the Expert Committee dated 22.6.2010 and 12.7.2010 and she has stated as follows:

It is submitted that after the due execution of my warrant and my personal visit I inspected entire institution and made comparison with the reports of the first visit dated 22.6.2010 and re-visit dated 12.7.2010 and conclusively find out that the deficiencies in the construction of building is completed. But, except two class rooms, seminar hall and language laboratory all other rooms have to be furnished.

8. Therefore, on the face of the learned Advocate Commissioner's Report, it is clear that as on date the appellate authority's directions or report the Expert Committee of its original report as well as the second report, compliance has been completely made. The counsel for the Respondents would oppose saying that the compliance would have been made by the management hurriedly and after appointment of the Advocate Commissioner. If such compliance is made belatedly, it is only for the Petitioner-institution to apply afresh for the next academic year 2011-2012.

9. On the other hand, Mr. R. Muthukumarasamy, learned Senior Counsel for the Petitioner would submit that if only the deficiencies were pointed out by the Expert Committee in its original report, viz., 22.6.2010, the compliance would have been reported to the Appellate Authority itself. Even as on date, the rejection order dated 25.10.2010 has not been served on the Petitioner and therefore, according to the learned Senior Counsel, the Petitioner cannot be

driven to file a fresh application for the academic year 2011-2012 so as to make the Petitioner to undergo another round for getting approval as per law.

10. I have considered the contentions made by the learned Senior Counsel for the Petitioner as well as the learned Counsel for the Respondents and also considered the learned Advocate Commissioner's Report.

11. As stated above, the application of the Petitioner has been considered by the first Respondent under the All India Council for Technical Education (Grant of Approval to Technical Institutions) Regulations 2010, even though the application was filed by the Petitioner on 10.3.2010. Even if fault is attributable to the Petitioner or the Respondents, the Petitioner is entitled for consideration only for the academic year 2011-2012, as rightly admitted by the learned Senior Counsel for the Petitioner also.

12. The question to be considered is as to whether the Petitioner has to be directed to file a fresh application of approval for the academic year 2011-2012 or the application filed by the Petitioner on 10.3.2010 has to be directed to be considered and processed for the academic year 2011-2012. As per the schedule made by the first Respondent for the academic year 2010-2011, the last date for submission of application was 10.3.2010. It is admitted that the Petitioner had made application within time viz., the application for approval was made on 10.3.2010 itself. On the application, the first Respondent has to communicate the deficiencies which are to be done before 14.3.2010, whereas on the facts of the present case, the Scrutiny Committee itself has been constituted by the AICTE only on 8.6.2010 and the first Expert Committee Report was made on 22.6.2010 and the original committee of the first Respondent has taken a decision not to recommend for the academic year 2010-2011 only on 24.6.2010. In fact, the schedule given by the first Respondent shows that on finding out the deficiencies, time must be given for rectification up to 3.4.2010. Such time admittedly has not been given as far as the Petitioner case is concerned.

13. In the present case, the Expert Committee has scrutinized only on 8.6.2010 as it is seen in the first Expert Committee, which is dated 22.6.2010. The date by which the letter of approval should have been given by the first Respondent in the schedule is 30.4.2010, while the decision taken not to grant approval by the original Committee was only on 24.6.2010. Therefore, it is seen that the schedule has not been followed by the first Respondent as per the clauses incorporated by the first Respondent itself. After the original committee's decision was informed to the Petitioner, the Petitioner has approached the Appellate Authority on 6.11.2010.

14. Before going into the merits of the case, it is relevant to point out that the Expert Committee, which was sent by the first Respondent in its report dated 22.6.2010 has found out some deficiencies. The most important of which were non-availability of Barrier free environment and toilets for physically challenged, non-availability of Safety provision including fire and other calamities and the

General notice board and department notice boards were not ready. That apart, medical and counseling facilities were not ready. Apart from that, Class rooms, Tutorial Rooms, Laboratories, Computer Centre, Library etc., were stated to be under construction.

15. As enumerated above, in the appeal filed by the Petitioner on 6.7.2010 to the second Respondent, the Petitioner has enclosed 12 supporting documents, which include the Architect Certificate for Barrier Free Environment, Certificate for Safety Provisions, Architect Certificate for completion of Construction, Certificate of Medical Counseling facilities etc, which were all pointed out by the first Respondent-Expert Committee. The Appellate Authority having been admittedly satisfied about the compliance of deficiencies pointed out by the Expert Committee has pointed out five requirements viz., Internet, Journals, Telephones, Barrier Free, Medical Facility and therefore directed for re-visit of the Experts. It is common ground that the Appellate Authority's finding and directives are binding on the first Respondent, since it is of statutory in nature and therefore, when once as per the direction of the Appellate Authority, re-visit is made, the purpose of re-visit is to ensure that the deficiencies pointed out by the appellate authority are rectified and compliance is reported. Unfortunately, the second Expert Committee, which has re-inspected has gone beyond the directives of the appellate authority and found so many other deficiencies including the buildings stated to have been found under construction, flooring, plastering, electrical wiring etc as in progress and are not completed. Therefore, taking note of the incomplete status, the impugned order came to be passed. Now, that the learned Advocate Commissioner had clearly stated that there is a contradiction between two inspection report and the requirements have been complied with, and taking note of the fact that the first Respondent did not keep up the schedule issued, I am of the considered view that no useful purpose would be served in directing the Petitioner to make a fresh application for the academic year 2011-2012, even though it is true that as on date, the Petitioner-institution is entitled for consideration only for the academic year 2011-2012.

16. Accordingly, the impugned order stands set aside on the face of the findings of the learned Advocate Commissioner in her report and the first Respondent is directed to consider the application of the Petitioner dated 10.3.2010 for grant of approval for the academic year 2011-2012 and pass appropriate orders for grant of approval, which shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

17. The Advocate Commissioner, who has taken efforts in finding out the entire available records as well as the visit of the properties through out, I am of the view that the Advocate Commissioner shall be paid an additional remuneration of Rs. 10,000/-.

18. With the above observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.