

(2011) 07 DEL CK 0010

In the Delhi High Court

Case No : Writ Petition (C) No. 5218 of 2011

Global Educational and Social Trust

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 DEL CK 0010

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Rakesh Tiku and Yashpal Rangi, for the Appellant; Mukul Talwar, for the Respondent-University, Amitesh Kumar, for the Respondent-AICTE and Manjit Singh, for the Respondent-State of Haryana, for the Respondent

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks quashing of the decision of the Respondent No. 1 University not to grant affiliation to the Petitioner institute.

2. Background of facts that has led to the filing of the present petition is that the Petitioner institute which is situated in Faridabad applied for approval to AICTE for starting an MBA course, which after inspection granted the said approval on 29.6.2010. That the Petitioner on 16.7.2010 applied to the Respondent University for affiliation for session 2010-2011 which was rejected on the ground of non-furnishing of the No-objection certificate by the State of Haryana. Feeling aggrieved with the said act of the University, the Petitioner filed a writ petition WPC 5331/2010 whereby vide order dated 10.8.2010, the court directed the university to scrutinize and consider the request of the Petitioner expeditiously. However, the Respondent university approached the court for clarification of its order dated 10.8.2010 and the court vide order dated 18.8.2010 directed the University to deal with the application of the Petitioner in accordance with its rules and Regulations. However the University again vide order dated 20.8.2010 rejected the application of the Petitioner for non furnishing of the NOC by the

State Government and the Petitioner again approached the court vide WPC 5831/2010 where vide order dated 31.8.2010 the interim relief of conducting an inspection and granting provisional admission for the session 2010-11 was declined. Consequently the Petitioner challenged the said order in LPA 655/2010 wherein vide order dated 15.9.2010 both AICTE and the University were to conduct a joint inspection of the Petitioner Institute. That as per the joint inspection report, No. deficiency was found and thus the Hon''ble Division Bench vide order dated 6.1.2011 directed the Petitioner to apply for fresh approval to AICTE for the session 2011-2012 and then to the Respondent university for affiliation. That the AICTE granted the approval to the Petitioner Institute but the Respondent university refused to grant affiliation on the ground of non furnishing of NOC by the State of Haryana. Feeling aggrieved with the same, the Petitioner has preferred the present petition.

3. Thus evidently from the facts as set out above, the main grievance raised by the Petitioner is that despite approval of the Petitioner institute by the AICTE, it has not been granted affiliation by the Guru Gobind Singh Indraprastha University/Respondent No. 1 on account of non-issuance of NOC by the State of Haryana, which as per the Petitioner is not statutorily required.

4. Mr. Manjit Singh, counsel representing the State of Haryana very fairly submits that No. policy decision has been taken by the State Government of Haryana till date regarding issuance of No. objection certificate in favour of those institutes/colleges which are located in the State of Haryana and seek affiliation with the University outside the State of Haryana.

5. I have heard counsel for the parties at considerable length.

6. In the present case, vide order dated 03.08.2011, this Court gave direction to the Respondent-State of Haryana to file a short affidavit taking a categorical stand keeping in view the observations made by the Hon''ble Division Bench in the order dated 06.01.2011. It is pertinent to mention here that the said directions of the Hon''ble Division Bench were given in LPA No. 655/2010, which was filed by the present Petitioner challenging the interim order of the learned Single Judge dated 31st August, 2010 whereby the learned Single Judge had refused to grant interim stay in favour of the Petitioner seeking interim directions to direct the Respondent University to inspect the institute of the Petitioner to satisfy itself as to whether the Petitioner had complied with requirements for affiliation or not. During the pendency of the said LPA, the Hon''ble Division Bench vide order dated 22nd September, 2010 passed the following order:

This Court on 15th September, 2010 had constituted two committees of the Respondent No. 1-University as well as the AICTE and directed the committees to visit the Appellant-institution along with three counsel, namely, Mr. Amitesh Kumar, Mr. Mukul Talwar and Mr. Rajiv Bansal. Be it noted, Mr. Bansal had not accompanied the team. When the matter was taken up today, Mr. Talwar submitted a report on behalf of the Respondent-university and Mr. Rakesh

Dwivedi, learned senior counsel, submitted a report on behalf of AICTE. If we allow ourselves to say so, that was not the intention of the order which was passed on earlier occasion. We are really at a loss as to why there is so much of cavil between the AICTE and the University on a factual position. However, let the reports be exchanged and a meeting be held by the AICTE authorities with the University authorities and a decision be taken whether the Appellant-institution meets the requisite criteria as per the norms/guidelines framed by the AICTE. Matter be listed on 1st October, 2010.

7. Pursuant to the said directions given by the Hon''ble Division Bench, two committees constituted by the University as well as AICTE carried out the necessary inspection and the said joint inspection of both the committees found that there was No. deficiency in the Petitioner institute. Para 5 of the said order dated 6.1.2011 in LPA No. 655/2010 so records and the same is reproduced as under:

5. Thereafter, as evincible, various orders were passed and eventually on 25th November, 2010 this Court recorded that an inspection as directed had not taken place and granted some more time to complete the said exercise. When the matter was called today, we have been apprised that a joint inspection has been taken up by the AICTE and the Respondent-University and the inspection committee of both the statutory authorities have found that there is No. deficiency in the institution in praesenti.

8. The Hon''ble Division Bench in the said order gave further directions, mainly to the AICTE and the Respondent University to take a decision on the application of the Petitioner seeking grant of recognition/approval to their institute for starting the MBA course and in the penultimate para, the Division Bench also observed that when there is concurrence by the AICTE and the University, the State Government in the case of the present nature has No. role to refuse the NOC. Paras 6,7 and 8 of the said order are also reproduced as under:

6. In view of the aforesaid, it is directed that if the Appellant files an application for grant of recognition/approval to the course before the AICTE, the same shall be placed before the Board, which shall take a decision within three weeks from the date of submission of the application for the academic session 2011-12. Regard being had to the joint committee inspection, after the AICTE takes a decision, the same shall be communicated to the Respondent-University, which shall follow the same in letter and spirit.

7. Needless to say that the Respondent-University shall act promptly after getting the communication from the AICTE. Mr. Parag P. Tripathi, learned Additional Solicitor General representing the Respondent-University has fairly stated that the University always acts expeditiously and would not cause any delay or hindrance. Mr. Manjit Singh, learned Additional Advocate General for the State of Haryana has stated that the State shall abide by the law. Needless to say that when there is concurrence by the AICTE and University, the State

Government in a case of the present nature has No. role to refuse the NOC.

8. In view of the aforesaid, the appeal is disposed of. As nothing remains to be adjudicated in the Writ Petition (Civil) No. 5831/2010, the same also is deemed to have been disposed of. No. order as to costs.

9. In the light of the said observations made by the Hon''ble Division Bench, the State of Haryana was directed by this Court to take a categorical stand in its affidavit to explain the reasons for not issuing NOC, once the Hon''ble Division Bench clearly took a view that it has No. role to refuse NOC in the background of there being concurrence between AICTE and the University to grant approval to the institute of the Petitioner for running the said MBA course. The State of Haryana in their reply filed by them has practically reiterated their stand as was taken by them in the W.P. (C) No. 3065/2003 and this would show that the State of Haryana has not brought any legislation/Regulations on the subject nor any policy decision has been taken by the State of Haryana in this regard. This Court while deciding the interim application of the Petitioner in the earlier writ petition No. 5331/2010 also took note of the stand taken by the Additional Advocate General representing the State of Haryana informing the Court that there is No. policy regarding issuance of NOC as required under Statute 24 of the Respondent University and decision on such matters for the grant of NOC is taken by the State on case to case basis. Para 2 of the order dated 31st August, 2010 is reproduced as under:

The Addl. Advocate General for the State of Haryana has today informed that the Educational Institutions located in the State of Haryana, if seek affiliation with a University, also in the State of Haryana, No. NOC is required. It is further clarified that there is No. policy regarding issuing NOC as required under the Ordinance of the Respondent No. 1 Guru Gobind Singh Indraprastha University (not situated in State of Haryana) and if an application for NOC is moved, decision thereon is taken by the State on a case to case basis.

10. In the affidavit filed by the State of Haryana in the present case also, No. stand has been taken as to why the NOC was not granted in favour of the Petitioner in the light of the said observations made by the Hon''ble Division Bench. It would be thus quite manifest that the State of Haryana as on this date has No. policy for grant of NOC to deal with such institutes located within the territory of the State, which are seeking affiliation with the Universities of the other State.

11. It is not in dispute between the parties that the AICTE has already granted approval in favour of the Petitioner-institute and the Respondent-University has also agreed to grant affiliation to the Petitioner in principle. It is only on account of non-grant of NOC by the State of Haryana that the affiliation by the University so far has not been granted in favour of the Petitioner. The defence raised by Mr. Mukul Talwar, learned Counsel representing the University is that under Statute 24, it is only after the NOC is issued by the concerned State Government, that

the affiliation sought by the Petitioner-institute can be granted.

12. It is thus quite apparent that it is only on account of non-grant of NOC by the State of Haryana in favour of the Petitioner that the University has not granted affiliation to the Petitioner-institute. The stand taken by the State of Haryana in its affidavit is that a conscious decision has been taken by the State Government not to give NOC to any of those institutes/colleges which are located in the State of Haryana but are seeking affiliation with the University outside the State of Haryana. This contention raised by counsel for the State of Haryana has been dealt much in detail in the judgment of the Hon''ble Division Bench of this Court in the case of Charanjiv Charitable Trust v. All India Council for Technical Education and Anr. WP(C) No. 3065/2003 decided on 1.9.2003, where also the State of Haryana raised a similar objection and the Hon''ble Division Bench in the said judgment had clearly observed that NOC could not be refused by the State of Haryana on the ground that such an institute did not seek affiliation with Maharshi Dayanand University, a university situated in the State of Haryana. The Division Bench further observed that the State of Haryana cannot refuse grant of NOC merely because the University is not situated in the State of Haryana. Mr. Rakesh Tiku, learned senior counsel appearing for the Petitioner has also pointed out that the said order passed by the Hon''ble Division Bench was challenged by the State of Haryana before the Hon''ble Supreme Court vide SLP No. 376/2004 and the same was dismissed vide order dated 25.4.2005.

13. In the background of the above position and taking into consideration the peculiar facts of the present case, more particularly in the light of the observations made by the Hon''ble Division Bench in the order dated 6.1.2011 and in the order dated 1.9.2003 and also on account of the fact that the State Government did not raise any kind of objection to the AICTE after the receipt of an application from the Petitioner institute, this Court deems fit and appropriate to direct the State of Haryana to issue NOC in favour of the Petitioner institute for starting the MBA course for the academic session 2011-12 within a period of 10 days from the date of this order.

14. With the above direction the present petition is disposed of. The legal questions raised by the counsel for the parties shall, however, remain open to be decided in an appropriate case. This order shall, however, not be treated as precedent in the other matters because of peculiarity of its fact-situation.