

(2014) 09 MAD CK 0208

In the Madras High Court

Case No : W.P. (MD) Nos. 14417, 16698 of 2012, Cont. P. (MD) No. 798 of 2012, M.P. (MD) Nos. 1 of 2012, 1 and 2 of 2013 in W.P. (MD) No. 14417 of 2012 and M.P. (MD) No. 1 of 2012 in W.P. (MD) No. 16698 of 2012

Immanuel Arasar International Institute of Science and
Technology Educational and Charitable Trust

APPELLANT

Vs

The Director/Commissioner of Technical Education

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0208

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner is a trust known as Immanuel Arasar International Institute of Science and Technology Educational and Charitable Trust. The said trust is running an Engineering College known as Immanuel Arasar JJ College of Engineering at Marthandam, in Kanyakumari District. The said college was established in the year 2009. The All India Council for Technical Education (hereinafter referred to as "AICTE"), New Delhi, granted recognition to start the Bachelor of Engineering courses in various disciplines in the said college from the academic year 2009-10. The Anna University has also granted affiliation and accordingly the College has been successfully running the Bachelor of Engineering courses.

2. While so, according to the petitioner, considering the large scale requirement for Diploma graduates in Civil Engineering and Mechanical Engineering, the petitioner submitted an application to AICTE for grant of approval for starting the Diploma courses in Civil Engineering and Mechanical Engineering as second shift. The AICTE granted approval, vide proceedings dated 10.05.2012, with an annual intake of 60 students in each discipline. In the said order, the AICTE had directed that the petitioner College should conduct the said courses as second shift. The duration of the courses is three years.

3. Thereafter, the petitioner submitted an application to the respondent herein on 04.05.2012, requesting for his approval for the said Diploma courses in Civil Engineering and Mechanical Engineering, because the respondent is the examining body for Diploma courses in the State of Tamil Nadu. The AICTE had earlier forwarded its order, dated 10.05.2012, to the respondent. Despite the said request made, along with the order of AICTE, the respondent did not consider the said request. Therefore, the petitioner was forced to file a writ petition in W.P. (MD). No. 9418 of 2012 before this Court, seeking a Mandamus to the respondent herein to consider the said application of the petitioner and to pass appropriate orders, in accordance with law. This Court, by order dated 11.07.2012, issued a direction to the respondent to pass orders on the application of the petitioner, dated 04.05.2012 on merits as expeditiously as possible. Even after that, there was no decision taken on the application of the petitioner. The petitioner, therefore, filed a contempt petition before this Court in Contempt Petition No. 798 of 2012. In the said contempt petition, this Court issued notice to the respondent on 02.11.2012. Now, the same is also before this Court today for disposal.

4. In the meanwhile, for the academic year 2012-2013, the petitioner had admitted five students in Diploma in Civil Engineering course and 46 students in Diploma in Mechanical Engineering course. The admissions were completed before 16.08.2012, which was the last date for admission. The students also attended the classes and they secured the required attendance. Even then, the application of the petitioner, dated 04.05.2012, was still kept pending by the respondent.

5. In course of time, the first semester examination was to commence on 15.11.2012. The students paid the examination fees and the same was in fact remitted to the account of the respondent. But, the respondent did not issue Hall Tickets to the students. While so, the respondent gave a reply in letter No. 16818/H4/2002, dated 30.10.2012, stating that the petitioner's application was not in complete form. The petitioner in turn informed the respondent that all the necessary particulars had already been submitted and the application was also in complete form. Since the semester examination was fast approaching, apprehending that the Hall Tickets might not be issued to the students, the petitioner filed yet another writ petition in W.P. (MD). No. 14417 of 2012 seeking a Mandamus for issuance of Hall Tickets to the students to permit them to write the examinations.

6. On 09.11.2012 this Court passed an interim order directing the respondent to permit the students to sit for the examinations. Despite the said order, hall tickets were not issued, instead the respondent insisted for a letter from the petitioner thereby giving an undertaking that the petitioner was willing to shift the above students to some other Polytechnic College, where seats were lying vacant.

7. At this juncture, it needs to be mentioned that in the meanwhile, three

students from Diploma in Mechanical Engineering Course had left. Therefore, the total strength had become only 48 students. Apprehending that the students' future would be spoiled and yielding to the pressure of the respondent, the petitioner gave a letter, as dictated by the respondent. Thereafter, hall tickets were issued. In the said letter, the petitioner had indicated that for the second semester of the courses, the students could be shifted to different institutions. Accordingly, the students were permitted to write examinations. Thereafter, the respondent by his proceedings in Letter No. 16818/H4/2012, dated 26.11.2012, issued an order directing the transfer of the abovesaid 48 students to the other Polytechnic Colleges for the second semester of the academic year 2012-2013. It was also stated that the application for approval of affiliation rejected by proceedings, dated 30.10.2012. Challenging the said proceeding, the petitioner has come up with W.P. (MD). No. 16698 of 2012. That is how W.P. (MD). No. 14417 of 2012 and W.P. (MD). No. 16698 of 2012 are also before me for final disposal.

8. A detailed counter has been filed by the respondent in W.P. (MD). No. 16698 of 2012, wherein inter alia it is stated in paragraph No. 6 as follows;

"6. In this connection, it has already been informed vide this office letter dated 30.10.2012 that the applications were not called for grant of affiliation for the Second Shift Diploma Courses in the existing approved Engineering Colleges by Directorate of Technical Education, Chennai till date. Hence, Immanuel Arasar J.J. College of Engineering, Edavilagam, Nattalam, Marthandam - 629165, Kanyakumari District has submitted an irrelevant application with incomplete data for an irrelevant course. No such application was received from 450 Self Financing Engineering Institutions spread all over Tamil Nadu for introduction of Diploma level courses in an degree level institution. In view of this, it has been informed that the application submitted by the College has been rejected, as no policy decision is taken by the Government regarding introduction of full time second shift diploma level courses in existing self financing engineering colleges. Further, it has also been informed that only based on the policy decision of the Government and issue of the Government Order, Application form will be invited from the Trust/Society seeking affiliation for the Second Shift Diploma Programme offered in the existing Engineering Colleges in a newly designed format in line with AICTE norms and Directorate of Technical Education's norms. Affiliation Order would be issued only after processing the new application form called by Directorate of Technical Education and as per the norms to be laid out in the Government Order."

9. I have heard the learned counsel appearing on either side and perused the materials available on record.

10. Referring to paragraph No. 6 of the counter affidavit, the learned counsel appearing for the petitioner submitted that when AICTE had given permission for conducting the said Diploma Courses as second shift, the respondent, which is only the examining body, has no right to deny permission for starting the said

courses. It is further stated by the learned counsel that as stated in paragraph No. 6, for the failure of the Government to take a policy decision in respect of the second shift diploma courses, the petitioner cannot be penalised. He would submit that had there been any Government Order requiring such affiliation and in the event the petitioner had admitted the students in violation of the said requirement, then only the petitioner could be found fault with. Here, in this case, there was no definite policy with the Government requiring affiliation by the respondent for commencing the said courses. Therefore, according to the learned counsel, it is enough with the permission/approval granted by the AICTE to commence courses.

11. The learned counsel for the petitioner would bring to my notice that now the Government has taken a policy decision and has issued G.O. (Ms.) No. 10, Higher Education (B2) Department, dated 20.01.2014, wherein the Government has permitted the Commissioner of Technical Education to grant affiliation for introduction of Diploma Courses, based on the guidelines stipulated in Government Order in G.O. (Ms.). No. 210, Higher Education (J2) Department, dated 06.09.2011. The paragraph No. 5 of the said Government Order reads as follows;

"5. The Government after careful examination accept the proposal of the Commissioner of Technical Education and permit him to issue affiliation orders for the introduction of following courses based on the guidelines stipulated in Government Order first read above:-

(i) Second Shift Diploma and Post Diploma Level Programmes in self-financing Engineering Colleges/Government Aided Engineering Colleges on self supporting basis.

(ii) Second Shift Diploma and Post Diploma Level Programme in self-financing Polytechnic Colleges/Government Aided Polytechnic Colleges on self supporting basis.

(iii) Second Shift HMCT Diploma and Post Diploma Level Programmes in self-financing Hotel Management and Catering Technology Colleges/Government Aided Hotel Management and Catering Technology Colleges on self supporting basis.

(iv) Part Time Diploma Level courses in self-financing Polytechnic Colleges/Government Aided Polytechnic Colleges on self supporting basis."

12. Referring to the same, the learned counsel for the petitioner submitted that since there is a requirement for granting affiliation, the respondent may not have any impediment as of now to grant affiliation to the petitioner college to conduct the Second Shift Diploma level courses in consistence with the permission granted by AICTE.

13. The learned Additional Government Pleader appearing for the respondent would submit that it was wrong on the part of the petitioner to admit the

students without getting affiliation from the respondent. It is his contention that mere permission granted by AICTE would not clothe the petitioner with any right to commence the courses without getting affiliation from the respondent. He would further submit that the students were permitted to write the examination only in pursuance of the interim orders granted by this Court. Now the students are in the final year of the course. He would further submit that even in the interim order passed earlier, this Court had made it very clear that such permission granted for sit for examination would not ensure any right in favour of the petitioner.

14. The learned Additional Government Pleader would further submit that after G.O. Ms. No. 10, dated 20.01.2014, it is for the petitioner to make fresh application seeking affiliation and the same would be considered by the respondent. So far as the admission already made, according to the learned counsel for the respondent, it is illegal and therefore, both the writ petitions are liable to be dismissed.

15. I have considered the above submissions.

16. Admittedly, the AICTE had granted permission to commence the Diploma Courses as Second Shift with intake of 60 students in each discipline. As rightly contended by the learned counsel for the petitioner, there was no legal requirement to seek affiliation from the respondent for commencing the said courses. The learned counsel would submit that so far as the Universities are concerned, there is a statutory requirement for getting such affiliation before commencing the course. But, in the case on hand, now only G.O. Ms. No. 10, dated 20.01.2014 has been issued requiring such affiliation. Earlier there was no such legal requirement at all for affiliation by the respondent. That is the reason why, according to the learned counsel, the application of the petitioner was only to permit the petitioner to conduct the courses since the respondent is the examining body. Thus, according to the learned counsel, the said permission sought for by the petitioner by making an application, dated 04.05.2012, was only formal in character.

17. This argument is acceptable to this Court. As rightly contended by the learned counsel for the petitioner, before the issuance of G.O. Ms. No. 10, dated 20.01.2014, there was no order from the Government requiring such affiliation from the respondent. Even in paragraph No. 6 of the counter, it has been very tacitly admitted that the policy decision in this regard was yet to be taken. That policy decision has been taken only under G.O. Ms. No. 10, dated 20.01.2014. Therefore, in my considered opinion, the petitioner cannot be blamed for having admitted the students in the said courses based on the permission granted by AICTE.

18. Now, after the issuance of G.O. Ms. No. 10, dated 20.01.2014, if the petitioner wants to admit the students in the above Diploma Courses for which permission has been granted by the AICTE, for the next academic year, the

petitioner has to make fresh application, as required under G.O. Ms. No. 10 and only after getting such affiliation should admit the students.

19. The learned Additional Government Pleader would submit that the admission of the students without getting affiliation is illegal in the instant case and therefore, the writ petitions are liable to be dismissed.

20. This argument does not persuade me at all. As I have already pointed out, since there was no legal requirement by means of any Government Order for getting such affiliation from the respondent, the admission of the students by the petitioner college for the academic year 2012-2013 cannot be stated to be illegal. Therefore, this argument is rejected.

21. The learned counsel for the petitioner, in this regard, would rely on the judgment of the Hon"ble Supreme Court in *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, . In that case, in similar circumstances, the Hon"ble Supreme Court has held that when there is no statutory requirement for obtaining the approval of the State Government, there is no need to seek any such approval from the State Government. The Supreme Court has gone further to say that even if there is any such statutory requirement for approval from the State Government, the same would be repugnant to AICTE Act and therefore, there is no question of seeking approval from the State Government. It is stated thus in paragraph No. 23 of the judgment which reads as follows;

"23. Thus we hold, in the present case that there was no statutory requirement for obtaining the approval of the State Government and even if there was one, it would have been repugnant to the AICTE Act. The University Statute 9(7) merely required that the "views" of the State Government be obtained before granting affiliation and this did not amount to obtaining "approval". If the University statute required "approval", it would have been repugnant to the AICTE Act. Point 1 is decided accordingly."

22. In paragraph No. 27 of the very same judgment, the Hon"ble Supreme Court has held as follows;

"27. The so-called "policy" of the State as mentioned in the counter-affidavit filed in the High Court was not a ground for refusing approval. In *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, which was a case relating to medical education and which also related to the effect of a Central law upon a law made by the State under Entry 25 List III, it was held that the "essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone".

Therefore, the State could not have any "policy" outside the AICTE Act and

indeed if it had a policy, it should have placed the same before AICTE and that too before the latter granted permission. Once that procedure laid down in the AICTE Act and Regulations had been followed under Regulation 8(4), and the Central Task Force had also given its favourable recommendations, there was no scope for any further objection or approval by the State. We may however add that if thereafter, any fresh facts came to light after an approval was granted by AICTE or if the State felt that some conditions attached to the permission and required by AICTE to be complied with, were not complied with, then the State Government could always write to AICTE to enable the latter to take appropriate action."

23. In view of the above judgment of the Hon"ble Supreme Court, it is crystal clear that in the case on hand, since there was neither statutory requirement nor there was any executive order requiring such approval from the respondent herein, the admission of the students by the petitioner was perfectly in order and legal, and therefore, the same cannot be found fault with as it is projected by the learned counsel for the respondent.

24. The learned counsel for the petitioner would submit that the petitioner trust was established with an avowed object of promotion of health and education for upliftment of the poor, Christians and downtrodden, among the rural population and to establish educational institutions for the deprived sections of the society. Referring to the said object, the learned counsel would submit that the petitioner trust has been running a multi-speciality hospital at Marthandam for the benefit of the poor and downtrodden people and it has also been running educational institutions. The learned counsel would submit that in the instant case, the Diploma courses were started by the petitioner only with the avowed object of rendering help to the downtrodden people, so that, they can educate the students in the field of technical education.

25. The learned counsel for the petitioner would further submit to show his bona fide the petitioner trust is prepared to donate a sum of Rs. 5 lakhs for the relief of flood affected victims of the State of Jammu and Kashmir. This offer is made by the learned counsel for the petitioner only with a view to demonstrate that the petitioner trust has been running only for the benefit of the people and not for any profit making. The learned counsel would submit that he would produce a demand draft, drawn in the name of the Hon"ble Chief Minister's Relief Fund of State of Jammu and Kashmir, to the Registrar (Administration) of the Madurai Bench of Madras High Court, Madurai, on or before 19.09.2014, so that it can be forwarded to the Hon"ble Chief Minister's Relief Fund of the Jammu and Kashmir. The said statement is recorded.

26. In view of the above, both the writ petitions are allowed in the following terms;

(1) The students, who have already been admitted in the Diploma Courses in the Second Shift run by the petitioner college, in pursuance of the permission

granted by AICTE, shall be permitted to complete the courses and the respondent shall conduct the examinations and publish the results and finally issue certificates to them unconditionally.

(2) For the academic year 2015-2016 onwards, if the petitioner wishes to run such courses, he may make an application to the respondent, in terms of G.O. Ms. No. 10, Higher Education (B2) Department, dated 20.01.2014 and if any such application is made, the respondent shall consider the same and pass orders within a period of two months from the date of receipt of such application. While doing so, the respondent shall have regard to the Hon''ble Supreme Court judgment in Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another, .

27. In view of the disposal of both the writ petitions, the contempt petition is closed. Consequently, connected miscellaneous petitions are also closed. No costs.

28. The gesture of the petitioner college to donate Rs. 5 lakhs for the relief of flood victims of the State of Jammu and Kashmir is appreciated.