

(2015) 07 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 7587 of 2015

Leela Champak Charitable Trust

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 GUJ CK 0024

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : P.A. Jadeja, for the Appellant; Vilas G. Goswamy, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Chhaya, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner-Trust has prayed for the following main relief(s):-

"(A) That this Hon''ble Court be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction, quashing and setting aside the Letter of Rejection dated 07th April, 2015 at Exh:E issued by the respondent as also decision of the SAC of the respondent at Exh:F and thereupon, be pleased to command the respondent to issue the Letter of Approval to the petitioner for commencing an institute in engineering at the level of graduation with effect from the academic year 2015-16 pursuant to its application at Exh:A for the courses in the concerned branches of the discipline of engineering at the level degree;

(B) That pending admission, hearing and final disposal of the present petition, this Hon''ble Court be pleased to direct the respondent to permit the petitioner to commence its institute in engineering at the level of graduation with effect from the academic year 2015-16 pursuant to its application for the same at Exh:A to the petition on such terms as the Hon''ble Court may deem fit and proper;

(C) ***;

(D)***."

2. This Court admitted the matter on 12.06.2015 and learned counsel for the parties are heard at length for final hearing.

3. The following noteworthy facts emerge from the record of the petition:-

3.1. The petitioner is a public trust constituted and registered under the provisions of the Bombay Public Trusts Act, 1950. As the petitioner-Trust intends to establish a self-finance college for imparting education in the discipline of engineering at the level of degree from the academic year 2015-16, it made an application in requisite form to the respondent Council on 03.03.2015. The application so made was placed before the Scrutiny Committee of the respondent-Council consisting of three experts and the said Committee vide its report dated 04.03.2015 noted certain deficiencies.

3.2. Upon recommendation of Scrutiny Committee of the respondent-Council, the petitioner remained present before the Re-scrutiny Committee on 11.03.2015 along with all necessary documents and the Re-scrutiny Committee after going through all the documents, presented in detail that the petitioner had in fact no deficiency and was fulfilling all requisite criteria to grant approval to commence a new college as per its application and recommended for visit by Expert Visiting Committee.

3.3. Record further indicates that pursuant to the same, the Expert Visiting Committee of the respondent visited the premises of the petitioner on 19.03.2015 and after inspecting the infrastructure and facilities in the set up of the petitioner, recommended in positive to grant of approval and application forwarded to Regional Committee for further follow up.

3.4. Record further indicates that after scrutinizing the same, the respondent-Council by impugned order dated 07.04.2015 informed the petitioner that their application is rejected and the petitioner was asked to appear before the Standing Appellate Committee on 14.04.2015. The petitioner appeared through its representative and made submissions before the Appellate Committee and the said Committee passed a final order of rejection on two grounds, which are as under:-

(i) Printers, Legal Application S/W, Legal System S/W, PCs to Student ratio - Documents not satisfactorily required PCs.

(ii) Whether any River, Canals, Rail Tracks, Highways or any other such entity hampering continuity of land is passing through the land. (Y/N) mention details if any. - Not submitted.

3.5. Being aggrieved by the same, present petition is filed by the petitioner-Trust.

4. Heard Mr. D.C. Dave, learned Senior Counsel with Mr. P.A. Jadeja, learned

counsel for the petitioner-Trust and Mr. Vilas Goswami, learned counsel for the respondent-A.I.C.T.E.

5. Learned counsel for the petitioner has taken this Court through the factual matrix arising out of this petition and has submitted that even though the petitioner-Trust fulfills all requirements only on technical aspect and on misreading of layout plan duly sanctioned by the appropriate authority under the Gujarat Town Planning and Urban Development Act, Gandhinagar Urban Development Authority has passed the impugned order.

6. Learned counsel for the petitioner contended that as such the decision of the Standing Appellate Committee was communicated to the petitioner on 23.04.2015 by placing it on the web portal only and therefore, it is not correct that the petitioner has approached this Court late. It was further contended that 18 meter road is not a public road, but it is internal road situated within the campus of the petitioner. It was further submitted that the said aspect was examined by the Committee which visited and has noted that this road is not highway road, still however, the deficiency is wrongly pointed by the respondent-Council and the same deficiency is made a reason of dismissing the appeal and confirming the refusal order passed by the authority of the respondent-Council.

7. Learned counsel for the petitioner pointed out that 18 meter road is internal road within the campus of the petitioner and on the contrary, the petitioner has provided pakka road within the campus and therefore the contention raised by the respondent-Council to the effect that it divides the campus into two parts is erroneous on face of it. Learned counsel for the petitioner has also shown the photographs of 18 meter road to exhibit that it is not a public road or highway. It was further contended that the said internal road is used for commutation inside the premises of the petitioner as well as used for the staff and students of the petitioner-College only.

8. Learned counsel for the petitioner submitted that first deficiency which is made the basis of the impugned order namely to the effect that necessary documents pertaining to the Printers, Legal Application, Numbers of PCs etc. are not in accordance with numbers of the students available, is factually incorrect. Relying upon the affidavit filed in this proceedings, learned counsel for the petitioner further contended that both the deficiencies which are noted in the report of the Standing Appellate Committee do not exist and the same are made the basis of the impugned order without proper verification and on misreading of the approved plan by G.U.D.A. It was therefore, submitted that the impugned order of rejection dated 14.04.2015 is erroneous on facts as can be culled out from the original record itself, and the reasons given by the respondent-Council for passing the order of rejection are non-existing and hence, the petition deserves to be allowed as prayed for.

9. Per contra, learned counsel for the respondent-Council has relied upon the Affidavit-in-Reply filed by the respondent-Council and has contended that certain

deficiencies were found and have not been accepted by the Standing Appellate Committee as the deficiencies still exist in the institution as on 14.04.2015. Relying upon the judgment of the Apex Court rendered in the case of Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others, (2013) 1 AD 1 : (2013) 1 JT 557 : (2012) 12 SCALE 219 : (2013) 3 SCC 385 : (2013) 2 SCT 163 contended that now the respondent-Council will not be able to grant any approval for current academic year.

No other and further submissions are made by learned counsel for the parties.

10. Upon considering the submissions made by learned counsel for the parties and on perusal of the original record of this petition, it appears that as far as discrepancy No. 1 is concerned, the petitioner-Trust has stated on oath before this Court that the petitioner-Trust has removed such deficiency and the numbers of PCs and other requirements like Printers, Legal Application etc. exist in the premises of the petitioner-Trust, which is not contradicted by the respondent-Council.

11. The affidavit filed by the petitioner before this Court clearly reveals that adequate numbers of computers are made available for the students and therefore, the said deficiency is removed by the petitioner and hence, the same cannot be made basis for rejection. Similarly second deficiency, which is made the basis of the order is concerned, on bare perusal of the layout plan, the same is nothing but misreading the layout plan by the respondent-Council. The contention raised by learned counsel for the petitioner that it is not a public road but it is internal road is quite clear from bare perusal of the plan. Layout plan is duly sanctioned by the Competent authority namely G.U.D.A. under the provisions of Gujarat Town Planning and Urban Development Act and as per the Regulations of the said authority. Conclusion arrived at by the respondent-council that it is a public road is erroneous on face of it. 18 meter road abuts inside the campus of the petitioner-Trust and as can be seen and appreciated from layout plan, which is forming part of the petition as well as original record of the respondent-council, 18 meter road is not only within the campus, but it is part of the internal planning. The width of the road provided by the owner and/or developer of the land is as per the sanctioned plan and inference drawn by the respondent-Council that it is a public road is not only without basis but is based on mere pigment imagination of the respondent-Council. Learned counsel for the petitioner had also made available photographs showing the said internal 18 meter road for perusal of this Court. On basis of such cogent material on record, the decision taken by the respondent-Council to the effect that 18 meter road, which is part of the layout is different road and the same having been made the basis of rejection of the application filed by the petitioner deserves to be quashed. The same is, with respect, misreading of layout by the respondent-Council.

12. This Court is conscious of the fact that while exercising jurisdiction under Article 226 of the Constitution of India, the Court would be reluctant to interfere

in the decision of the expert body, more particularly in the area of expert's field like education. However, in the facts of the case, on face of it the decision taken by the respondent-Council is erroneous which can be culled out from the record of the petition as well as on the record of the respondent-Council itself. Hence, this Court thinks it appropriate to exercise jurisdiction under Article 226 of the Constitution of India.

13. Considering the ratio laid down by the Apex Court in the case of Parshvanath Charitable Trust (supra), this Court is of the opinion that it was duty of the respondent-Council to appreciate the reply given by the petitioner while scrutinizing the application. However, in the instant case, deficiency No. 1 is not only technical in nature, but has been actually removed as per the record of the petition. The second deficiency raised is result of total misreading of the sanctioned layout plan and upon total non-application of mind.

14. In light of the aforesaid, the impugned order of rejection deserves to be quashed and set aside. However, at this juncture it would be appropriate to refer to the judgment of the Apex Court rendered in the case of Parshvanath Charitable Trust (supra), wherein it is observed thus:-

"The above Schedule though was finalized by the Committee on 29th January, 2012 but the same appears to have been notified only on 30th September, 2012. The reasons for the same are again unknown. We are unable to appreciate that once the academic session begins on 1st August, then as to why should admission be granted upto 30th August of the year, particularly when, as per the terms of the Schedule, beyond or after 30th April, AICTE will not issue any approval for commencement of new course for additional intakes. The Schedule, thus, introduces an element of arbitrariness and may cause prejudice to the students who might miss their classes for a period of one month without any justification. Thus, it is required that the above-stated Schedule be modified to bring it in line with the Schedule for approval as well as to prevent inequalities, arbitrariness and prejudice from affecting the students in relation to their academic courses. The order granting or refusing approval, thus, should positively be passed by 10th April of the relevant year. The appeal should be filed within one week and the Appellate Committee should hear the appeal and decide the same by 30th April of the relevant year. The University should grant/decline approval/affiliation by 15th May of the relevant year. Advertisement should be issued and entrance examination conducted positively by the end of the month of May."

15. Learned counsel for the petitioner however, submitted that in case of similar set of circumstances, this Court was pleased to partly allow the writ petition by directing the respondent-council to grant approval to the petitioner-Trust forthwith. However, this Court following the ratio laid down in the case of Parshvanath Charitable Trust (supra), was pleased to direct that such approval shall be operative from next academic year and in such case, the Apex Court in Special Leave to Appeal (Civil) No. 2152 of 2013 was pleased to direct the

respondent-Council to grant approval from the same academic session, and therefore, this Court may allow the petition and direct the respondent-Council to grant approval even for the academic year 2015-16. With respect such contention cannot be accepted by this Court as the time limit prescribed by the Apex Court in the case of Parshvanath Charitable Trust (supra) as noted hereinabove. Even in the case which is relied upon by learned counsel for the petitioner, the Apex Court has clearly provided that said order will not be treated as precedent by this Court to pass the order beyond time fixed by the Apex Court in the above referred judgment.

16. Considering the facts which emerge from the record of the petition, it appears that as the petitioner has removed all required deficiencies and numbers of PCs and other requirements of Printers, Legal Application etc. exist in the premises of the petitioner and in fact, the deficiency of layout plan is wrong and erroneous, following the ratio laid down in the case of Parshvanath Charitable Trust (supra), the petition deserves to be accepted partly.

17. Resultantly, the petition is partly allowed and the respondent-Council is directed to grant approval to the petitioner-Trust as per the application dated 03.03.2015 forthwith. However, such approval shall be operative from the next academic year. It is further provided that it shall be open for the respondent-Council to inspect the petitioner's premises and on finding any deficiency, to take action after issuing due notice to the petitioner. Rule is made absolute to the aforesaid extent only. No costs.

Registry is directed to return back the original file to Mr. Vilas Goswamy, learned counsel for the respondent-Council.