

(2014) 09 BOM CK 0220
In the Bombay High Court
Case No : W.P. No. 6293 of 2014

Lokmanya Tilak Jankalyan Shikshan Sanstha's Lokmanya
Tilak College of Engineering APPELLANT

Vs

All India Council for Technical Education (AICTE) and Others RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 4 BomCR 148 : (2015) 1 MhLj 775

Hon'ble Judges : F.M. Reis, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Harish Dangre and Nikhil Mehta instructed by KMC Legal Venture, Advocates for the Appellant; Mihir Desai, Sarnath Sariputta and Swaraj Jadhav, Advocates for the Respondent

Judgement

Anoop V. Mohta, J.—Rule. Rule, returnable forthwith. Heard finally, by consent of the parties. The petitioners, who are imparting the technical education based upon the requisite permissions from the concerned Authorities, including All India Council for Technical Education (for short, "AICTE"), since long, have filed present Writ Petition, on 3 July, 2014, and prayed to quash and set aside order/decision dated 23 June, 2014 passed by AICTE declaring the petitioners' institution under "no admission" category for the academic year 2014-15.

2. After hearing the learned counsel appearing for the parties, by giving reasons and on the basis of decision of the Supreme Court in Jayamatha Engineering College vs. Union of India and Ors., Writ Petition (Civil) No. 538 of 2014, on 4 July, 2014, we have passed ad interim reliefs in the following terms:

"5. Therefore, taking over all view of the matter, at this stage, in the interest of students, as well as, the institute, we are inclined to stay the effect and operation of impugned order/letter dated 23 June, 2014 in respect of the petitioners present institute and further grant ad interim relief in following terms:

"pending the hearing and final disposal of this writ petition, respondent Nos. 3 and 4 are directed to upload the petitioner's name for the Centralized Admission Process (CAP) and be allowed to participate in CAP round and/or Minority Admission Procedure, for the academic year 2014-15 for the Engineering Courses conducted by the petitioner at Lokmanya Tilak Jankalyan Shikshan Sanstha's Lokmanya Tilak College of Engineering, Sector TV, Koparkhairane, Plot No. 17, 18, 18A and 19, Navi Mumbai - 400 079."

6. However, this will be subject to the further orders of this Court. The petitioners will not claim any equity on the basis of this order. The respondents to file reply affidavit on or before the next date.

7. It is also clarified that non-listing of the petitioners institute/name on the AICTE Website will not affect the admission process and implementation.

8. The parties to act on an authenticated copy of this order.

9. It is also made clear that the Officer of respondent Nos. 3 and 4 i.e. Dr. Rajeev V. Shetkar, Assistant Director (Tech.), Directorate of Technical Education, M.S. Mumbai, is present in the Court and therefore, non-availability of the present order should not be the reason not to implement the order passed by this Court today."

3. The learned counsel appearing for the petitioners pointed out an affidavit and an additional affidavit, as filed as per the interim order/direction in Writ Petition No. 6021 of 2014 and other connected matters. The common operative part of the interim order passed by this Court on 14 July, 2014, reads thus:--

ORDER

(a) The respondents, including Director of Technical Education (DTE) to allow the admission of the students as per the intake capacity of the previous years/last LOA/EOA, based on the respective Applications of the petitioners.

(b) The admission of the students would be provisional. The concerned students shall be intimated accordingly and the admissions would be subject to further orders and/or outcome of the Writ Petitions.

(c) The petitioners and/or students shall not claim any equity on the basis of this order.

(d) The petitioners are directed to file additional affidavits dealing with the deficiencies, if any, and the objections so raised about the deficiencies and in what manner the alleged deficiencies can be cured and what steps they propose to take to remove those deficiencies and the time frame therefore.

(e) Additional affidavits referred to above shall be filed by the petitioners within four weeks, failing which it may entail vacation of interim orders. The Additional affidavit in reply be filed by the respondent AICTE also.

(f) The impugned order of AICTE shall not affect the admissions of existing

students and the classes and the courses.

(g) It is made clear that the ad interim order continues to operate notwithstanding this interim order and the protection granted by these orders shall not extend in any case to the next academic year. The approvals for the next academic year shall be decided on its own merits.

(h) The parties are at liberty to apply for appropriate clarification, if any."

4. We have, finally disposed of Writ Petition No. 6021 of 2014, on 27 August, 2014, by granting prayer clauses (a-i).

5. The petitioners' affidavits dealt with the removal of deficiencies and the objections so raised initially by AICTE. The alleged deficiencies have been cured. The detail steps they propose to take to remove deficiencies, if any. There is no counter-affidavit filed, so far as the additional affidavits are concerned. We are not dealing with the same in detail, in the present facts and circumstances, as ultimately, the respondents AICTE and/or the concerned Authorities need to deal with the same, in accordance with law.

6. Therefore, by keeping all points open, we are inclined to proceed further in the matter, in view of the reasoned orders so passed in Writ Petition No. 6021 of 2014 and other connected matters, dated 14 July, 2014; dealing with the power of AICTE and failure to take timely action as directed/observed by the Hon'ble the Supreme Court in various cases, including as referred in the following paragraphs:

"10. Admittedly, the AICTE was not in a position to follow the earlier scheduled dates so fixed by the Supreme Court in Parshavanath (supra) in view of the judgment in the case of Association of Management of Private Colleges (supra). As per those dates, by 30 April, 2014 AICTE ought to have completed the process of granting or denying the approvals including extension of approvals. Admittedly, till 9 May, 2014, the role of AICTE itself was quite restricted and limited. On the contrary, the UGC role was recognized for such courses. The AICTE role therefore, was only to give feedback to the UGC until 9 May, 2014.

11. There are about 1800 private/aided and non-aided institutions in Maharashtra imparting technical education. There are about 11,000 institutions throughout the country. Admittedly, since 2009 the institutions in Maharashtra and particularly the present institutions have not been inspected by AICTE within the time frame prescribed. The respective institutions, as per the procedure, submitted and provided the details to AICTE for extension of approval for the academic year 2014-2015. For the earlier years, as per the procedure, on making the online Application, AICTE used to grant them approval from time to time. Further, in the year 2014-2015, as recorded above, at the fagend i.e. on 9 May, 2014 they invited applications. Therefore, they themselves were not in position to comply with their own rules and adhere to the cutoff dates. AICTE has not inspected the institutions since 2009. It has not given opportunity to

defaulting institutions, to remove deficiencies, if any, or put on record their justification in time before taking action to withhold the extension of approval. The situation appeared to be beyond the control of AICTE to manage and to take inspection and/or pass adverse orders after giving show cause notice and hearing the parties concerned for the present academic year 2014-15.

12. It appears that on the basis of Complaints filed by some organizations and/or individuals, AICTE constituted a High Power "Fact Finding Committee" (for short, the Committee) to examine the complaints and to make its recommendation. The Committee after holding their respective meetings initially heard only one complainant viz. Citizens Forum for Sanctity in Educational System and not the representative of the petitioners. Admittedly, though their Complaint was against 32 institutions, the Complainant for undisclosed reasons, restricted their Complaint to 13 institutions only. Most of them are the petitioners in this group of Writ Petitions. It is contended that no show cause notice and/or hearing was given to the petitioners before taking action of withholding extension of approval. The Committee submitted its report dated 10-1-2014 to the AICTE, though at that time in view of judgment in Association of Management of Private Colleges (supra), the role of AICTE was restricted to give feedback to the UGC. The UGC as per the aforesaid judgment was supreme Authority to deal with such situation. The AICTE, however, based upon the recommendations of the High Power Committee appointed EVCs (Expert Visiting Committees) for inspection of the petitioners' institutions. The High Power Committee also directed to take suggestive steps and insisted upon for strict adherence to the conditions of approvals, in the public interest. The suggestion is also made to have a proper mechanism to monitor the cases in Courts.

13. The respective inspections of the petitioners' Institutions have been taken by the EVC AICTE based upon the report of EVC without giving proper opportunity of hearing, communicated the impugned adverse orders to the respective petitioners on the dates which are ranging from 10 June, 2014, 23 June, 2014, 26 June, 2014 and 2/3 July, 2014. The information collected at the fagend of the academic year 2014-2015 without earlier inspections of any kind for more than 5 years and without giving opportunity to remove the deficiencies or permitting them to justify their respective contentions, AICTE issued the respective impugned orders.

14. Therefore, at this stage we are definitely concerned with the way and manner by which AICTE has taken the decisions. AICTE after collecting information did not grant reasonable time and opportunity to the petitioners' institutions and passed the impugned orders. From the record, it is apparent that the petitioners were heard by the Standing Complaints Committee and the impugned orders were passed by another Authority viz. Competent Authority (i.e. Chairman of AICTE). Normally, the authority who hears the parties must pass orders. (See Rasid Javed and Others Vs. State of U.P. and Another etc. etc., and Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road

Transport Corporation and Another, In the present cases, prima facie, it appears that authorities/bodies, invoked their respective powers at different stages and ultimately the impugned orders were passed against the petitioners without giving proper and reasonable opportunity, in breach of the principles of natural justice as well as the respective provisions/procedures declared by AICTE. These orders will cause great injustice and hardship to the institutions, staff and the students. The investments so made by the petitioners also just cannot be overlooked."

7. The Supreme Court recently in Union of India (UOI) and Others Vs. Shiv Raj and Others, though in Land Acquisition matter has reiterated the same principle in following words:--

"27. In pursuance to the above reference, the matter came up before the third Hon"ble Judge, who delivered the judgment cited as Smt. Chatro Devi and Others Vs. Union of India (UOI) and Others, . Relying on the decision in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , the Court was of the opinion that where the objections were heard by one collector but the report was made by another, such procedure was not in strict compliance of requirements of section 5-A of the Act, 1894. The issue of prejudice caused to a party in case of violation of principles of natural justice arises in cases dealing with un-codified procedure."

8. It is also necessary to quote the relevant paragraphs of the order passed by this Court in Writ Petition No. 6021 of 2014 and other connected matters, dated 14 July, 2014, which read thus:

"15. There is no material that, out of 1800 such institutions in Maharashtra, only these are the defaulting institutions."

16. "The impugned orders are in breach of natural justice, fair-play and equity and therefore, required to be tested also on the anvil of Article 14 of the Constitution of India. The respondents discriminatingly selected the petitioners" old established institutions some of which are of high repute and passed the impugned orders."

"17. We have gone through the deficiencies so alleged and referred to by the Counsel appearing for the respective petitioners. We find that some of the deficiencies are curable. Other deficiencies relate to land, playground, occupation certificate, nature of occupancy with permission and/or without permission, common playground, sharing of premises, less area, running by the institutions from campus, less land/insufficient land or built-up area, class rooms or laboratories, the multiple use of same premises and requisite staff/faculty/less staff are required to be dealt with as per the norms prescribed in AICTE handbook. We have gone even through those basic norms para 9.1.5 about land area requirements, para 9.1.6 classification of building areas norms para 12.2 and para 10 which deal with the multi use of facilities shows that the interpretation and submissions of petitioners if accepted, there will be no

deficiencies. The authorities before passing order based upon their understanding of those norms, though permitted the petitioners to run the institutions/colleges/courses for so many years suddenly took U-turn and discarded the submission/explanation so given by the respective petitioners without giving reasons on those issues. Those norms and standards including regulations of grant of approval for technical education itself provide for relaxation/exemptions. We fail to understand that if there were indeed some area/land deficiencies, how the letters of approval were issued to the petitioners at the threshold. We are not here to give decisions on the respective deficiencies at this stage, but as submitted by the learned counsel appearing for the petitioners that those norms and standards and regulations/rules unless interpreted and/or considered by this Court and/or even by the supreme authority under AICTE Act and/or other Act, such drastic action would definitely cause injustice and hardship to all the concerned. There is nothing on record to show that any findings and/or reasons have been given by the Council, while interpreting these regulations. It is relevant to note that there is power to relax, whereby the Council may in exceptional cases for removal of any hardship and/or other reasons to be recorded in writing, relax any of the deficiencies of this kind of any classes or categories of institutions. No proper opportunity was given to the petitioners to put up their case before taking such drastic action. The decision, therefore, so taken is arbitrary and not in consonance with the various norms and regulations of AICTE. Due to time constraints, as the impugned orders are passed at the eleventh hour just before the admission process was to begin, the petitioners have had no opportunity to remove the deficiencies and/or file Appeals before the Appellate Authority."

18.We see no reason to accept the drastic action so taken by the AICTE of bringing such institutions in "no admission" category, at least, for the current year 2014-2015."

"19. It is relevant to note that there is challenge also made to the procedure and norms so declared by AICTE whereby, the institutions/Applicants are permitted to file their Applications online for approval/extension of approval for courses and/or variation in intakes. These rules are in existence for so many years. The petitioners and/or such other institutions are accordingly submitting their online Applications for extension of approvals from time to time. The workable procedure is adopted as there are more than 11000 institutions which are imparting technical education in India."

"21. We have passed such orders and granted similar ad interim reliefs in all the Petitions. The statement is made that accordingly the institutions names are listed. The students have been submitting their Applications online till this date. All the respondents are, therefore, required to follow the timetable so fixed by the Supreme Court in all respect."

"22. The scope of writ jurisdiction is wide and so also its restrictions. It depends upon facts, circumstances and situations specifically when dealing with the

expert body's decision. The time schedule fixed in Parshvanath (supra) has been rescheduled by the Supreme Court. If case is of perversity, illegality in following due procedure of law, it is settled that any decision/order passed in breach of principles of natural justice, fair play and equity and which causes injustice, hardship and prejudice and specially when it relates to students and higher education and which affect the people at large, High Court in writ jurisdiction, may interfere with the same, to test the validity, illegality of such action. A Division Bench of this Court in Dental College and Hospital of the Dental College and Hospital of the Vidarbha Youth Welfare Society Vs. Government of India, Dental Council of India, Government of Maharashtra and Maharashtra University of Health Sciences, while dealing with the provisions of Dentists Act, 1948 and the power of supreme Authority under the Act referring to the establishment of New Dental College and courses held that apart from others "There is no bar to interfere in expert body's decision." There also similar objection was raised by the respondents and opposed for the grant of any relief in favour of the institutions. The Division Bench, based upon the facts, even directed the respective Council to reconsider the representation made by the petitioners and further ordered to have fresh inspection and to pass order in accordance with law by giving an opportunity to the petitioners. It is also noted in the said judgment as follows:

"32. The peculiarity of the fact in the present case which the Court just cannot overlook merely because the impugned decision is taken by the expert body. As noted above, the expert and/or expert body and/or institution and their power just cannot be decided by the Court so far as the matter pertained to and/or related to the students and/or academic sessions. Any Tribunal/body even of experts, if takes certain quasi judicial or administrative decisions by which they take away and/or infringe the rights of any person and/or institution and if there is breach of principles of natural justice, we are inclined to observe that the High Court need to test the decision/order if case is made out. There is no bar whatsoever that the decision of the expert body in such a situation cannot be interfered with and/or the High Court has no power to test the decision."

"23.The extension of approvals as prayed for running and long standing establishment cannot be rejected abruptly in such fashion." "The space constraints in cities and their respective permission of less space/less land/ pending occupation certificate and/or related aspect definitely require reconsideration/interpretation of the same. The Authorities of AICTEC are therefore required to consider the representation and/or application for relaxation of certain deficiencies and/or permit the petitioners to point out that there are no deficiencies by giving opportunity to the party concerned before taking drastic action."

9. Therefore, for the above reasons, we are not inclined to keep this Petition pending, as all the concerned parties have already acted upon the same, including the students. The reasons so recorded above, in our view, are sufficient

to maintain the orders so passed on 4 July, 2014 and 14 July, 2014 for this academic year 2014-2015.

10. However, it is made clear that AICTE is at liberty to proceed in accordance with law and regulation within the time schedule, so fixed by the Hon"ble the Supreme Court for the next academic year 2015-2016 and onwards. We are not deciding the aspect of the deficiencies, even if any. The respondents Authorities are final Authorities to deal with the same and to take action and/or pass order in future. All points are kept open even with this regard.

11. The petitioners are also under obligation to see that they should run such institutions without deficiencies and specifically the major deficiencies. The deficiencies are minor and/or major, ultimately, the respondent-Authorities need to adjudicate and decide the same after giving hearing to the concerned parties. Once the decision is taken in accordance with law, the respondents are under obligation to pass appropriate order, as the question of standard of technical and quality education is required to be maintained by all the concerned. Therefore, as in the present matter we have passed interim orders on 4 July, 2014 and 14 July, 2014, taking note of the situation so made and mentioned therein, we are inclined to dispose of the present Writ Petition, by maintaining order already passed on 4 July, 2014/14 July, 2014. This order will sufficient to dispose of other similarly placed Writ Petitions. In view of above, the following order:

ORDER

- a) Impugned order/decision dated 23 June, 2014 (Exhibit "M") passed by the AICTE is quashed and set aside.
- b) Interim orders dated 4 July, 2014 and 14 July, 2014 are confirmed/maintained.
- c) We direct respondent Nos. 1 and 2 AICTE to grant permission/approval to the petitioners for the academic year 2014-2015.
- d) The AICTE is at liberty to proceed in accordance with law from the next academic year, including the issues so raised.
- e) By keeping all points open, the present Writ Petition is allowed.
- f) Rule made absolute accordingly.
- g) There shall be no order as to costs.