

(2012) 08 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 13447 of 2012 and M.P. No's. 1 and 2 of 2012

Maharaja Engineering College for Women, (run by
Paramasivam Palanisamy Charitable Trust), Erode Road,
Perundurai-638 052

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 08 MAD CK 0021

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Kandhan Duraismi, for the Appellant; A.L. Ganthimathi, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice, K. Chandru

1. This writ petition is filed by the petitioner college run by Paramasivam Palanisamy Charitable Trust. In this writ petition, they have sought to

challenge an order passed by the first respondent All India Council for Technical Education (for short AICTE), dated 12.04.2012 and after setting

aside the same, seeks for a direction to process the application of the petitioner for conversion of ""Maharaja Engineering College for Women"" into

Maharaja College of Engineering and Technology"" at Perundurai for the academic year 2012-13 without insisting upon production of approval by

the Director of Town and Country Planning as a condition precedent. When the matter came up on 16.5.2012, this court directed notice to be

issued to the respondents with liberty to take private notice. On notice from this court, on behalf of respondents, a counter affidavit, dated

30.5.2012 has been filed by the second respondent.

2. The contention of the petitioner was that Paramasivam Palanisamy Charitable Trust had established an engineering college exclusively for

women students in the name and style of ""Maharaja Engineering College for Women"" at Perundurai in the year 2008 by obtaining an approval from

the first respondent AICTE, dated 02.06.2008. This was to impart technical education to women in four disciplines and that the intake was 300

total number of students. The affiliation to the college was granted by the Anna University, Coimbatore by an order dated 30.6.2008. The first

respondent AICTE had also granted extension of approval for the year 2009-10 by a letter dated 28.5.2009. The AICTE had also increased the

intake of seats as well as introduction of additional course for the year 2009-10 by a letter dated 30.6.2009. The affiliation for the revised intake

was granted by the Anna University, Coimbatore for the year 2009-10 by proceedings dated 01.10.2009. The total admission of women students

for the academic year 2009-10 was only 61, out of the approved intake of 420 students. Since the admission in the women engineering college for

the year 2009-10 was only 14.52% of the approved intake and as it was not viable to run the institution with such low intake, the trust had applied

to the AICTE on 14.10.2009 for converting the women engineering college into a co-education college in the name and style of ""Maharaja College

of Engineering and Technology"". The AICTE had refused to grant approval on the ground that it was their policy not to accept applications for

conversion submitted after 06.10.2009.

3. The management filed a writ petition being W.P.No.7065 of 2010, which was dismissed. As against the same, the writ appeal filed in

W.A.No.1106 of 2010 was also dismissed. The final attempt by the management to challenge it before the Supreme Court in SLP (Civil)

No.29917 of 2010 was also dismissed. However, subsequently, for the academic year 2010-11, the AICTE had announced a new set of

guidelines and norms. On 07.03.2011, the petitioner submitted a fresh application under the new norms for conversion of the women engineering

college into co-education college. As per the guidelines, the trust had paid the conversion fee. However, the application for conversion was

rejected by the AICTE by an order dated 22.11.2011 pointing out the following

deficiencies :

1.A certificate stating that less than 40% admission for three consecutive years issued by Competent Admission Authority.

2. A certificate stating the actual enrolment of students for the last three consecutive years, issued by the Registrar of the Affiliating University.

3. NOC from the State Government.

4. NOC from Affiliating University.

5. Resolution of the Trust/ Society Board of Governors for the conversion from Women's Institute to Co-Ed. Institute.

4. The petitioner had furnished those documents and submitted a fresh proposal on 21.01.2012 for conversion for the academic year 2012-13 and

also paid the processing fee. As per the Scrutiny Committee schedule of the AICTE, the Trust representatives appeared before the committee on

03.03.2012 and had presented documents called for by the AICTE. The report of the Scrutiny committee was uploaded in the website of the

AICTE. When the petitioner perused the report of the scrutiny committee on 09.03.2012, certain additional documents were required by the

AICTE. Immediately, on 13.03.2012, the petitioner had furnished a detailed compliance report and requested them to consider the additional

documents and to grant permission. However, a surprise inspection was conducted in the college on 21.3.2012. All original documents were

placed before the inspection team on the said date. The representatives of the college were also asked to appear before the re-scrutiny committee

at the Southern Regional Office on 22.03.2012. The petitioner trust also appeared before the committee. On perusal of the report of the re-

scrutiny committee from the website, it was found that originally the proposal for conversion was duly recommended by the committee mentioning

that all documents required were submitted. But subsequently, the report was altered to state that it was not recommended pointing out

deficiencies, i.e, building plan was not approved by the DTCP. It was submitted that the building was originally constructed in the year 2007 after

obtaining necessary approval from the competent authority, i.e., the Executive authority of the local panchayat.

5. It was stated that nearly 1000 AICTE approved institutions are available in Tamil Nadu including engineering, management, MCA, Pharmacy

and Polytechnic and almost all the existing 1000 plus institutions have been granted extension of approval and approval of new courses, additional

intake without insisting upon DTCP approval as a pre-condition. Whereas seeking for such approval for the petitioner alone as a pre-condition is

discriminatory and causing great prejudice. It was also stated that the other technical institutions such as institution run by Sengunthar Charitable

Trust was granted approval without insisting upon DTCP approval. The petitioner alone has been singled out as the Chairman of the petitioner trust

happened to be the President of the Association of Management of Coimbatore Anna University Affiliated Colleges and had successfully filed

various cases against AICTE including challenging the implementation of AICTE's new regulations and mandatory subscription to e-journals

chosen by the AICTE. Therefore, they had acted in vindictive manner. The petitioner trust had already taken steps to obtain DTCP approval. It

will take a considerable time to obtain the order. Hence insisting upon the said certificate was discriminatory. Since the petitioner is only seeking for

conversion of the existing institution, the AICTE should not make the approval by the DTCP as a condition precedent and further rejecting the

application for one reason or other is also illegal.

6. In the counter affidavit filed by the respondents, it was stated that the initial application of the petitioner was rejected only because the

application was submitted after 06.10.2009. But in the academic year 2010-2011, as per the guidelines and norms of the respondent Council, the

conversion was not granted since a certificate stating that less than 40% admission in three consecutive years issued by the competent authority

was not submitted. Further, the NOC from the State Government and the affiliating university was also not submitted. A fresh proposal for

conversion of the college into co-education for academic year 2012-2013 was submitted by the petitioner. The application was sent before the

scrutiny committee. The scrutiny committee found that documents submitted by the petitioner was not sufficient and there were deficiencies in

respect of building plan of the college. The Scrutiny committee had stated that deficiencies should be complied with. The petitioner thereafter had

submitted a representation dated 13.3.2012 with supporting documents stating that deficiencies have been complied with. Thereafter, re-scrutiny

was done by the committee on 22.03.2012. With regard to the surprise inspection conducted on 21.3.2012, it had nothing to do with the conversion proposal. It was a random inspection done in several institutions. Even then, on perusal of all documents submitted by the petitioner, it was found that building plan was not approved by the competent authority. Hence the deficiency was noted by the committee. On perusal of the documents, the Regional Committee on 27.03.2012 made its report stating that not recommended for conversion of women college to Co-education. On perusal of all reports, the council by a letter dated 12.4.2012 had informed the petitioner that their application for conversion was rejected and that the report containing deficiencies were available in the web portal of the AICTE.

7. It was further stated that conversion of the women college into a co-education institution was considered under Regulation 3.8 of the Approval

Process Handbook of the AICTE for the year 2012-13. It is clearly provided that the application shall be processed as per the procedure for

approval of a new institution. As per the regulations of the AICTE, the conversion of a college can be considered only if all norms and guidelines of

the AICTE are fulfilled. It also includes the building plan approval by the competent authority. The allegation that the college established by

Sengunthar Charitable Trust was granted conversion was also denied. The said college was granted conversion much before the new guidelines of

the AICTE was prescribed. Later, all institutions which are seeking conversion were treated alike. Even for one institution run by Sengunthar

Charitable Trust, their request for conversion is still kept pending for DTCP building plan approval.

8. With reference to the malafide alleged, in paragraph 12 of the counter, it was averred as follows :

12.....the malafides alleged by the petitioner are also without substance and the same are strictly denied as false and incorrect. Petitioner has not

been treated in a discriminatory manner and DTCP approval of Building Plan is insisted from all the institutions which are seeking conversion.

Without knowledge of correct facts, the petitioner has made sweeping allegations against the respondent Council and the same are illegal and

arbitrary and it requires to be looked into with proper perspective. Petitioner cannot make such allegations against a public authority without any

basis and without adding any person to attribute such malafides. As per the Regulations of the AICTE, the DTCP approval is necessary for

granting approval and as such, the Petitioner's application which was scrutinized by the Re-scrutiny Committee on 4.5.2012, is still kept pending

for orders

9. In the light of these facts, it has to be seen whether the petitioner's prayer can be countenanced by this court. It must be noted that unless the

petitioner satisfies the regulations framed by the AICTE, the question of this court giving directions to the AICTE to act contrary to his own

regulations does not arise. When a law requires an act to be done in a particular fashion, it has to be done only in that manner and not in any other

manner. The fact that the petitioner has been waiting for the last three years is not a ground to grant the relief and that the rejection of those three

years was on different ground. After new regulations have come into force and applicable for the academic year 2012-13, the petitioner will have

to necessarily comply with the requirements as the request for conversion is treated as that of starting of a new institution.

10. The Supreme Court in its decision in *Bedanga Talukdar Vs. Saifudaullah Khan and Others*, held that if pursuant to an advertisement,

conditions stipulated are not complied with and even in the absence of any power to the selecting authority, no such application can be entertained.

It is necessary to refer to the following passages found in paragraphs 29,30 and 32, which reads as follows :

29. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public

office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any

undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated

selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained.

There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could

be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the

absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.

32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list.

11. Therefore, even the AICTE cannot grant any exemption in the absence of any such exemption before it. It cannot be said that the approval by the DTCP is an automatic process. When the certificate from the competent authority is not enclosed, then the petitioner's application cannot be said to be complete in all respects. Therefore, the contention that there is discrimination or that the certificate will come in due course cannot satisfy the requirement of the AICTE in terms of its regulations. In the absence of the petitioner satisfies the legal requirement for getting conversion, the writ in the nature of mandamus can never be entertained. The court cannot

direct the authority to do or act contrary to its own regulations. The regulations are also not under challenge before this court. In view of the above, there is no case made out by the petitioner. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.