
(2012) 09 AHC CK 0258

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48812 of 2012

R.V. Northland Institute

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 ALJ 602 : (2013) 3 AWC 2915

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Uma Nath Pandey and Rakesh Pande, for the Appellant; Neeraj Tiwari, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioner Sri. Rakesh Pande and Sri. Neeraj Tiwari for the respondent Nos. 2 to 5 as well as respondent No. 6 and the learned Standing Counsel for the Respondent No. 1. This petition has been filed assailing the order dated 11th September, 2012 passed by the AICTE refusing to grant approval to the petitioner institution for the Session 2012-13 to run the courses in pharmacy as referred to in the impugned order. The ground taken for non suiting the petitioner institution is mentioned categorically in the impugned order to the effect that such orders are being passed in view of the provisions of Clause 3.1 (d) and (e) of Chapter II of the AICTE Approval Process Handbook. According to the same, if the company or society running the institution or its member is charge-sheeted in any criminal case, then in that event approval of the institution shall not be considered till the accused is acquitted. The second provision is that no further increase shall be given to the institution where any such FIR has been lodged or investigation or inquiry is pending. Accordingly, on the said basis, since the earlier Chairman of the petitioner institute Mr. Dev Ram Sharma had been charge-sheeted by the Central Bureau of Investigation on 31.8.2010, the Council has refused to grant

approval.

2. This writ petition has been filed bringing on record the previous litigation that the petitioner institute had to undergo and mala fides are also alleged. It is not necessary to trace the entire history of the litigation between the petitioner and Council but suffice it to say that having noticed the same and having heard learned counsel for the petitioner, the learned counsel for the AICTE, Sri. Neeraj Tiwari was called upon to obtain instructions and inform the Court about the applicability of the aforesaid clause in the present case by the order dated 21.9.2012 quoted herein under:

Heard Sri. Rakesh Pande learned counsel for the petitioner. The contention raised is that the orders impugned dated 29.8.2012 and 11.9.2012 are fundamentally mala fide inasmuch as they have been passed only on account of the past litigation between the petitioner and the All India Council for Technical Education which culminated in filing of a contempt application before this Court. Sri. Pande learned counsel for the petitioner contends, with the help of a detail interim order passed by the Bombay High Court Division Bench dated 29.6.2012 in Writ Petition No. 773 of 2012 that the entire objection of the Council is based on an erroneous assumption of law inasmuch as the clause which has been invoked for non suiting the petitioner, namely clause 3.1 (d) and (e), is not at all attracted as Ved Ram Sharma the erstwhile Chairman of the Society had been charge-sheeted by the C.B.I. on 31.8.2010 on which date the said provisions were not enforced by the respondent Council. In such circumstances if the charge-sheet was submitted in the year 2010 then action on the basis of provisions which came to be introduced later on cannot be taken.

The second submission is on the basis of the interim order passed by the Bombay High Court referred to hereinabove. His third submission is that even assuming for the sake of argument that such a provision would be applicable, Ved Ram Sharma has already been removed on 29.4.2012 not only from the post of Chairman but also from his primary membership which aspect has been completely overlooked while passing the impugned orders.

Sri. Pandey learned counsel for the petitioner contends that neither the facts on the basis whereof the impugned orders have been passed did exist nor did the provisions that were introduced later on could have been invoked in relation to the charge-sheet which was submitted prior to its enforcement. Sri. Pandey, further, contends that even otherwise in view of the reasoning given by the Division Bench of the Bombay High Court the petitioner is entitled for an approval and therefore, the impugned orders are unsustainable in law.

Prima facie there is no dispute on facts which are also indicated in the impugned orders except for the date of enforcement of the provisions. The same being a legal issue therefore the aforesaid fact of the date of enforcement of the provisions be intimated to the Court by the learned counsel for the All India Council for Technical Education by Tuesday next through instructions or an

affidavit. Put up on Tuesday next.

3. The same submissions have been advanced by the learned counsel for the petitioner today and Sri. Tiwari in spite of having made repeated attempts has been unable to obtain any instructions on the query made by the Court in the order aforesaid.

4. Sri. Tiwari has, however, placed before the Court the Approval Process Handbook for the year 2011-12 as well as 2012-13. The relevant extract of the year 2011-12 is quoted herein under:

3.1 (d) No increase shall be given to Institutions where a CBI/CVC/any other investigation agency. Anti Ragging/Punitive action initiated by AICTE for any violation in the norms and standards/enquiries are pending.

5. The relevant extract of the year 2012-13 which has been invoked in the present case for passing the impugned order is quoted herein under:

3.1 (d) Any Institution/Society/Trust/Section 25 company or a member belonging to these if charge-sheeted shall not be considered for approval unless they are acquitted".

3.1 (e) No increase shall be given to institution where a FIR/CBI/CVC/any other investigation agency/Anti Ragging/Punitive Action initiated by AICTE for any violation in the norms and standards where enquiries are pending.

6. Sri. Pandey submits that the aforesaid provisions cannot be invoked inasmuch as the erstwhile Chairman Mr. Ved Ram Sharma has already been removed prior to the passing of the impugned order not only from his office of Chairman but also from the primary membership of the society. In the aforesaid circumstances, the said fact does not exist so as to warrant invoking of the powers under the aforesaid provision after his removal on 29.4.2012.

7. His second submission is that the provisions quoted hereinabove were not in existence in the Session 2010-11 when Sri. Ved Ram Sharma was charge-sheeted on 31.8.2010. He contends that so far as the Session of 2010-11 is concerned, the petitioner institution had already been granted approval by the respondent Council. He therefore, submits that even assuming for the sake of argument that such a provision did exist, the same will be deemed to have been waived keeping in view the own conduct of the Council in granting approval for the Session 2010-11.

8. The fourth submission of Sri. Pandey is as indicated in the order dated 21.9.2012, namely, the interim directions of the Bombay High Court Division Bench dated 29.6.2012 in Writ Petition No. 5773 of 2012. The said order passed by the Division Bench in the case of Jawaharlal Darda Education Society v. All India Council for Technical Education. The entire order is extracted herein under for ready reference:

1. Leave to amend in terms of draft tendered and taken on record and marked

"X". The amendment shall be carried out within a period of one week from today.

2. Issue notice returnable on 17 July, 2012. Learned counsel appearing on behalf of the respondents waive service.

3. The Second Respondent was granted approval by the AICTE, the first respondent, for establishing a new technical institute on 30 June, 1995. The second petitioner claims to be a private unaided minority institution and conducts technical and engineering courses in Yavatmal. It appears that at present, about 1,900 students are enrolled in the institute.

4. On 21 August, 2009 a surprise inspection took place by the CBI, when it was observed allegedly that the institute did not have the declared built-up area. The CBI registered an FIR and, after investigation, a charge-sheet has been filed on 19 November, 2010. The charge-sheet alleges that there was a deficiency in the built-up area to the extent of 6.5%. According to the petitioners, the norms of the AICTE permit a condonation of a deficiency of 10% in the built-up area. Besides, it is contended by the petitioners that the actual measurement which took place during the course of the surprise inspection on 21 August, 2009, was not correct and that as a matter of fact, even at that stage, the petitioner had the required built-up area.

5. For academic year 2011-12, the AICTE withheld the Letter of Approval of extension and showed the approved intake capacity of the second petitioner to be zero for all courses. The petitioners filed a petition before this Court under Article 226 of the Constitution of India (Writ Petition No. 5155 of 2011). The petition was admitted by an order of a Division Bench dated 11 July, 2011. The Division Bench took note of the charge-sheet which alleges that till 21 August, 2009 the institute did not have a required built-up area of 15,544 sq.mtrs for an intake of 330 students, while it was found to have a built-up area only of 14,236.31 sq.mtrs and an occupation certificate for 9,605 sq.mtrs. The Division Bench observed in the course of its order that when the Scrutiny Committee visited the college in May 2011, the required built-up area was available. The Regional committee of the AICTE in its report dated 18 June, 2011 had recommended grant of an approval. However, on behalf of the AICTE, reliance was placed on Clause 3.1(d) of the Approval Process Handbook for 2011-12, which stipulates that no approval shall be given to the institution, inter alia, where the CBI or any other Investigating Agency has initiated action for violation of the norms and standards or where inquiries are pending.

6. The Division Bench in its interim order dated 11 July, 2011 recorded the following reasons:

10. Having heard the learned Counsel for the parties, it appears that the facts are that in spite of initiation of CBI enquiry in October 2009 and in spite of filing CBI charge-sheet in November 2010, the AICTE has not so far issued any show cause notice to the petitioners before taking the impugned decision not to grant extension of approval; AICTE has withheld the extension of approval only on the

ground of filing of CBI charge-sheet without considering that even as per the allegations in the charge-sheet the deficit in the built up area at the time of the concerned inspection was only 6.5% as against the permissible deficit of 10%.

The interim order that was passed by the Division Bench was in the following terms:--

11. In view of the above, without prejudice to the rights and contentions of the AICTE, we are inclined to grant interim relief directing the AICTE to permit the petitioners to grant admission to the undergraduate Engineering Courses in the petitioner No. 2 college for the academic year 2011-2012 as per the intake capacity which the petitioner No. 2 institute had in the year 2010-2011. For this purpose the AICTE shall include the name of petitioner No. 2 college in the list of approved institutions for the academic year 2011-2012.

However, the Court clarified that AICTE would not be precluded from taking appropriate action in accordance with law after following the principles of natural justice.

7. After the order of the Division Bench, a show cause notice was issued to the petitioners on 6 June, 2012 by the AICTE, for hearing before the Standing Complaint Committee on 8 June, 2012 at 10.00 a.m. The petitioners attended the hearing and after the filing of the petition, an order has been passed on 28 June, 2012 declining approval on the ground that the institution has been charge-sheeted by the CBI and, hence, the extension of approval for academic year 2012-13 cannot be granted under Clause 3.1(d) of Chapter-II of the Approval Process Handbook, 2012-13. The Approval Process Handbook for the academic year 2012-13 provides in Clause-3 of Chapter-II that institutions fulfilling the norms and standards would be entitled to allotment. However, Sub-clauses (d) and (e) of Clause-3.1 stipulate as follows:--

3.1 (d). Any Institution/Society/Trust/Section 25 company or a member belonging to these if charge-sheeted, shall not be considered for extension of approval unless they are acquitted;

3.1 (e). No increase shall be given to Institutions where a FIR/CBI/CVC/any other investigation agency/Anti Ragging/Punitive action initiated by AICTE for any violation in the norms and standards where enquiries are pending.

The submission of the petitioners is that the mere filing of a charge-sheet, cannot be a ground to disable an institute from obtaining approval, without any violation being established in a Court of competent jurisdiction. It has been submitted that otherwise, it would amount to pre-judging the guilt of an institution irrespective of its defence and without any finding being arrived at in the course of a criminal trial which is pending.

8. Prima facie, in our view at this stage, it appears that the approval for the previous academic year 2011-12 was sought to be withheld on the same ground, namely, that a charge-sheet had been filed by the CBI. That circumstance was

duly taken note of by the Division Bench of this Court while passing an interim order dated 11 July, 2011. The Division Bench took due note of the fact that the Regional Committee of AICTE, which had inspected the institution, had in its report dated 18 June, 2011 recommended the grant of approval of extension. The Division Bench also noted that the AICTE had withheld the extension of approval only on the ground of the filing of the charge-sheet without considering the position that even according to the allegations in the charge-sheet, the deficiency in the built-up area at the time of inspection, was only 6.5% as against a deficit of 10%, which could be condoned. Coupled with the circumstances which weighed with the Division Bench in passing the interim order dated 11 July, 2011, there is an additional circumstance to which the attention of the Court has been drawn in this proceeding. The AICTE in its Deficiency Report, which has been generated on 18 January, 2012, certified that there is no deficiency either in the faculty or in the facilities of the institute. The report contains a detailed elaboration of all the individual facilities including the class rooms, library and other amenities. The report would clearly indicate that no deficiency has been found and on that basis a recommendation, according to the petitioners, was submitted to the Regional Office for increase in the intake capacity. As regards the filing of a charge-sheet, we are of the view, prima facie, that the violations which are referred to in the charge-sheet, may independently form the basis of action which the AICTE may adopt at the departmental level. In other words, a violation may give rise to both, a criminal prosecution as well as the adoption of suitable steps by the AICTE under its enabling Regulations. In the present case, while the AICTE issued a notice to show cause to the petitioners, the ultimate order has been passed on 28 June, 2012 merely relying upon Clause 3.1 (d) namely that since a charge-sheet has been filed by the CBI, the extension of approval cannot be granted. There is no independent finding in the impugned order dated 28 June, 2012 to the effect that the petitioners were in fact found deficient or of having committed a breach of AICTE Regulations. As a matter of fact, prima facie, the report generated on 18 January 2012 would indicate that there are no deficiencies in staff or infrastructure. The attention of the Court was also drawn to the order of a Division Bench of this Court dated 19 April 2012 in *Sri. Balaji Society and others v. All India Council for Technical Education (AICTE) and others* in Writ Petition No. 1594 of 2012.

9. The petition has been listed for urgent orders before the Division Bench today in view of the fact that unless the AICTE communicates its approval of extension for academic year 2012-13 by 30 June 2012, it would not be possible for the institution either to admit fresh students or to continue with the admission of the existing batch of 1,900 students, who would have to take admission for the ensuing academic year.

10. In the circumstances and consistent with the order that has been passed by the Division Bench for academic year 2011-12, we direct AICTE to permit the petitioners to grant admission to the undergraduate engineering courses in the second petitioner for academic year 2012-13 in accordance with the same intake

capacity, which the institute had for academic year 2011-12. We clarify that at this stage, we have not issued any direction in regard to the enhancement of the intake capacity. The AICTE shall include the name of the second petitioner in the list of approved institutions for academic year 2012-13.

11. Learned counsel for the first respondent states that AICTE shall file its affidavit-in-reply on or before 13 July 2012 with an advance copy to the petitioners. The further hearing shall stand over to 17 July 2012. In addition to the directions issued hereinabove, there shall be an ad interim order in terms of prayer clause (h-1), as amended.

12. AICTE shall furnish an intimation of the aforesaid directions of this Court to the State Government to facilitate consequential compliance, forthwith. The petitioners would be at liberty to produce a copy of this order before the Competent Authority of the State Government in addition.

9. On the strength of the aforesaid submissions Sri. Pandey contends that the invoking of the aforesaid provisions is absolutely unjustified and is clearly intended to harass the petitioner mala fide.

10. Sri. Neeraj Tiwari on the other hand contends that he is handicapped on account of no communication from the respondent Council but the material as placed hereinabove empowers the Council to invoke the provisions in the circumstances that exist. He, therefore, contends that the petitioner institution can be non-suited keeping in view the provisions which have been brought on record.

11. Having considered the aforesaid sub-missions, this aspect as to the applicability of the provisions and further that the charge-sheeted person had already been removed on 29.4.2012 has been completely overlooked while passing the impugned order. Not only this even though the order of the Division Bench of the Bombay High Court is of interim nature, yet the same takes into consideration the various issues that were raised and prima facie in the absence of any deficiency for breach having been committed by the petitioner institution the reasoning given by the Bombay High Court would come to the aid of the petitioner. In the aforesaid circumstances the impugned order reflects non-application of mind to relevant issues and is, therefore, unsustainable. The writ petition is allowed. The order dated 11th September, 2012 is quashed. The All India Council for Technical Education shall pass an appropriate order within three weeks of the date of production of a certified copy of this order keeping in view the observations made hereinabove.