

(2009) 12 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22842 of 2009

St. Mary's College of Engineering and Technology

APPELLANT

Vs

All India Council for Technical Education and Others

RESPONDENT

Date of Decision : 31-12-2009

Acts Referred:

Citation : (2010) 2 ALD 469 : (2010) 3 ALT 298

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K.V.K. Rao, for the Appellant; K. Ramakanth Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner is a college of Engineering and Technology established in the year 2001 with the approval of All India Council for Technical Education (for short "the Council"), 1st respondent herein. The 1st respondent has created a facility of permitting 15% of supernumerary seats in each course of study in an Engineering College for the benefit of the students who are Foreign Nationals, persons of Indian origin and children of Indian workers in Gulf Countries (for short "the PIO quota"), subject to certain conditions. The 1st respondent evolved an independent procedure for this. 12 conditions are stipulated for this purpose. The petitioner submitted an application for availing this benefit. Approval was accorded by the 1st respondent to the petitioner for the academic year 2008-09 for four courses. However, since the approval came at a belated stage, it is stated that the petitioner was not able to avail the benefit thereof.

2. As required under the relevant provisions, the petitioner submitted an application on 29.12.2008 for extension of that benefit for the current academic year i.e., 2009-10. Correspondence ensued in this regard. As a matter of fact, the petitioner approached this Court by filing a writ petition complaining that no action has been taken thereon. Ultimately, the 1st respondent issued proceedings

dated 15.10.2009 refusing to accord approval by stating two reasons viz., that the built up area available per student does not accord with the stipulated norms and that the result in the final year of concerned course for the past two academic years is less than 75%. The petitioner challenges the said proceedings.

3. It is urged that the difference between the available space on the one hand and the prescribed one is very meager and that the percentage of pass of students for the past two academic years has no nexus with the approval prayed for by the petitioner. The In-charge Chairman and the Member Secretary of the 1st respondent are made as eo nomine parties to the writ petition and mala fides are alleged against them.

4. The 1st respondent filed a counter affidavit. The parameters for according permission for supernumerary seats under PIO quota are mentioned in detail. The allegation made by the petitioner be it as to the mala fides or compliance with the conditions are denied. Reference is also made to the correspondence that ensued between the petitioner and the 1st respondent.

5. Respondents 2 and 3 have entered appearance and submissions are made by their counsel extensively on their behalf, but no counter affidavit was filed.

6. The Secretary and Correspondent of the petitioner-institution appeared in person and made extensive arguments. He submits that the very fact that the approval was accorded to the petitioner during the past academic year discloses that it fulfilled the conditions and that the impugned proceedings are unsustainable in law or on facts. He further submits that he has exposed several mistakes that are taking place in the Council and as a vindictive measure, respondents 2 and 3 have denied approval to the petitioner by raising certain grounds. It is also pleaded that the conditions such as built up area per student is not immediately relevant for the purpose. He contends that the percentage of result in an institution depends upon several factors and stipulation of minimum 75% of results for the past two academic years not only causes hardship but is also irrelevant.

7. Sri K.Rama Kantha Reddy advanced arguments on behalf of all the respondents. He submits that the facility claimed by the petitioner is extraordinary one in nature and since high standards are required to be maintained for the students of such category, necessary stipulations are made. Learned Counsel submits that once the petitioner does not dispute that the deficiency pointed out in the impugned proceedings exist, the writ petition is without any merits. He also submits that respondents 2 and 3 were made parties by name with an oblique motive.

8. In addition to the intake that is permitted in each course in an institution, the Council provided for an additional intake to the extent of 15% in favour of the students of PIO category. As many as 12 conditions are stipulated for this purpose. It is only those institutions which fulfil these conditions that are entitled for the facility. The petitioner submitted application seeking the said facility for

four courses viz., (i) Computer Science & Engineering (ii) Electronics and Communication Engineering (iii) Electrical and Electronics Engineering; and (iv) Information Technology for the current academic year 2008-09. The application was processed and approval was accorded at a belated stage. It is stated that the petitioner could not avail the same.

9. As required under the relevant regulations, the petitioner submitted application for the current academic year. There was indeed some delay on the part of the 1st respondent in processing the application. However, the reasons therefore are not of immediate relevance. The application was ultimately rejected vide proceedings dated 15.10.2009 stating that there are two deficiencies viz.,

(i) build-up area available is 12.18 square meters per student as against the requirement of 12.5 square meters per student; and

(ii) the result of the last two years for the final year students is less than 75% calculated based on number of students who have appeared in the final examination.

The grounds of challenge to these proceedings have already been mentioned above.

10. The Council prescribed the procedure to be followed in the matter of extension of the facility of 15% supernumerary seats. Clause (7) thereof deals with the eligibility criteria. The two relevant clauses of the procedure read as under:

(i) The total built up area of the institution (excluding hostels and residential areas) should not be less than 12.5 sq. m. per student; and

(ii) The results of the last two years for final year students should not be less than 75%, calculated based on Number of students appeared in the final examination.

The petitioner does not dispute that the two conditions referred to above are not fulfilled. It must be noted that the supernumerary seats are created for the benefit of Foreign Nationals or persons of Indian origin and naturally they would tend to compare the facilities in the institutions in India with those available in the concerned Countries. Even otherwise, the Council is vested with the power to prescribe the norms for grant of approval. The very fact that the petitioner made an application for that facility discloses its willingness and readiness to abide by the conditions. Having submitted application under the prescribed procedure, the petitioner cannot turn round and brand the conditions either as irrelevant or unreasonable.

11. This Court cannot examine the relevance or otherwise of the conditions referred to above, particularly when the petitioner did not challenge them. The stipulation of a specified area per student cannot be said to be without nexus. The specialized agency like the Council has studied the entire issue and arrived

at the conclusion that per student, the built up area of 12.5 square meters must be made available. This includes the space for class room, the laboratories and other facilities. The objectivity with which the application was considered is evident from the fact that the built up area available with the petitioner is clearly mentioned.

12. So far as the results for the past two years in the final year of the concerned courses in the institution are concerned, it is certainly an important and relevant stipulation. If the performance in the regular courses is not encouraging or meritorious, a special facility intended for the benefit of Foreign Nationals cannot be extended. It is a matter of record that the percentage of pass in the petitioner-institution for the past two years in the said courses is 68%, far below the prescribed percentage. Neither the Council or for that matter, this Court is concerned with the reasons that contributed for relatively less percentage of results.

13. The petitioner made certain allegations against respondents 2 and 3. The occasion for this Court to examine the allegations of mala fides would arise only when the petitioner has fulfilled the relevant conditions and was entitled for approval, but the same was denied on account of the mala fide exercise of powers by respondents 2 and 3. In the facts of the present case, the grant of approval in favour of the petitioner, despite the existence of deficiency on important aspects, would have been the result of an illegal exercise of power and an instance of favoritism. Rejection of an application on the ground that the conditions are not fulfilled, cannot be branded as mala fide exercise. Viewed from any angle, this Court does not find any basis to interfere with the impugned order.

14. The writ petition is accordingly dismissed. There shall be no order as to costs.