

(1998) 04 MAD CK 0092
In the Madras High Court

Tagore Educational Trust

APPELLANT

Vs

All India Council for Technical Education

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Citation : (1998) 3 MLJ 263

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of certiorarified mandamus, calling for the records comprised in proceedings of the respondents dated 24.12.1997 in F.No. 730-52-202 (NDEG/ET/96) and quash the said proceedings and consequently direct the respondents to grant approval/permission under the AICTE Act, and the regulations framed thereunder for the Petitioner's Tagore Engineering College in respect of 6 approved Engineering courses with an annual intake of 360 students with effect from the academic year 1997-98 onwards.

2. An area of 19.64 acres of land situate in Chrompet, Pallavaram Municipality, which belonged to M/s. Chrome Leather Company Ltd., was taken on lease for a period of 99 years by the petitioner on 6.3.1997. A registered lease deed was executed by the owner in favour of the petitioner. As per the deed of declaration of Trust dated 134.1997, the petitioner with intent to benefit telugu speaking public and also for carrying on charitable activities for the protection of persons living in rural areas who are educationally, socially and economically backward, wanted to start an Engineering College on self-financing basis. It was with that idea, the lease deed was taken in favour of the petitioner.

3. For getting approval certain preliminary certificates will have to be obtained and certain conditions will have to be satisfied in terms of the regulations framed under All India Council for Technical Education Act (in short "AICTE ACT") It has to obtain a "no objection certificate from the State Government and also a letter of viability from the concerned University to which it is to be affiliated. The petitioner approached the University of Madras and as per communication dated

25.4.1997, the University informed the petitioner that they have no objection for the petitioner starting a self-financing Engineering College from the academic year 1997-98. A similar move was also made before the State Government which also gave its consent for "no objection certificate" for the said purpose. The viability certificate as well as the "no objection certificate" obtained from the University of Madras and State Government were communicated to the respondents. As per their letter dated 18.9.1997, a three member committee inspected the site, in which the proposed college is to be established. As per the above letter, the respondent intimated the petitioner that it must show its title to the land either the ownership document or the registered lease deed. When the members inspected the site, a copy of registered lease deed was shown to them. It is said that even as per the regulations of the AICTE, the land must be either owned by the Society or Trust and in nowhere it is stated that only in case the Society or Trust is having absolute ownership, sanction would be given.

4. After the inspection report was submitted the respondent sent a further communication and the only clarification they wanted was whether the land included within the Metropolitan area or within the village area. Necessary clarification was also submitted within a few days thereafter. Even after all the clarifications were submitted, no orders are passed, and therefore, the petitioner moved this Court in W.P.No. 17652 of 1997 and this Court directed that final orders will have to be passed within a time stipulated therein. After the direction of this Court, the impugned order has been passed, rejecting the petitioner's request for starting an Engineering College. The only reason stated in the impugned order dated 24.12.1997 is that the petitioner (has failed to prove its ownership of the land, and it is further stated that as per the regulations of the AICTE, without proving the ownership, it cannot recommend or permit the petitioner to start the college, It is the said order that is challenged in this writ petition.

5. A detailed counter-affidavit has been filed by the respondents, wherein it is reiterated that as per the new amended regulations of 1997, the petitioner has to satisfy the ownership over the land. It is further stated in the counter that the petitioner has undertaken to produce the document of ownership and having failed to produce the same, the respondents are justified in rejecting the application.

6. I heard the learned Counsel on both sides.

7. The only question that requires consideration is whether the impugned order dated 24.12.1997 rejecting the application of the petitioner is justified i.e., whether the respondents are justified in insisting that it will consider the request of the petitioner only on proof of the ownership of land, in view of the amended regulations.

8. Before going into the legal question, let us see the last portion of the impugned order, which reads thus:

Since you have failed to furnish registered ownership of the land in the name of the Trust as per the requirements of AICTE Regulations, the Council regrets to inform you that your proposal has not been recommended for the academic session 1997-98.

Counsel brought to my notice both the old Regulation and the new Regulation. The earlier Regulation is published in the Government of India Gazette dated 23.11.1994. As per old Regulation 5(2)(a), "every applicant has to file an application for starting technical institution in Form No. I. A pro-forma No. I is also appended. It is stated that along with the application, the applicant has also to file certain documents. It is stated thus:

Applicants should ensure to attach the following documents:

- (a) A copy of registration document of the Society/Trust, etc., along with the composition of Society/Trust etc. (only for private Societies/ Trusts).
- (b) Copies of the curriculum and syllabus of the proposed course(s) along with the teaching and examination schemes.
- (c) The undertaking on non-judicial stamp paper as per form enclosed (only for private Societies/Trusts). .
- (d) A copy of the land registration papers/registered lease deed.

Clause (8) deals with land, which reads thus:

8.1. State the land area (in hectares) in possession for establishing the Institute (Please consult the relevant AICTE norms and standards to assess the desired land area requirement). Please attach a copy of the registration documents.

Also indicate if the land area is in one plot or more. If more than one please give a sketch showing area of each plot and centre to centre distanced between the plot.

For valid form of ownership, please see instructions.

8.2. Please attach a road map of the District showing location of the proposed site of the institution.

9. Learned counsel for the petitioner submitted that the 1994 Regulation has been amended as per the AICTE Notification dated 11.4.1997, and the same has been published in the Government of India Gazette, dated 12.5.1997. The argument of learned Counsel for the petitioner is that the submission of documents by the petitioner itself is sufficient to give a consent for starting a college, in view of the amended regulations. It is submitted by the counsel for the respondents, that the lease right is a matter which could be terminated at any point of time, and. if the permission is granted on the basis of a lease arrangement, and if ultimately the lease is terminated, it is the students who are likely to be affected, and therefore, it cannot recognise it. How far the said argument is justifiable or could be accepted by court can only be considered, on

the basis of the amended regulations of the AICTE.

10. I do not find any amendment to Regulation 5, in regard to the right which the applicant owns over the property. In so far as Clauses 8 and 9 of the 1994 Regulations are concerned, they are substituted by new Regulations. Regulation 8(4)(a) of the new Regulations deals with "Requirement of land". After describing the location, a note is appended, which reads thus:

Note: It shall not be necessary for the applicant to have ownership or title of the land proposed to be utilised for starting the new technical institution at the stage of making the application in Form VI. The ownership title shall be required only after issuance of the letter of viability.

(b) Funds

(i) The minimum requirement of funds for starting of new technical institution by a registered society/trust shall be as detailed in Table II below:

New Regulation 8(8) reads thus:

"While issuing a letter of viability under Sub-regulation (7), the Council shall ask the applicant to submit by May 15 the following documents, along with the applications in Form I, namely:

(i) (a) Deed of registration of land relating to ownership/title of the applicant society/trust of the land earmarked for setting up of the new institution;

(b) A land use certificate from the authority concerned; and

(iv) In case the applicant society/trust does not hold ownership right over the land, a Lease Agreement duly registered in its name, for temporary accommodation for a minimum period of two years along with lay out plan and photographs of the premises."

FORM VI is the Application for issue of letter of viability for starting new Technical institution at degree/diploma level. Column (9) of the said Form reads thus:

"9. Land Area: (a) Whether owned by the applicant Trust Society/Institute or on lease basis Owned - hectares

Lease - hectares

(b) Land area proposed to be purchased by the Trust/Society/Institution - hectares "

Finally there is a declaration in the new Regulation, which reads thus:

"(1) Document showing ownership of land as per norms laid down by the Council, in the name of the Society/trust/Applicant.

(2) Fixed deposit receipts in joint name of Applicant and concerned Regional Officer, as per the norms laid down by the Council.

11. On going by the amended Regulations, I do not think that the argument of the learned Counsel for the respondents could be accepted. It is clear from the various regulations that the All India Council of Technical Education makes a difference between the ownership and the title to the land. Wherever it is read, it only shows that the applicant has to show either ownership or the title to the land, if it is not the case of ownership and from Regulation 8(iv), it is further clear that the leased arrangement is also one recognised by the respondents as one of the title which entitles the applicant to get a consent. Merely because, he is not owning a land that cannot be treated as a disqualification. Even from the proforma, the intention is clear that the applicant can either be an owner or a lessee.

12. Learned counsel for the respondents submitted that in the declaration the applicant has to declare that he is the owner as per the norms laid down by the Council. According to me, the counsel has not understood the scope of that declaration. The ownership that is referred to in the declaration is the ownership regarding the lease and not the absolute title. If the applicant is the owner of the leasehold right, that will, satisfy the requirements of the AICTE. The respondents has no case that the applicant is not the owner of the lease hold right.

13. According to me, the present order is only an after-thought. It was after the new regulations came into force, the respondent communicated the letter dated 6.8.1997 to the petitioner that documents are necessary for perusal about the viability of starting Engineering College. Clause (1) of that letter required the applicant to produce the deed of registration relating to ownership/title of the applicant society. The Southern Regional Office of the Respondent, as per letter dated 18.9.1997, informed the petitioner that the following documents must be kept ready at the time of inspection:

(a) Original documents relating to purchase of land for the institution/registered lease deed;

...

It was thereafter the petitioner placed the copy of registered lease deed before the respondents. There was no objection at that time. On 17.10.1997, the respondent wrote to the petitioner seeking clarification about the location of the property. This was after the receipt of the copy of lease deed. The only doubt they had was whether the property is situated within the Metropolitan area or outside the Metropolitan area. The matter was clarified by the petitioner by the letter dated 23.10.1997.

14. When all the clarifications were given and when no orders were passed, the petitioner came to this Court in W.P.No. 17652 of 1997 to compel the respondents to pass, final orders on their application. After hearing both the counsel, an order was passed on 4.12.1997, which reads thus:

It is now submitted by both sides that the clarifications sought for has been

submitted to the respondents and it also submitted by counsel for the petitioner that the property is within the city of Madras and necessary details have also been submitted to second respondent. As it stands, no further action is to be taken by the petitioner for getting the permission. I only direct the respondents to pass final orders in the applicant of the petitioner, with notice to the petitioner if any further clarification is required, within a period of three weeks from the date of production of a copy of this order.

When I have said that no action is to be taken by the petitioner, it follows that the petitioner cannot be called for to produce any other document. To insist that the petitioner has failed to produce the documents showing its absolute title over the land is a matter which is most irrelevant to be taken into consideration by the respondents.

15. It is true that the respondent wrote a letter on 12.12.1997, asking the petitioner to produce a sale deed in favour of the Trust. According to me, such a requirement is not contemplated either in the Regulation or in other instructions. If the petitioner is having absolute control over the land and can be in possession for 99 years as a lessee, that will satisfy the regulations and the respondents cannot insist that it will not consider the application without the sale deed.

16. Learned counsel for the petitioner relied on the decision reported in M.P. Oil Extraction and Another Vs. State of M.P. and Others, to contend that the principle of legitimate expectation also could be applied to the facts of the case and in appropriate cases, the same could be treated as an enforceable right. Learned counsel submitted that relying on the regulations and the letters issued by the respondents, the petitioner has taken the lease deed for 99 years and invested huge amounts for starting an Engineering College. When all the requirements are satisfied, denying permission on the ground that it has not taken a sale deed cannot be heard of from the respondents. I feel that the said argument of the learned Counsel for the petitioner is also only to be accepted.

17. In view of the apprehension of the respondents that the lease hold right will be liable to be terminated at any point of time, which will affect the institution and the students, I feel that sufficient safeguard also could be had regarding the same. The petitioner is directed to get a "no objection certificate" from the lessor stating that he has no objection in starting the self-financing Engineering College by the petitioner in the subject land, and he will not seek to recover the land or to terminate the leasehold right before the expiry of the term viz., Before 99 years from the date of lease. On production of the said letter, final orders will be passed by the respondents.

18. In the result, the impugned order is quashed and the respondents are directed to pass final orders on the applicant of the petitioner within a period of two weeks from today. While passing orders, the respondents are directed not to rackup fresh deficiencies or delay the matter or refuse to pass order. The respondents shall take into consideration that the leasehold right owned by the

petitioner itself is sufficient to start the Engineering College as per the new Regulations of AICTE, and they should not insist on absolute title nor it should insist a sale deed in favour of the petitioner.

19. The writ petition is allowed as indicated above. Consequently, the connected W.M.Ps., are closed.