

(2002) 04 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 9707 of 2002 and W.P.M.P. No. 3998 of 2002

V.S.B. Educational Trust

APPELLANT

Vs

The All India Council for Technical Education, The State of
Tamil Nadu and The Anna University

RESPONDENT

Date of Decision : 26-04-2002

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 3

Citation : (2002) 2 MLJ 642

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Doraisamy for Muthumani Doraisamy, for the Appellant; R. Santhanam, Addl. Central Govt., Standing Counsel and P.S. Jayakumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—V.S.B. Educational Trust through its Chairman has approached this Court to issue a writ of mandamus directing the first

respondent to process their application dated 07.08.2000, for grant of approval to establish V.S.B. Engineering College without insisting upon

production of "No objection Certificate" by the State Government during the academic year 2002-2003.

2. The case of the petitioner is briefly stated hereunder:

V.S.B. Educational Trust - the petitioner herein is a Trust registered under the Trust Act. The Trust was formed for serving the educational need by

establishing a self financing Engineering College. They submitted an application to the first respondent on 07.08.2000, seeking permission to

establish a self financing Engineering College for the academic year 2002-2003 and simultaneously, the petitioner submitted a copy of the

application to the State Government as well as to the concerned University. Pursuant to the said application, the Director of Technical Education, Chennai in his letter dated 28.02.2001, informed the petitioner that an Expert Committee would visit the Institution in connection with the No Objection Certificate by the State Government. The Expert Committee visited the Institution and expressed its full satisfaction about the viability of the proposal. The Director of Technical Education in his letter dated 06.02.2002, informed the petitioner that another Expert Committee would visit the Institution in connection with the issue of No Objection Certificate. Again, the Expert Committee visited the Institution. Thereafter, the petitioner did not hear anything from the State Government or from the Director of Technical Education. The first respondent after scrutinising the application of the petitioner, called upon them to appear and present details of the proposals supported by documentary evidence. After thorough scrutiny and satisfied with the proposal of the petitioner to establish a self financing Engineering College, the first respondent issued a letter of viability dated 13.04.2001. The petitioner submitted the original documents and was called upon to deposit inspection fees of Rs.50,000.00. The petitioner complied with all the requirements. They also made a deposit in a cumulative fixed deposit in Nationalised Bank for Rs.50 lakhs. To comply with the requirements of the first respondent, so far the petitioner has spent about Rs.2.5 crores. As per the Regulation of the first respondent, there is no requirement that No Objection Certificate would be obtained as a condition precedent to establish a self financing Engineering College. In such a circumstance, having no other effective remedy, filed the above writ petition.

3. The first respondent filed a counter affidavit disputing various averments made by the petitioner. It is stated that Section 3 of the All India Council for Technical Education Act, 1987 (hereinafter called as ""the Act"") provides for the establishment of Council while section 10 specifies the functions of the Council. Apart from directing generally that the Council must take all steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards, the Act specifically empowers the Council inter alia to fix norms and guidelines for charging tuition and other fees for grant of approval for starting new technical institution and for introduction of new courses or

programmes in consultation with the agencies concerned and take all necessary steps to prevent commercialisation of technical education. The

application of the petitioner was duly considered by the third respondent Council and by letter dated 13.04.2001, the first respondent Council

issued a letter of viability to the petitioner. However, the petitioner Trust had not obtained No Objection Certificate from the State Government.

Since the State Government which is well conversant with the ground realities prevailing in the State of Tamilnadu, has not given No Objection

Certificate, the grievance of the petitioner could not be processed. The first respondent has not passed any final order on the application of the

petitioner. Without waiting for the same, the petitioner has approached this Court. Accordingly, the relief sought for in the writ petition is not

maintainable.

4. In the light of the above pleadings, I have heard the learned senior counsel for the petitioner as well as learned Additional Central Government

Standing Counsel for first respondent.

5. Mr. K. Doraisamy, learned senior counsel for the petitioner after drawing my attention to the relevant provisions of the Act for establishment of

an Engineering College, the report of the Expert Committee sent by the third respondent and the letter of viability of the first respondent dated

13.04.2001, contended that it is incumbent on the part of the first respondent to process the application of the petitioner dated 07.08.2000, for

grant of approval to establish V.S.B. Engineering College without insisting upon production of No Objection Certificate by the State Government.

6. On the other hand, Mr. R. Santhanam, learned Additional Central Government Standing Counsel would contend that in the light of number of

existing institutions, seats which were vacant during the past academic years, instead of obtaining No Objection Certificate from the State

Government, which is a mandatory requirement to process the application for approval has approached this court, hence prayed for dismissal of

the same.

7. I have carefully considered the rival submissions.

8. It is clear from the particulars furnished that the petitioner Trust has made an application to the first respondent as early as on 07.08.2000,

seeking permission to establish a self financing Engineering College for the

academic year 2002-2003. It is also seen that pursuant to the said application, on the basis of the direction of the third respondent, Expert Committee visited the Institution and verified the existence of infrastructure facilities. It is the case of the petitioner that the Committee after inspection and after satisfaction about the viability of the proposal, promised the petitioner that it would sent a favourable report recommending for the grant of No Objection Certificate by the State Government. It is also seen that based on the application of the petitioner, the first respondent scrutinised the same and called upon the petitioner to appear in person for production of certain documentary evidence. It is also the case of the petitioner that after thorough scrutiny and satisfying itself that the proposal of the petitioner to establish a self financing Engineering College is viable, issued a letter of viability in F.No.732-52-011 (NDEG/ET/2001) dated 13.04.2001. By drawing my attention to the letter of viability dated 13.04.2001, issued by the first respondent, learned senior counsel for the petitioner contended that, No Objection Certificate from the State Government is no longer required under law and only on abundant caution, the petitioner has made a representation to the State Government for the same.

9. Now, I shall consider the relevant provisions relating to approval by the first respondent. There is no dispute that after the commencement of All

India Council for Technical Education Regulations, 1994 (in short "the Regulation"), without the approval of the Council, no Technical Institution or

College admit students for Degree or Diploma courses or Programmes. Regulation 4 refers Requirement of Grant of Approval. Regulation 6

prescribes Conditions for Grant of Approval. Regulation 7 refers about Submission of applications and Regulation 8 speaks about Scrutiny of

applications. Among the various Sub Regulations in Regulation 8, learned senior counsel for the petitioner very much relied on Sub-Regulation 7,

which read as under.

8. Scrutiny of Applications.-

(1) to (6)

(7) After considering the recommendations of the agencies concerned and after making such further enquiry as it may deem necessary, the Council

may, by 15th April,-

(i) Issue a letter of viability on the proposal to the applicant stating therein that the proposal is viable and that the applicant may proceed to take

further action for getting final approval of the Council under these regulations; or

(ii) Issue a letter of regret to the applicant stating therein the specific ground or grounds on which the application has been rejected;

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of being heard in the matter.

10. While issuing a letter of viability under Sub-Regulation 7, Council is empowered to ask the applicant to submit by May, 15 certain documents

provided therein along with the application in Form No.1. Clauses (i) to (vi) of Sub Regulation 8 of Regulation 8 prescribe details of document and

other relevant particulars. In our case, I have already referred to the fact that, after considering the application of the petitioner to establish a self

financing Engineering College for the academic year 2002-2003, the first respondent AICTE, which is the competent authority, issued a letter of

viability dated 13.04.2001, well before the cut off date. By drawing my attention to Sub-Regulation 7 of Regulation 8, learned Senior counsel for

the petitioner contended that, inasmuch as the Council of the first respondent consists of representatives of various Bodies, including the State

Government and after deliberation and satisfaction, issued a letter of viability before the cut off date, they are not justified in asking No Objection

Certificate from the State Government. After going through the various Regulations, requirement of grant of approval, forms for applications,

submission of applications, scrutiny and other details, and the ultimate decision by the respondent granting letter of viability, I am of the view that it

is presumed that the first respondent authority has considered all the matters including the views of the State Government, hence they are not

justified in either waiting or asking the petitioner to secure No Objection Certificate from the State Government.

11. In this regard, it is relevant to refer the decision of the Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational

and Research Institute and Others, In that decision, while considering the very same provisions of the Regulation, in para 40 their Lordships have

held that,

40. under the Central Act, the State Governments have a representation on

the Council and have a say in laying down the standards and requirements for starting and running technical institutions. Even otherwise, it is always open to the State Government to bring to the notice of the Council the inadequacies of the requirement laid down by it.....

12. It is also brought to my notice order passed by S.S. Subramni, J., in W.P.No.18569 of 1998 dated 8.12.1998. In similar circumstance, the learned Judge has observed,

3. On going by the Statute and Regulations, the applicant will have to simultaneously make an application to the State Government as well as to the University for getting Essentiality Certificate and also for consent for affiliation. Nowhere the Statute or Regulation says that only if the State Government or the University expresses no objection, the first respondent can issue letter of viability. The Regulations are being misinterpreted by respondents.

4. It is true that simultaneously with the application to the first respondent, petitioner has also submitted applications to the State Government and also the University, Regulation No.8 provides the procedure as to what is to be done after receipt of the application submitted to the Council. As per the said Regulations, on receipt of a copy of the application submitted to the Council for obtaining a letter of viability, the concerned University or the Directorate of Technical Education, having jurisdiction in the area in which the new technical institution is to be started, shall make arrangements for scrutiny, and verification of the information contained therein. It also enables the University or the Directorate of Technical Education to have a local inspection of the site, if so desired, for which purpose, it may constitute its Local Inspection Committee (LIC). The Inspection will be made under intimation to the applicant. On receipt of report of the Local Inspection Committee, or after verification of the particulars contained in the application to the satisfaction of the University or the Directorate of Technical Education, as the case may be, or by such other means as it may deem proper, it shall give its recommendations to the respective State Government or the University Grants Commission with a copy to the Council. Thereafter, Order is passed by the first respondent on the request for issuance of letter of viability. On going by Regulation 8, which alone governs the case, I do not think that there is

any question of getting No Objection Certificate from either the University or from the State Government as is being insisted upon by the first respondent.

The learned Judge once again reiterated the same view while dismissing the Review Application No.2 of 1999 dated 27.01.1999.

13. In the light of what is stated above and in view of the fact that the petitioner made an application within the prescribed time, the Expert

Committee of the second respondent visited the Institution on two occasions, and of the fact that the letter of viability has been issued before the

cut off date in terms of Sub-Regulation 7 of Regulation 8 and also of the fact that pursuant to the direction, the petitioner has complied with the

required conditions, I hold that the petitioner is entitled a direction from this Court. Accordingly, direction is issued to the first respondent - AICTE

for processing their application dated 07.08.2000, for grant of approval of establishing V.S.B. Engineering College without insisting upon the

production of No Objection Certificate by the State Government during the academic year 2002-2003, subject to satisfying other conditions if any

and pass necessary orders within a period of four weeks from the date of receipt of a copy of this order. The writ petition is allowed to this extent.

No costs. Consequently, connected WPMP, is closed.