

MANU/MH/1002/2014

Equivalent Citation: 2014(5)ABR310, 2014(6)ALLMR341, 2015(3)BomCR63

IN THE HIGH COURT OF BOMBAY

Writ Petition Nos. 6021, 6235, 6247, 6252, 6293, 6356, 6362, 6365, 6366, 6468, 6469, 6513 of 2014, CAW/1684 of 2014 in WP/4500/2013 and Writ Petition (Stamp) No. 17839 of 2014

Decided On: 14.07.2014

Appellants: **Mahatma Education Society's Pillai's Institute of Information Technology**

Vs.

Respondent: **All India Council for Technical Education (AICTE)**

Hon'ble Judges/Coram:

Anoop V. Mohta and A.A. Sayed, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Rafiq Dada, Senior Counsel, C.K. Thomas i/by C.K. Thomas & Associates, A.Y. Sakhare, Senior Advocate, Mahadeo A. Choudhari, Sugandh B. Deshmukh, Joel John Carlos, Shrinivas S. Patwardhan, Raturaj Pawar, S.C. Naidu, Y.C. Naidu, Rahul Tanwani i/by Pramod Kalwar, i/by C.R. Naidu and Company, Nikhil Mehta i/by KMC Legal Venture, Sudhir S. Hardikar, Nandini Govind Menon and S.S. Bhende, AGP

For Respondents/Defendant: Pranali Dixit i/by R.A. Rodrigues

JUDGMENT

1. Rule, returnable on 25.08.2014. Hearing expedited. Learned Counsel appearing for the respective Respondents waive service.

2. We have heard the learned Counsel appearing for the parties. In view of urgency so expressed, we are inclined to pass this common interim order as the challenge in all these Petitions is essentially to the decision of AICTE denying 'Extension of Approval' to the existing institutions of the Petitioners and placing the institutions in 'no admission' category. In Writ Petition No. 6468 of 2014, AICTE has reduced the intake capacity of three Undergraduate Degree Courses and two Post-graduate Degree Courses.

3. "Technical education" and related aspects are controlled and governed by the All India Council for Technical Education Act, 1987 (For short, "AICTE Act"). The aim and object by the AICTE Act is to co-ordinate and integrate the development of technical education system at all levels throughout the country to provide and promote qualitative technical education in planned manner. The AICTE is required to regulate and ensure proper maintenance of norms and standards in technical education system. It also involves regular performance appraisal for technical institutions and Universities. The AICTE, therefore, is under obligation to control the norms and standards for common development of such education in the country.

4. The Act itself provides for grant of extension of approval to existing institutions, for starting new technical institutions, for adding of new courses in existing

institutions and variation in intake capacity in consultation with the other Respondents/Authorities. On the basis of this Act, therefore, various authorities, Board, Council have been created to control and supervise technical education and all its related aspects. This itself means, AICTE is having various functions and powers and being a specialized body is empowered to ensure that all the institutions recognized by the AICTE are possessed of complete infrastructure/staff and other facilities and have capacity of maintaining quality education standards for imparting technical education.

5. The Petitioners respective Society/Trust, running long institutions, are imparting technical education in the area after getting due and necessary approval/permission from the respective authorities. The Petitioners' institutions are affiliated to the respective Universities/Board since long. The institutions are running degree/diploma colleges for technical education like Engineering, Technology, Management etc. for more than 10 to 25 years. AICTE has been granting them approval/sanction as prayed from time to time continuously based upon the existing infrastructure and facilities.

6. In view of judgment in Association of Management of Private Colleges Vs. All India Council for Technical Education & Ors. MANU/SC/0436/2013 : (2013) 8 SCC 271 dated 25 April 2013, the role of AICTE was curtailed. The Supreme Court has held that no such approval of AICTE is necessary, once the University has given its affiliation to start such technical course. However, by order dated 9 May 2014, the Supreme Court directed that for the present academic year 2014-2015, AICTE would be the approval granting authority. We are informed that the issues in Association of Management of Private Colleges (supra) are referred to a Larger Bench and the same is pending in the Supreme Court. It is clear that for the academic year 2014-2015, the AICTE, in view of the provisions of law and the judgments is the supreme authority to grant approvals.

7. The Supreme Court by order dated 9 May 2014 referred to above, in Petition for Special Leave to Appeal (Civil) No. 7277 of 2014, (Orissa Technical Colleges Association Vs. AICTE & Anr.), extended the date for AICTE to grant approval/sanction to 10 June 2014 by referring to earlier order dated 17 April 2014, whereby the Supreme Court has directed the AICTE to proceed in accordance with the approval process for the academic year 2014-2015. This itself means the time table/schedule so fixed in the case of Parshvanath Charitable Trust vs. All India Council for Tech. Edu. MANU/SC/1100/2012 : (2013) 3 SCC 385 was re-scheduled. April 30 of the respective year was the date fixed by the Supreme Court to complete all formalities and to grant approval by the AICTE and/or its Appellate Authority.

8. AICTE having advertised on 9/10 May 2014 inviting fresh applications from all concerned, including the Petitioners means that the time fixed by the Supreme Court in the case of Parshvanath (supra) was re-scheduled. AICTE was under an obligation to complete the formality in time for granting/rejecting approvals on the dates so announced.

9. Lastly, by order dated 26 June 2014 in Jayamatha Engineering College Vs. Union of India & Ors. (Writ Petition (Civil) No. 538 of 2014) the dates have been further extended by the Supreme Court by passing the following order:-

The AICTE is granted seven days within which to take a decision on all the applications pending before it. It shall first take up the applications in which it has already expressed willingness to grant approvals, but have not done so

in deference of the Orders of this Court. Thereafter, the concerned Universities/State Authorities/Bodies which have the powers of granting affiliation shall take a decision on that subject within one week. It is for these reasons that the first round of counselling/admission for allotment of seats which was to be completed by 30th June, 2014 will now be completed by 15th July, 2014. The second round of counselling shall be completed by 22nd July, 2014 and the last round by 29th July, 2014. In this manner, the date of commencement of the Academic Session, as laid down by this Court above, shall not be disturbed.

It is made clear that all the Colleges who have been cleared for intake of students for the Academic Year 2014-2015, as envisaged in the process above, shall be cleared and considered for admitting students for the current Academic Year. Learned Senior Counsel appearing for the petitioners in some of the Writ Petitions apprehends that the respondents may adhere to Annexure P-7. We think that that would not be appropriate in view of the orders contained herein.

Thus, the time for granting approvals by AICTE stood extended to 3 July 2014.

10. Admittedly, the AICTE was not in a position to follow the earlier scheduled dates so fixed by the Supreme Court in Parshvanath (supra) in view of the judgment in the case of Association of Management of Private Colleges (supra). As per those dates, by 30 April 2014 AICTE ought to have completed the process of granting or denying the approvals including extension of approvals. Admittedly, till 9 May, 2014, the role of AICTE itself was quite restricted and limited. On the contrary, the UGC role was recognized for such courses. The AICTE role therefore, was only to give feedback to the UGC until 9 May 2014.

11. There are about 1800 private/aided and non-aided institutions in Maharashtra imparting technical education. There are about 11,000 institutions throughout the country. Admittedly, since 2009 the institutions in Maharashtra and particularly the present institutions have not been inspected by AICTE within the time frame prescribed. The respective institutions, as per the procedure, submitted and provided the details to AICTE for extension of approval for the academic year 2014-2015. For the earlier years, as per the procedure, on making the on-line Application, AICTE used to grant them approval from time to time. Further, in the year 2014-2015, as recorded above, at the fag-end i.e. on 9 May 2014 they invited applications. Therefore, they themselves were not in position to comply with their own rules and adhere to the cut-off dates. AICTE has not inspected the institutions since 2009. It has not given opportunity to defaulting institutions, to remove deficiencies, if any, or put on record their justification in time before taking action to withhold the extension of approval. The situation appeared to be beyond the control of AICTE to manage and to take inspection and/or pass adverse orders after giving show cause notice and hearing the parties concerned for the present academic year 2014-15.

12. It appears that on the basis of Complaints filed by some organizations and/or individuals, AICTE constituted a High Power "Fact Finding Committee" (for short, the Committee) to examine the complaints and to make its recommendation. The Committee after holding their respective meetings initially heard only one complainant viz. Citizens Forum for Sanctity in Educational System and not the representative of the Petitioners. Admittedly, though their Complaint was against 32 institutions, the Complainant for undisclosed reasons, restricted their Complaint to 13

institutions only. Most of them are the Petitioners in this group of Writ Petitions. It is contended that no show cause notice and/or hearing was given to the Petitioners before taking action of withholding extension of approval. The Committee submitted its report dated 10/01/2014 to the AICTE, though at that time in view of judgment in Association of Management of Private Colleges (supra), the role of AICTE was restricted to give feedback to the UGC. The UGC as per the aforesaid judgment was supreme Authority to deal with such situation. The AICTE, however, based upon the recommendations of the High Power Committee appointed EVCs (Expert Visiting Committees) for inspection of the Petitioners' institutions. The High Power Committee also directed to take suggestive steps and insisted upon for strict adherence to the conditions of approvals, in the public interest. The suggestion is also made to have a proper mechanism to monitor the cases in Courts.

13. The respective inspections of the Petitioners' Institutions have been taken by the EVC. AICTE based upon the report of EVC without giving proper opportunity of hearing, communicated the impugned adverse orders to the respective Petitioners on the dates which are ranging from 10 June 2014, 23 June 2014, 26 June 2014 and 2/3 July 2014. The information collected at the fag-end of the academic year 2014-2015 without earlier inspections of any kind for more than 5 years and without giving opportunity to remove the deficiencies or permitting them to justify their respective contentions, AICTE issued the respective impugned orders.

14. Therefore, at this stage we are definitely concerned with the way and manner by which AICTE has taken the decisions. AICTE after collecting information did not grant reasonable time and opportunity to the Petitioners' institutions and passed the impugned orders. From the record, it is apparent that the Petitioners were heard by the Standing Complaints Committee and the impugned orders were passed by another Authority viz. Competent Authority (i.e. Chairman of AICTE). Normally, the authority who hears the parties must pass orders. (See Rasid Javed & Ors. Vs. State of Uttar Pradesh & Anr. MANU/SC/0423/2010 : 2010(7) SCC 781 and Gullapalli Nageswara Rao Vs. A.P. SRTC MANU/SC/0017/1958 : AIR 1959 SC 308) In the present cases, prima-facie, it appears that authorities/bodies, invoked their respective powers at different stages and ultimately the impugned orders were passed against the Petitioners without giving proper and reasonable opportunity, in breach of the principles of natural justice as well as the respective provisions/procedures declared by AICTE. These orders will cause great injustice and hardship to the institutions, staff and the students. The investments so made by the Petitioners also just cannot be overlooked.

15. There is no material that, out of 1800 such institutions in Maharashtra, only these are the defaulting institutions. The complainant also unable to justify their restrictions and insistence to proceed only against these institutions. There is also nothing on record to show that all other 1800 institutions are without deficiencies.

16. We are not suggesting that institutions should not remove the deficiencies. But, this is not the way to deal with such institutions on the basis of private complaint by giving unilateral hearing to them thereby adopting a pick and choose policy. It is an admitted position that for the academic year 2014-15 because of the time constraints, AICTE has not made site visits in case of other institutions seeking extension of approvals or for that matter additional courses/increase in intake capacity. Timely and proper opportunity should have been given before passing such orders and paucity of time can be no reason for not following due procedure of law. Timely action should have been taken. The impugned orders are in breach of natural justice,

fair-play and equity and therefore, required to be tested also on the anvil of Article 14 of the Constitution of India. The Respondents discriminatingly selected the Petitioners' old established institutions some of which are of high repute and passed the impugned orders. We have also noted that the High Power Committee never recommended and/or directed to take such drastic action at this stage of academic year 2014-2015.

17. We have gone through the deficiencies so alleged and referred to by the Counsel appearing for the respective Petitioners. We find that some of the deficiencies are curable. Other deficiencies relate to land, play-ground, occupation certificate, nature of occupancy with permission and/or without permission, common playground, sharing of premises, less area, running by the institutions from campus, less land/insufficient land or built-up area, class rooms or laboratories, the multiple use of same premises and requisite staff/faculty/less staff are required to be dealt with as per the norms prescribed in AICTE handbook. We have gone even through those basic norms para 9.1.5 about land area requirements, para 9.1.6 classification of building areas norms para 12.2 and para 10 which deal with the multi use of facilities shows that the interpretation and submissions of Petitioners if accepted, there will be no deficiencies. The authorities before passing order based upon their understanding of those norms, though permitted the Petitioners to run the institutions/colleges/courses for so many years suddenly took U-turn and discarded the submission/explanation so given by the respective Petitioners without giving reasons on those issues. Those norms and standards including regulations of grant of approval for technical education itself provide for relaxation/exemptions. We fail to understand that if there were indeed some area/land deficiencies, how the letters of approval were issued to the Petitioners at the threshold. We are not here to give decisions on the respective deficiencies at this stage, but as submitted by the learned counsel appearing for the Petitioners that those norms and standards and regulations/rules unless interpreted and/or considered by this Court and/or even by the supreme authority under AICTE Act and/or other Act, such drastic action would definitely cause injustice and hardship to all the concerned. There is nothing on record to show that any findings and/or reasons have been given by the Council, while interpreting these regulations. It is relevant to note that there is power to relax, whereby the Council may in exceptional cases for removal of any hardship and/or other reasons to be recorded in writing, relax any of the deficiencies of this kind of any classes or categories of institutions. No proper opportunity was given to the Petitioners to put up their case before taking such drastic action. The decision, therefore, so taken is arbitrary and not in consonance with the various norms and regulations of AICTE. Due to time constraints, as the impugned orders are passed at the eleventh hour just before the admission process was to begin, the Petitioners have had no opportunity to remove the deficiencies and/or file Appeals before the Appellate Authority.

18. It is relevant to note that in some of the cases, though there is no major deficiencies/zero deficiencies as recorded and as there were minor deficiencies or removable deficiencies but for want of time, they have not passed favourable order. We see no reason to accept the drastic action so taken by the AICTE of bringing such institutions in "no admission" category, at least, for the current year 2014-2015. It appears that AICTE has, based upon the alleged complaint, inquiry and investigation, selected these institutions and passed the orders without giving any explanation for their inaction and not taking inspection at appropriate stages.

19. It is relevant to note that there is challenge also made to the procedure and

norms so declared by AICTE whereby, the institutions/Applicants are permitted to file their Applications on-line for approval/extension of approval for courses and/or variation in intakes. These rules are in existence for so many years. The Petitioners and/or such other institutions are accordingly submitting their on-line Applications for extension of approvals from time to time. The workable procedure is adopted as there are more than 11000 institutions which are imparting technical education in India. At this stage, it is not possible to consider and accept the challenge to these rules. We have to hear those matters finally, including the role of complainants in such matters and power and authority to take such drastic action by the supreme authority itself like AICTE in the manner it has done. The submission on behalf of AICTE, therefore, not to grant any ad-interim or interim relief in view of above is also unacceptable.

20. After hearing both the parties on the last date, we have already granted ad-interim relief in the respective matters based upon the documents and material placed on record. Though separate orders and the reasons so given, in view of above discussion, need to continue till the final decision of the present Writ Petitions. We have already stayed the impugned order of AICTE in the respective matters and directed the Respondents-DTE to upload the Petitioners Institutions' names in the Centralized Admission Process (CAP). The ad-interim reliefs in somewhat following form are granted in every matter.

c. pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct Respondent Nos. 3 and 4 to upload the Petitioner's name for the Centralized Admission Process (CAP) and be allowed to participate in CAP round and/or Minority Admission Procedure, for the academic year 2014-15 for the Engineering courses conducted by the Petitioners at Pillai's Institute of Information Technology, Engineering, Media Studies and Research at 10, Sector 16, Podi 2, New Panvel, Raigad-410 206.

However, this will be subject to the further orders of this Court. The Petitioners will not claim any equity on the basis of this order. The Respondents to file reply affidavit on or before the next date.

It is also clarified that non-listing of the Petitioners institute/name on the AICTE Website will not affect the admission process and implementation of prayer clause (c).

The parties to act on an authenticated copy of this order.

It is also made clear that the Officer of Respondent Nos. 3 and 4 i.e. Dr. Rajeev V. Shetkar, Assistant Director (Tech.), Directorate of Technical Education, M.S. Mumbai, is present in the Court and therefore, non-availability of the present order should not be the reason not to implement the order passed by this Court today.

21. We have passed such orders and granted similar ad-interim reliefs in all the Petitions. The statement is made that accordingly the institutions names are listed. The students have been submitting their Applications on-line till this date. All the Respondents are, therefore, required to follow the time-table so fixed by the Supreme Court in all respect.

22. The scope of writ jurisdiction is wide and so also it's restrictions. It depends upon facts, circumstances and situations specifically when dealing with the expert

body's decision. The time schedule fixed in Parshvanath (supra) has been re-scheduled by the Supreme Court. If case is of perversity, illegality in following due procedure of law, it is settled that any decision/order passed in breach of principles of natural justice, fair play and equity and which causes injustice, hardship and prejudice and specially when it relates to students and higher education and which affect the people at large, High Court in writ jurisdiction, may interfere with the same, to test the validity, illegality of such action. A Division Bench of this Court in Dental College & Hospital of the Vidarbha Youth Welfare Society vs. Government of India & ors. MANU/MH/1008/2013 : 2013(5) ALL MR. 830 while dealing with the provisions of Dentists Act, 1948 and the power of supreme Authority under the Act referring to the establishment of New Dental College and courses held that apart from others "There is no bar to interfere in expert body's decision.". There also similar objection was raised by the Respondents and opposed for the grant of any relief in favour of the institutions. The Division Bench, based upon the facts, even directed the respective Council to reconsider the representation made by the Petitioners and further ordered to have fresh inspection and to pass order in accordance with law by giving an opportunity to the Petitioners. It is also noted in the said judgment as follows:

32 The peculiarity of the fact in the present case which the Court just cannot overlook merely because the impugned decision is taken by the expert body. As noted above, the expert and/or expert body and/or institution and their power just cannot be decided by the Court so far as the matter pertained to and/or related to the students and/or academic sessions. Any Tribunal/body even of experts, if takes certain quasi judicial or administrative decisions by which they take away and/or infringe the rights of any person and/or institution and if there is breach of principles of natural justice, we are inclined to observe that the High Court need to test the decision/order if case is made out. There is no bar whatsoever that the decision of the expert body in such a situation cannot be interfered with and/or the High Court has no power to test the decision.

23. The interim relief, therefore, if not granted, as case is made out, the position of students as well as institutions would be irreversible. The balance of convenience, equity lies in favour of the students, people at large and the Petitioners. The extension of approvals as prayed for running and long standing establishment cannot be rejected abruptly in such fashion. The reasonable opportunity should be given to remove the deficiencies, if any and if representation is made, the Respondents also need to consider to relax and/or exempt the Petitioners from such conditions with a view to permitting such established institutions to run the courses in their respective places/locality/area. The space constraints in cities and their respective permission of less space/less land/pending occupation certificate and/or related aspect definitely require reconsideration/interpretation of the same. The Authorities of AICTEC are therefore required to consider the representation and/or application for relaxation of certain deficiencies and/or permit the Petitioners to point out that there are no deficiencies by giving opportunity to the party concerned before taking drastic action. Prima facie we find that the manner and haste in which AICTE has passed the impugned orders is unjustifiable. We also prima facie find that there are infirmities in decision making process in passing the impugned orders.

24. It is not in dispute that it was AICTE itself has granted extension of approval to these institutions for last many years. It is an admitted position that AICTE has acted merely on the complaints filed by the Citizens Forum of Fairness in Education. AICTE

in its Affidavit-in-reply has averred that that it was based on the complaints of the Citizens Forum of Fairness in Education that a CBI enquiry was conducted and the then AICTE Chairman and Secretary were arrested in 2009. We are not intending to interfere with the pending investigation or inquiry, if any.

25. We are inclined to allow the Petitioners to admit the students provisionally at this stage by treating the Applications of the Petitioners as having been approved provisionally subject to conditions and further orders.

26. We have, as recorded above, by ad-interim orders stayed the impugned orders and permitted the institutions to participate in the Centralized Admission Process (CAP) and to admit the students as per the intake capacity of the previous years and/or last Letter of Approval (LOA)/EOA. For the reasons discussed above, by way of interim reliefs, we pass the following order:-

ORDER

(a) The Respondents, including Director of Technical Education (DTE) to allow the admission of the students as per the intake capacity of the previous years/last LOA/EOA, based on the respective Applications of the Petitioners.

(b) The admission of the students would be provisional. The concerned students shall be intimated accordingly and the admissions would be subject to further orders and/or outcome of the Writ Petitions.

(c) The Petitioners and/or students shall not claim any equity on the basis of this order.

(d) The Petitioners are directed to file additional affidavits dealing with the deficiencies, if any, and the objections so raised about the deficiencies and in what manner the alleged deficiencies can be cured and what steps they propose to take to remove those deficiencies and the time frame therefor.

(e) Additional affidavits referred to above shall be filed by the Petitioners within four weeks, failing which it may entail vacation of interim orders. The Additional affidavit in reply be filed by the Respondent-AICTE also.

(f) The impugned order of AICTE shall not affect the admissions of existing students and the classes and the courses.

(g) It is made clear that the ad-interim order continues to operate notwithstanding this interim order and the protection granted by these orders shall not extend in any case to the next academic year. The approvals for the next academic year shall be decided on its own merits.

(h) The parties are at liberty to apply for appropriate clarification, if any.

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