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Court : Punjab and Haryana

Decided On : Feb-04-2014

Appellant : “basically the Issue Involved in the Present Writ Petition Is Whether

Respondent : All India Council for Technical Education and Others

Judgement :

CWP No.22229 of 2013 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CWP No.22229 of 2013 Date of decision:04.02.2014 Dev Raj Institute of Management & Technology Society ....Petitioner Versus All India Council for Technical Education & others ....Respondents CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA Present: Ms.Reeta Kohli, Advocate, for the petitioner. Mr.Ashok Sharma, Advocate, for the respondents. ***** G.S.Sandhawalia J.(ORAL) 1. The present writ petition has been filed for challenging the order dated 16.08.2013 (Annexure P13), whereby respondent No.1 decided to maintain status quo on its earlier decision, regarding non extention of approval, issued vide order dated 31.12.2012, which was subsequently confirmed on 16.03.2013, in respect of the petitioner, on account of non-production of structural safety certificate from the competent authority of Punjab State Government on permanent basis. The said order was passed in compliance to the orders passed by this Court on 04.06.2013 and 14.08.2013. It is pertinent to mention that no order was passed on 14.08.2013 and the judgment

was reserved in CWP No.7154 of 2013.

2. There is no denying the fact that respondent accorded approval to the petitioner-Institute for the academic year 2011-12, subject to certain conditions, enumerated in the letter of approval, which laid down that if the Institute fails to disclose the information or suppress or misrepresent the information, then appropriate action would be taken, as per the notified regulations, against the Institute. On a complaint being made against the Institute, regarding the Sailesh ranjan 2014.02.13 10:46 I attest to the accuracy and integrity of this document CWP No.22229 of 2013 -2- structural safety of the building as well as various other issues, a visit was conducted on 26.05.2011 and revisit on 09.07.2011. The Institute submitted certificate issued by the Executive Engineer, Provincial Division, PWD (B&R), Ferozepur, Punjab vide its memo No.677 dated 24.05.2011, with regard to the structural safety aspect of the building. The respondent-Council, in its show cause notice, issued on 27.07.2012, noted that the said certificate was valid for the year 2011-12 and its validity got expired and therefore, the Institute had failed to produce the structural safety certificate for the academic year 2012-13 and it had not complied with the requirement as stated under Clause 11.10 of the Approval Process Handbook, regarding safety aspects. Accordingly, for taking appropriate action, including as to why withdrawal of the approval be not initiated for non-compliance of the terms and conditions of the approval, order dated 31.12.2012 (Annexure P3) was issued, placing the Institute in the category of No Extension of Approval, for various courses. The said decision was reiterated vide letter dated 16.03.2013 (Annexure P4). The petitioner-Institute filed CWP No.7154 of 2013 in which this Court framed the following issue: Basically, the issue involved in the present writ petition is whether the validity of the orders dated 31.12.2012 and 16.3.2013 by which extension of approval for the academic year 2012-13 has been declined to the petitioner on the ground that the building has been found to be structurally unsafe and the petitioner has not submitted the certificate of its safety for the academic year 2012-13 which is the requirement of Clause 11.10 of the Handbook of Approval and also that the certificate of safety for the year 2012-13 submitted by the petitioner on 2.5.2013 had overwriting for which respondent No.2 sought confirmation which has not been supplied by the concerned department despite reminders.. 3. After discussing Clause 11.10 of the

Approval Process Handbook, which was the ground for putting the Institute in the No Approval List, it was noticed that once a certificate had been issued on 24.05.2011 for the year 2011- Sailesh ranjan 2014.02.13 10:46 I attest to the accuracy and integrity of this document CWP No.22229 of 2013 -3- 12, the Council was totally unjustified in declining the approval for the year 2012-13. In the said writ petition also, CM No.11453 of 2013 (Annexure P12) was also filed, wherein the petitioner prayed for formal approval for the year 2013-14 also, on the ground that the order had been stayed and students had been admitted. The Co-ordinate Bench, however, permitted the petitioner to agitate separately regarding the said issue. The concluding part of the order, passed on 21.08.2013, read as under: After going through the record, I have found that the earlier building safety certificate was issued by the Executive Engineer, Provincial Division, PWD, B&R, Ferozepur vide its Memo No.677 dated 24.5.2011, which has been found to be validly issued for the year 2011-12. The building safety certificate for the year 2012-13 bearing Memo No.327/ML dated 2.5.2012 issued by the Executive Engineering, Provl. Division, PWD B&R, Br, Ferozepur and in respect thereof, the petitioner had submitted letter dated 20.12.2012 bearing Memo No.1671/CE written by Superintending Engineer, Punjab, Public Works Department, Construction Circle, Ferozepur to Chief Engineer (South), Punjab, Public Works Department (B&R) Branch, Chandigarh about the authenticity of Memo No.327 dated 2.5.2012 and letter No.4981 dated 21.12.2012 written by Chief Engineer (South), Punjab, Public Works Department (B&R) Branch, Chandigarh to the Advisor (Approval), AICTE, New Delhi with reference to their reminders dated 1.10.2012 and 17.10.2012 informing that that the Memo No.327 dated 2.5.2012 was authenticated. Thus, the objections which have been taken by respondent No.2 in para No.8 of its impugned order dated 31.12.2012 (Annexure P-11) is totally misplaced for declining extension of approval for the year 2012-13. Even otherwise, once, the building is structurally safe in the year 2010 and the building safety certificate has been accepted for the academic year 2011-12, it is really surprising that how the building has become unsafe only in one year. Nothing has been disclosed in the reply filed by respondent No.2 as to how the building is structurally unsafe. Thus, the impugned order is apparently without any reason which could justify the denial of extension of approval to the petitioner. Sailesh

ranjan In these circumstances, the writ petition is found to be 2014.02.13 10:46 I attest to the accuracy and integrity of this document CWP No.22229 of 2013 -4- meritorious and the same is hereby allowed. The impugned orders dated 31.12.2012 and 16.3.2013 are thus quashed. However, no relief can be given to the petitioner on the application bearing CM No.11453 of 2013 about which the petitioner may agitate separately, if so advised, in accordance with law.. 4. It seems that in the meantime, when the case was being argued on various dates, the impugned order dated 16.08.2013 was passed in which, again, reliance has been placed upon the orders dated 31.12.2012 and 16.03.2013, which has been quashed in CWP No.7154 of 2013, on 21.08.2013. Thus, the basis for the impugned order dated 16.08.2013, extending the No Approval, is not justifiable and it is apparent that the authorities have to re-decide the whole issue, after applying the observations of this Court dated 21.08.2013.

5. It is suffice to say that the petitioner had also approached this Court by filing CWP No.12989 of 2013, seeking similar relief that the respondents should include the name of the petitioner-Institute in the list of the approved Institutes, for the academic session 2013-14. This Court had, vide order dated 04.06.2013, issued directions to the respondents to look into the matter and consider the grievance which finds mention in the impugned order also.

6. Counsel for the respondent has submitted that the petitioner had also approached the Apex Court on 31.07.2013 by filing W.P. (C) No.612 of 2013 along with some other Institutes and the following order was passed on 30.07.2013: Learned counsel for the petitioners wants to withdraw the writ petitions with liberty to move the High Court. The same are dismissed as withdrawn with liberty to move the High Court. However, we make it clear that we have not relaxed the cut off dates fixed by this Court in Parshavnath Charitable Trust & others v. A.I.C.T.E. & others (2013) 3 SCC385. Sailesh ranjan 2014.02.13 10:46 I attest to the accuracy and integrity of this document CWP No.22229 of 2013 -5- Accordingly, counsel for the respondents submits that the authorities are not competent to relax the cut off date.

7. This Court is not impressed with the said submission. Admittedly, the petitioner is a recognized Institute from the year 2011-12 and therefore, the strict adherence to the time-schedule fixed, as held in Parsavnath Charitable Trust & others v. A.I.C.T.E. & others (2013) 3 SCC385 would not be applicable in the facts and circumstances of the case as due to some technical objections, the respondents are continuing to deny it recognition, inspite of the fact that once the structural certificate has been issued by a competent authority, they cannot, time and again, deny permission on the same ground, as has been noticed by this Court in its order dated 21.08.2013. It is not the case of the respondents that the petitioner-Institute is deficient on account of any other infrastructure pertaining to the teaching faculty. In the absence of any report that the building was unsafe, the respondent-Council would not be justified to hold that for subsequent year, the building has become unsafe. A Division Bench of this Court, in LPA No.1099 of 2013 titled The Regional Officer, All India Council for Technical Education, Chandigarh & another Vs. Jind Institute of Engineering & Technology, Jind & others decided on 06.06.2013, while examining the principles laid down in Parsavnath Charitable Trust (supra) has held that the said directions pertain to the authority and it does not pertain to the power of the Court. Relevant observation read as under: The appellants now seek shelter behind the observations of the Hon'ble Supreme Court in Parshvanath Charitable Trust's (supra) and as extracted hereinabove where a time schedule has been prescribed and the authorities are bound to such a schedule. According to learned counsel for the appellants, the Courts too would be restrained from giving any such directions which may result in deviating from the above schedule. We are not in agreement with the contention raised before Sailesh ranjan 2014.02.13 10:46 I attest to the accuracy and us as the power under Article 226 of the Constitution of India is integrity of this document CWP No.22229 of 2013 -6- wide enough to enable the Court to pass orders in the given set of facts of the case and to ensure substantial justice.. 8. The respondents cannot take advantage of their own wrongs and to delay and keep the matter pending and let the academic year go by, as it would be apparent, in the present case that the petitioner had to approach this court in CWP No.12989 of 2013, for grant of formal approval and accordingly, directions were issued on 04.06.2013, to decide the issue. Accordingly, in view of the facts mentioned

above, the order dated 16.08.2013 is not justified in view of the subsequent developments and the same is, accordingly, quashed and present writ petition is allowed. The respondents are directed to take a fresh decision on the issue of approval for admission for the year 2013-14, after taking into account the observations made by this Court in the order dated 21.08.2013. The needful be done within a period of three weeks from the receipt of certified copy of this order. 04.02.2014 (G.S.SANDHAWALIA) sailesh JUDGE Sailesh ranjan 2014.02.13 10:46 I attest to the accuracy and integrity of this document

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