

Petitioner Vs. Respondent

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Court : Chennai Madurai

Decided On : Jul-12-2016

Judge : M. Venugopal

Appeal No. : W.M.P.(MD).No. 9270 of 2016 in W.P.(MD).No. 12170 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard the Learned Senior Counsel for the Petitioner/Trust/College.
2. According to the Learned Senior Counsel for the Petitioner/Trust/College, the impugned order dated 04.07.2016 of the Fifth Respondent/Dean (Agriculture) and Chairman Admissions, Tamil Nadu Agricultural University, Coimbatore, Tamilnadu, in withholding the admission for the first year B.Sc., (Agriculture) programme of the Petitioner's College for the academic year 2016 2017, on the ground that there is no permanent infrastructure facilities in the campus and further, the temporary infrastructure facilities available in the campus are poor and inadequate for the students' intake etc., is per se illegal, arbitrary and the same is liable to be set aside in furtherance of substantial cause of justice.

3. Advancing his argument, the Learned Senior Counsel for the Petitioner/Trust/College urges before this Court that the impugned order of the Fifth Respondent/Dean (Agriculture) and Chairman Admissions, Tamil Nadu Agricultural University, Coimbatore, Tamilnadu, suffers from the vice of non-application of mind. In this regard, the Learned Senior Counsel for the Petitioner projects an argument that permanent infrastructure facilities are very much available in the campus and that the Standing Committee of the Tamil Nadu Agricultural University, Coimbatore had also inspected the Petitioner's College and if any deficiencies were pointed out, then show-cause notice should have been given to the Petitioner/Trust/College and a reply should have been obtained from the Petitioner and apart from that, at least, a summary enquiry should have been conducted.

4. At this stage, it is represented on behalf of the Petitioner that in the instant case, the deficiencies were not pointed out by the concerned/competent authority, no show-cause notice pointing out / mentioning the deficiencies was issued to the Petitioner/Trust/College and in fact, there is negation of the principles of natural justice.

5. Expatiating his submission, the Learned Senior Counsel for the Petitioner contends that the name of the Petitioner/Trust/College is found in the Information Brochure which was uploaded in the Internet in the month of May 2016 i.e., subsequent to the Standing Committee inspection. Also, the Learned Senior Counsel for the Petitioner brings it to the notice of this Court that the impugned order dated 04.07.2016 passed by the Fifth Respondent was received by the Petitioner/Trust/College through Email on 04.07.2016.

6. Besides the above, the Learned Senior Counsel for the Petitioner invites the attention of this Court to the 'Hand Book of Guidelines for Establishing Agricultural Colleges' issued by the Tamil Nadu Agricultural University, Coimbatore, wherein at para-III, under the caption Mandatory Conditions, Clause 8.1 runs to the following effect:

8.1. The privileges conferred on a college by affiliation may be withdrawn in part or in full, suspended or modified, if the college, on due enquiry is found to have failed

to comply with any of the provisions of the Act, the Statutes, the Ordinances, the Rules and Regulations or any other direction or instruction of the TNAU or failed to observe any of the conditions of affiliation, or has conducted itself in a manner prejudicial to the academic and administrative standards and interests of the University.

7. The Learned Senior Counsel for the Petitioner by adverting to Clause 8.1 of the 'Hand Book of Guidelines for Establishing Agricultural Colleges' lays specific emphasis on the following words ... 'on due enquiry is found to have failed to comply with any of the provisions of the Act, the Statutes, the Ordinances, the Rules and Regulations etc.', and submits that in the present case on hand, admittedly, the Petitioner/Trust/College was not provided with enough opportunity or at least a show-cause notice before passing the impugned order dated 04.07.2016 by the Fifth Respondent. Therefore, the principles of natural justice have been violated by the Fifth Respondent/Dean (Agriculture) and Chairman Admissions, Tamil Nadu Agricultural University, Coimbatore, Tamilnadu and therefore, the impugned order dated 04.07.2016 is liable to be set aside, in the interest of justice.

8. The Learned Senior Counsel for the Petitioner relies on the decision of the Honourable Supreme Court (Swamy Devi Dayal Hospital and Dental College v. Union of India and others) reported in (2014) 13 SCC 506 at special page 514, whereby and whereunder at paragraphs 13 and 14, it is observed as under:

13. Thus, the procedure prescribed in Section 10-A contains the requirement of following this principle of natural justice at two stages. In the first place, by DCI when it finds deficiencies while examining the school in the second stage at the level of the Central Government before it passes away adverse orders, as it is the final administrative authority vested with powers to pass such an order. The law, thus specifically requires that at the stage of a decision by the Central Government, again an opportunity of being heard is to be provided. This proviso, thus, acknowledges the need of and confers a very valuable right in favour of the petitioner.

14. In the present case, the petitioner had been accorded permission in these two specialties for the previous academic session. Non-renewal thereof in the present academic session has an adverse effect. It has visited the petitioner with civil and/or evil consequences barring the petitioner to enrol fresh students in this year. We would like to reproduce the following discussion from the judgment in Sahara India (Firm) (1) v. CIT [(2008) 14 SCC 151] (SCC PP, 161-63, paras 15-16 and 19-20).

15. Rules of 'natural justice' are not embodied rules. The phrase 'natural justice' is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e fair play in action. As observed by this Court in A.K.Kraipak V. Union of India (1969) 2 SCC 262 the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO V. Madnani Engineering Works Limited [(1979) 2 SCC 455].

9. He also cites the decision of this Court (Principal, R.V.S.College of Engineering and Technology, Coimbatore v. All India Council for Technical Education, New Delhi, represented by its Member Secretary and others) reported in (2014) 5 MLJ 648 at special page 649, wherein it is observed and held as follows:

Held: The principles of natural justice forms part of Part III of the Constitution of India and that the same should be meticulously followed by the authorities before taking any decision which results in civil and penal consequences. At the same time, it cannot be said that in every case of failure, the principles of natural justice would vitiate the decision. It is only in a case where the decision has adverse effect on the person against whom such decision or order is passed resulting in penal or civil consequences, the failure to follow the principles of natural justice will undoubtedly vitiate the decision of the authority. It is also seen from these judgments that the principles of natural justice is applicable in respect of a decision making process unless the same has been either expressly or impliedly excluded by statute. On the contrary if the particular statute dealing with the subject in

recognition of the principles of natural justice makes explicit provision of providing such opportunity, undoubtedly, the same should be scrupulously followed by the authority concerned before the decision is taken. Therefore, it is again crystal clear, if the legal rights of the person are likely to be affected by the order and where the regulation explicitly provides for such an opportunity, then, even in administrative action such opportunity should be given and failure to do so will vitiate the decision. In the case on hand, admittedly, there is such explicit provision which mandates that AICTE should afford reasonable opportunity of being heard to the institution before withdrawing the approval.

It is crystal clear that in the case on hand, in order to enable the Petitioner to point out deficiencies, if any, in the recommendation made by the Standing Appellate Committee, opportunity as required under Regulation 12 should have been given and since the same has not been given as held by the Hon'ble Supreme Court in the above said case, in the instant case also, the impugned order is liable to be set aside. In the case on hand also, though there is no specific provision in the Regulation that a copy of the report of the Standing Appellate Committee must be furnished to the institution, it is in fitness of things in order to satisfy the principles of natural justice, a copy of the report should be given and thus the same is a mandatory requirement. This Court has no option but to hold that failure of the AICTE to furnish a copy of the report of the Appellate Standing Committee and to afford opportunity of being heard vitiates the entire proceedings since providing such opportunity is mandatory as it results in civil and penal consequences as enumerated in Chapter IV of the Handbook. Thus, on this ground, by itself, this Court is inclined to set aside the order.

10. The Learned Senior Counsel for the Petitioner while winding up his argument, puts forward a plea that every year, the Tamil Nadu Agricultural University publishes Information Brochure Under Graduate Admission-2016 which contains everything relating to admissions to be carried with respect to constituent college and affiliated colleges, wherein the Petitioner's College is shown as S.No.14 among the list of affiliated colleges. As such, it is not open to the Fifth Respondent/Dean (Agriculture) and Chairman Admissions, Tamil Nadu Agricultural University, Coimbatore, Tamilnadu, to suddenly withhold the

admissions for the year 2016 - 2017 without any rhyme or reason.

11. On a careful consideration of the contentions advanced on behalf of the Petitioner/Trust/College and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case, in an integral fashion, comes to a resultant conclusion that the Petitioner has made out a prima facie case for the grant of an interim order. Accordingly, this Court, to prevent an aberration of justice and to advance the cause of justice, grants interim stay of the operation of the impugned order of the Fifth Respondent/Dean (Agriculture) and Chairman Admissions, Tamil Nadu Agricultural University, Coimbatore, Tamilnadu in Proceedings No.Dean(Agri.)/UG Admin.2016-2017/SRSIAT/2016, dated 04.07.2016 and orders notice.

12. Private notice is also permitted.

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