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Court : Jharkhand

Decided On : Dec-10-2015

Appellant : Kumar Nishant and Anr

Respondent : All India Council for Technical Education and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI. I.A. No. 5891 of 2015 In L.P.A. No. 612 of 2015 1. Kumar Nishant; 2. Sunil Kumar .. Appellants -V e r s u s- All India Council for Technical Education & others... Respondents. With I.A. No. 6769 of 2015 In L.P.A. No. 676 of 2015 Nilai Educational Trust .. Appellant -V e r s u s- All India Council for Technical Education & others.. Respondents. CORAM: - HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HONBLE MR. JUSTICE P.P. BHATT. For the Appellants :-M/s Ritu Kumar & S.D. Bhanj, Advocates (L.P.A. No. 612/2015) Mr. Anil Kr. Sinha, Sr. Advocate Mr. Vikas Kumar, Advocate (in L.P.A. No. 676/2015) For the State : - Mr. Ajit Kumar, A.A.G. Mr. Vikash Kumar, J.C. to A.A.G. For the AICTE :- M/s. (Dr.) J.P. Gupta & Ashutosh Anand, Advocates ... th Order No.07/Dated:

10. December, 2015 Per Virender Singh, C.J.

1. Being aggrieved of the judgment dated 01.10.2015 handed down by the learned Single Judge in W.P.(C) No. 1545 of 2015, two students of Nilai Educational Trust,

namely, Kumar Nishant and Sunil Kumar have preferred L.P.A. No. 612 of 2015 seeking leave to appeal through I.A. No. 6239 of 2015 which was allowed by the Court vide the order dated 03.11.2015 primarily on the ground that they were allowed to intervene in the main writ application and assistance was also rendered to the learned Writ Court on their behalf. The other grounds taken by these two appellants-students were that the impugned order is adversely affecting many students admitted in Nilai Educational Trust, which are about 1500 pursuing their studies for engineering, management and diploma courses. Interlocutory application was also moved for stay of operation of the impugned judgment.

2. It needs to be mentioned here that Nilai Educational Trust has also assailed the impugned judgment by filing separate appeal being L.P.A. No. 676 of 2015 in which the same interim prayer is made. Pursuant to the notice, Mr. Ajit Kumar, learned Additional Advocate General appears for the State of Jharkhand and Mr. Ashutosh Anand, learned counsel appears for the AICTE.

3. Service is thus complete.

4. Heard Mr. A.K. Sinha, learned Senior Advocate appearing in L.P.A. No. 676/2015 and Mrs. Ritu Kumar, learned counsel appearing in L.P.A. No. 612/2015. We have also perused the impugned judgment.

5. During course of arguments, Mr. Sinha has also drawn the attention of the Court to Regulation-VI of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010, issued on 15.01.2010, which deals with requirement of land and it reads, Requirement of Land: The promoter society/ trust of a new technical education institution shall have the land as required and prescribed, in its lawful possession, with clear title, in the name of the promoter society/ trust on or before the date of submission of application. Provided, that it shall be open for the promoter society/ trust/ proposed institution to mortgage the land for raising the resources for the purpose of development of the technical education institute situated on that land.

6. Learned Senior Counsel submitted that the finding retained by the learned Writ Court with regard to the mortgage of the land, where the institute is established, is

not only contrary to Regulation-VI, it is otherwise not in consonance with Section 58 of the Transfer of Properties Act. While strengthening his arguments, Mr. Sinha further submitted that for the grant of recognition initially the appellant-Trust had disclosed that it was in the possession of 11.78 acres of land but subsequently out of which 7.79 acres of land was mortgaged to HUDCO. In fact, the requirement of land was only 4.5 acres which too was reduced to 2.5 acres somewhere in 2011-12.. Learned Senior Counsel vehemently submitted that before the impugned order could be passed the requirement was only of 2.5 acres and in the flashback of the aforesaid facts, this hyper technical aspect could be ignored by the learned Writ Court when no other flaw was noticed by AICTE for the purposes of withdrawing the recognition.

7. Learned Senior Counsel further submitted that in the impugned judgment itself, it is made clear that as per the latest requirement of land which is 2.5 acres, the appellant- Trust can still move AICTE for future affiliation/ approval.

8. On the strength of aforesaid submissions, learned Senior Counsel submitted that appellant has prima facie a good case on merits, therefore, there is a prayer for stay of operation of the impugned judgment as well as the impugned order dated 14.4.2015 passed by the respondent-AICTE, whereby withdrawing the recognition of the appellant-Institute.

9. Strengthening the cause of the students already pursuing their studies in Nilai Educational Trust, Mrs. Kumar submitted that career of 1500 students is at stake. She submitted that Nilai Educational Trust perhaps is one of the best institutes in Ranchi and that most of the students for getting admission in this Institute have taken loans from various financial institutions. She further submitted that no doubt there are two other institutes also established in Ranchi where the students pursuing their B.Tech education can be shifted in terms of impugned order and so can be the position even with regard to the other students pursuing their Diploma courses as there are other institutes where they can be accommodated but all these institutes are already overloaded and are working in shifts. She submitted that clause 4.31 of the Regulation framed by the AICTE provides that the affiliating Universities shall transfer the students of the institutions, whose programmes/

courses have been discontinued by the council or approval is withdrawn or suspended, no steps have been taken by the AICTE at least after 16.07.2015 when the interim order directing the AICTE for not taking any steps for transferring of the existing students of these institutes to other institutes was withdrawn by the learned Writ Court itself and at this fag end when the students have to sit in their final examination somewhere in January, 2016, their shifting at this stage to different institutes would be at the cost of their studies. She submitted that in these set of circumstances, their studies are to be adversely affected. She also thus prays for stay of the operation of the impugned order whereby direction has been given to AICTE to shift the students of Nilai Educational Trust.

10. Repeating the submissions advanced by the learned counsel for both the appellants vis-a-vis the prayer for interim relief made herein Mr. Ashutosh Anand, learned counsel appearing for the respondent-AICTE submits that Nilai Educational Trust was never having a clear title over the land where the institute was established as it was already mortgaged by one of its trustees, namely, Dream Consultants Private Limited, who was the vendor. Learned counsel submitted that the approval was given by the AICTE as integrated campus on the basis of affidavit and the application tendered by the appellant-Nilai Educational Trust which ultimately found to be false. Learned counsel submitted that in the flashback of these facts AICTE was well justified in withdrawing the approval granted to the appellant- Trust. So far as transfer of the students is concerned, learned counsel submitted that a request has already been made to the State by the AICTE for transferring the students to other institutes established in Ranchi and perhaps, the State will do the needful without any waste of time.

11. On a specific query put to Mrs. Ritu Kumar appearing not only for the two students (appellants herein) but represents the cause of all other students as well as to how many girl students are pursuing their studies in these institutes, she after getting the instructions made a statement at the Bar that there are as many as 200 girl students in the institute and most of them are staying in the hostel.

12. The Court when put a specific query to Mr. Ajit Kumar, learned Additional Advocate General as to whether, while shifting the students, any arrangement has

been made for stay of the girl students in the hostels, he states that he is not very clear on this aspect and there can certainly be some difficulty in this regard.

13. Keeping in view the totality of the facts and circumstances of the present case and without expressing any opinion on merits at this juncture and considering one very vital and important aspect, shifting of 1500 students at this juncture, which includes 200 girl students from the appellant- Nilai Educational Trust to other institutions without providing them certain basic amenities would not only create lot of hardship for them, their studies would certainly be adversely affected. Thus balance of convenience prima facie is tilting towards the cause of more than 1500 students. We, primarily taking care of the cause of the students projected before us, are of the considered view that the operation of the impugned order handed down by the learned Single Judge deserves to be stayed for the time being. To make it more clear, till further orders, all the students, who are pursuing their studies in Nilai Educational Trust shall continue with their studies in that Trust only. It goes without saying that they shall also be allowed to sit in the examination somewhere in January, 2016.

14. List again for further considerations on I.A. No. 5891 of 2015 in L.P.A. No. 612 of 2015 and I.A. No. 6769 of 2015 in L.P.A. No. 676 of 2015 on 01.02.2016. (Virender Singh, C.J.) (P.P. Bhatt, J.) APK/SB

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