

All India Council for Technical Education. Vs. Sun College of Engineering and Technology.

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Court : Chennai

Decided On : Jun-29-2012

Judge : R.Banumathi; B.Rajendran, Jj.

Acts : [Indian Penal Code\(IPC\) 1860](#) - Section 420; Life Insurance Corporation Act - Section 25

Appeal No. : Writ Appeal (MD) No.448 of 2012

Appellant : All India Council for Technical Education.

Respondent : Sun College of Engineering and Technology.

Advocate for Def. : Mr.S.Prabhakaran, Adv

Advocate for Pet/Ap. : Mr.AR.L.Sundaresan, Adv

Judgement :

JUDGMENT

B. RAJENDRAN, J

1. The writ appellants, aggrieved against the order dated 17.05.2012, have come forward with this Writ Appeal.

2. The respondent has filed a writ of mandamus directing the first appellant to consider the respondent's applications dated 11.04.2012 and 18.04.2012 for extension of approval of petition mentioned courses for the academic year 2012-2013 without reference to Clause 3(1)(d) of Chapter II of the Approval Process Handbook (2012-2013), paragraphs 4 and 5 of the notifications vide No.1-MS/2012, dated 31.03.2012 and vide No.2-MS/2012, dated 12.04.2012 issued by the first appellant.

3. According to the respondent, they are running the college as per the approval originally granted way back in the year 1999-2000. Thereafter, every year, the approval has to be renewed. Subsequently, the renewal has been done upto 2008. In the year 2009, there was an enquiry by the Central Bureau of Investigation (in short CBI) in regard to the very approval originally granted stating that there was a malpractice and suppression of the very infrastructures availability and it was fraudulently granted. Therefore, CBI has originally filed FIR for connivance of the respondent organisations along with the officers of the then All India Council for Technical Education (in short AICTE) members and then, charge sheet also has been filed under Section 420 of IPC as well as under the Prevention of the Corruption Act. Therefore, pending this charge sheet and FIR, the renewal sought for was denied. Therefore, the respondent also filed writ petition seeking for approval for the academic year 2010-2011 and 2011-2012. This Court after taking into consideration that mere FIR or charge sheet would not be a bar for considering the application for approval for the present year and directed the authorities to renew the same and pursuant to the same, the renewal has also been done for the academic year 2010-2011 and 2011-2012. As AICTE has also not appealed or objected to the same, it has become final and the respondent has also been granted such approval for the academic year 2010-2011 and 2011-2012.

4. While this is so, the respondent has now applied for extension of approval for the academic year 2012-2013. In the meanwhile, the regulations pertaining to the renewal in the Approval Process Handbook issued by AICTE for the academic year 2012-2013 has been amended, a new clause has been introduced in Clause 3(1)(d) of Chapter II which specifically prohibits any institution or society seeking

for extension of approval shall not be considered if they are charge sheeted unless they are acquitted. Clause 3(1)(d) reads as follows: Any Institution/Society/Trust/Section 25 company or a member belonging to these if charge sheeted, shall not be considered for extension of approval unless they are acquitted.

Therefore, the respondent has filed W.P.(MD) No.6790 of 2012 questioning the validity of the Clause 3(1)(d) of Chapter II of the Approval Process Handbook (2012-2013) issued by the first appellant. In the said writ petition, the respondent has also asked for a stay of operation of the said clause. Though no stay was granted, the writ petition has been admitted and the writ petition is pending.

5. On the same day, the respondent has also filed another writ petition viz., W.P.No.6791 of 2012 for a mandamus seeking a direction to the appellants to grant extension of approval for the academic year 2012-2013 without considering or without reference to Clause 3(1)(d) of Chapter II of the Approval Process Handbook (2012-2013) and also the subsequent circulars dated 11.04.2012 and 18.04.2012. The learned Single Judge after giving notice to AICTE, on the next day in the vacation Court has heard and taken into consideration that the previous orders issued by this Court for the academic years 2010-2011 and 2011- 2012 has allowed the renewal and adopted the same analogy and allowed the very writ petition itself stating that AICTE should consider renewal without recourse to the new amended provision to Clause 3(1)(d) and/or the circulars subsequently issued. Aggrieved against the said order, the present writ appeal has been filed by AICTE.

6. The main contention of the appellants is that when the respondent sought for extension of approval for previous years, there was no specific rule in the Approval Process Handbook to deny the approval even if there is a charge sheet. But, in the amended Clause in the year 2012, which is to be implemented for the academic year 2012-2013, it has been very clearly incorporated and the respondent having challenged the very regulation itself and having failed to get an interim order of stay cannot come by way of writ of mandamus to consider their approval without recourse to Clause 3(1)(d). It is literally staying the operation of the section and

what they could not obtain by way of stay, in the main writ petition they have obtained by way of writ of mandamus.

7. They would further contend that the law is well settled when the regulation or rule or Act is promulgated until it is set aside by the competent Court of law, it is deemed to be correct. Therefore, when that rule itself has been challenged as long as the rule stands in the book, we will have to follow the rule. Therefore, there cannot be a mandamus to consider the renewal without the rule at all.

8. They would further contend that by virtue of issuing an order of mandamus literally the Court is asking to defy the regulation or the rule of the very institution which is in force. Therefore, also the order sought for ought not to have been granted. In this connection, they would rely upon the following judgments of the Hon'ble Supreme Court:

1. 1995 Suppl (1) SCC 304, Dental Council of India v. Harpreet Kaur Bal and others.

2. (1997) 2 SCC 713, Santosh Kumar Verma and others v. State of Bihar.

3. (1997) 10 SCC 264, Vice-Chancellor, University of Allahabad and others v. Dr. Anand Prakash Mishra and others.

4. (1994) 2 SCC 718, Life Insurance Corporation of India v. Asha Ramchandra Ambedkar (Mrs) and another.

9. The learned Senior Counsel for the respondent mainly would contend that even when the original approval was granted way back in the year 1999-2000 some third parties objected to the said approval by way of filing Public Interest Litigation and in that, the stand taken by AICTE itself was that the approval was granted in accordance with law. Therefore, they cannot now approbate or reprobate and say the very approval for the year 1999-2000 is wrong. He would further contend that in view of the orders of this Court a direction to grant approval for the year 2010-2011 and 2011-2012 in spite of the fact that there was an FIR or charge sheet would enure the benefit for the year 2012-2013 also. He would further contend that as per the criminal jurisprudence mere charge sheet or FIR is not the ultimate

authority to say that a person has committed fraud or wrong unless he is convicted by the Court of law. Under the criminal jurisprudence, the innocence of the person is to be accepted till he is convicted. Therefore, merely because there was a charge sheet or FIR, there cannot be an embargo for even granting the approval or for consideration. Lastly, he would only contend that the previous order granting approval is not questioned and it has become final. He would submit that a similarly placed persons in Bombay High Court also questioned the same for earlier years and which went upto the Hon'ble Supreme Court and the Hon'ble Supreme Court also held that permission to renewal can be granted for the academic years 2010-2011 and 2011-2012 and argued that the same order would also apply to the present academic year i.e. 2012-2013. Therefore, the mandamus was rightly given.

10. Heard both sides. By consent, the main writ appeal itself is taken up for final disposal. The learned Senior Counsel appearing on either side have argued in detail in the writ appeal itself.

11. The grievance of the respondent is that the AICTE has introduced a norm in the Approval Process Handbook (2012-2013) which reads as follows: 3(1)(d). Any Institution/Society/Trust/Section 25 company or a member belonging to these if charge sheeted, shall not be considered for extension of approval unless they are acquitted.

Since this clause has been introduced from the academic year 2012-2013, any applications which are filed for renewal for the academic year 2012-2013 will be governed by the new set of regulations introduced in the year. No doubt, the respondent has challenged the very regulations itself in their earlier Writ Petition in W.P.(MD) No.6790 of 2012 and that writ petition has been admitted and in the said writ petition, though stay has been sought for, stay has not been granted and the matter is pending. While this is so, on the very same day when they filed this writ petition, they have also filed another writ petition for mandamus seeking to consider the approval without recourse to 3(1)(d). Literally speaking, the respondent who has lost their right in getting the interim order in the petition challenging the very regulation has ingeniously filed this writ of mandamus seeking

for consideration to the authorities to eschew clause 3(1)(d) and consider their application for the academic year 2012-2013, can it be granted, of course, not. It is a well- settled law that when the rule or regulation which is incorporated in the proceedings that will be in force until it is quashed by the competent Court of law. When especially they have challenged that very regulation and it is pending decision in the Court and they have failed to get an order of stay, it is not open for the respondent to seek any mandamus against the same authority not to invoke that provision for the present academic year by way of mandamus. Literally speaking, they have sought for a mandamus to seek an order to act against the very regulation.

12. In this connection, we are governed by the decision of the Hon'ble Supreme Court reported in (1997) 10 SCC 264, Vice-Chancellor, University of Allahabad and others v. Dr.Anand Prakash Mishra and others, wherein it has been categorically held that a mandamus cannot be issued to violate the law or to act in violation of the law. In the instant case, the direction issued by the High Court tantamounts to a direction to the appellant to appoint the respondents as per the order issued by the Chancellor, in violation of the Act. The mandamus was, therefore, clearly illegal. The incumbent Vice-Chancellor cannot be found fault with as regards the implementation of the Act. It is also very clear that any process initiated after the commencement of the Act or regulation has to be in conformity with the provisions of that Act or regulation which was in force on that date. Definitely, for the academic year 2012-2013, the regulation which is in force is 3(1)(d) which specifically embarks or prohibits the authority to consider even if they are charge sheeted. Therefore, there cannot be a mandamus for violation of the very regulation. Similar to that effect, the appellants would also rely upon a decision reported in (1997) 2 SCC 713, Santosh Kumar Verma and others v. State of Bihar wherein it has been held that Therefore, any regulation in violation of the recruitment to be made by the Public Service Commission is in contravention of the law. The High Court, therefore, rightly did not issue any mandamus for regularisation of the services made in contravention of the Rules and no mandamus or direction would be issued to violate law.

13. They would also rely upon a decision reported in (1994) 2 SCC 718, Life Insurance Corporation of India v. Asha Ramchandra Ambedkar (Mrs) and another wherein it has been held as follows:

The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, should never be done. In the very case itself, there are regulations and instructions governing the matter. The court below has not even examined whether a case falls within the scope of relevant statutory provisions. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

Moreover, the High Court should not have directed the appointment on compassionate grounds. It should have merely directed consideration of the claim of the second respondent. No mandamus should be issued directing to do a thing forbidden by law.

14. Therefore, first of all, this Court definitely would come to the conclusion that having challenged the regulation and having failed to get a stay in the writ petition, it will not be open for the respondent to file a writ of mandamus on the very same day as the next case and seek to consider the application excluding the regulation, such a mandamus cannot be granted.

15. The next argument made by the learned Senior Counsel for the respondent was that earlier two writ petitions were filed for grant of renewal for the academic years 2010-2011 and 2011-2012 and this Court has granted the said mandamus and since the AICTE has not preferred any appeal, the same would enure the benefit for the academic year 2012-2013 also. This argument cannot be accepted for the simple reason that for the relevant academic year 2011-2012, there was no regulation that the application cannot be considered if there is a charge sheet. Though an objection was made by the AICTE, the Court intervened only to state that without a specific regulation or rule, Court cannot prohibit the renewal for

consideration merely because there was an FIR or a charge sheet being filed. That is not the case in present case on hand. Here, when there is a regulation which has been challenged, the previous orders will not be a bar for the present year.

16. Yet another argument made by the learned Senior Counsel for the respondent was that insofar as the very approval is granted for the year 1990- 2000 is concerned, there were earlier Public Interest Litigations in which AICTE itself has stated in the counter that the approval was granted properly and correctly. In fact, though the counter was filed during the relevant point of time viz., 1999-2000, at that time there was no CBI enquiry. Only at later point of time, CBI enquired into the matter and came to the conclusion that there was connivance and therefore, the counter was filed by the authority at the relevant point of time will not enure the benefit to respondent, as we are now concerned with the charge sheet filed by CBI, which makes an embargo for considering the approval. Therefore, that argument also cannot be accepted.

17. The next argument made by the learned Senior Counsel for the respondent was that in a similar circumstances, a writ petition was filed in Bombay High Court seeking for grant of approval for the academic year 2011-2012 without taking into consideration of CBI charge pending on the person of the institution. In that case, the Division Bench of the Bombay High Court has granted the relief allowing the writ petition and directed to grant extension of approval of the institution for the academic year 2011-2012 citing that it is not justified in refusing to grant extension of approval on the ground that CBI has charge sheeted on the person. As against that order, AICTE has taken the matter on appeal to the Supreme Court and the Supreme Court has also admitted the SLP and taking into consideration the deficiencies pointed out by the AICTE, after the same is rectified directed them to grant approval for the year 2011- 2012 and SLP is pending and subsequently, another writ petition was also filed in the Bombay High Court wherein also though originally it was sought for extension of approval for the academic year 2011-2012 citing the amended provision also renewal for the academic year 2012-2013 has sought for, the Bombay High Court has granted an interim order on the concession given by the AICTE counsel, and directed to consider the approval for the

academic year 2012- 2013 also. Therefore, their stand that the Hon'ble Supreme Court has granted orders and subsequently, the Bombay High Court has also granted orders and therefore, the same order should be granted here in the present writ of mandamus. Unfortunately, the argument made by the learned Senior Counsel for the respondent is not correct.

18. If we go through the order of the Bombay High Court, the Division Bench has categorically considered the grant of approval for the academic year 2011-2012. No doubt, there also the stand taken by AICTE was that since the charge sheet is pending, they will not grant approval for the academic year 2011-2012 and as stated supra at that time there was no regulation. Therefore, the Bombay High Court has come to the conclusion that AICTE cannot insist on the ground that since the charge sheet is pending. Against which, they filed SLP and the same was admitted and interim order was granted only to the extent that apart from the allegations of the charge sheet, there were some deficiencies pointed out. The Supreme Court directed them to comply with that deficiencies pointed out by AICTE and thereafter, on compliance of such deficiencies, granted the approval again for the year 2011-2012 only and the SLP is still pending. But in the interim order of the Bombay High Court, in the subsequent writ petition, this was not stated. But what was incorporated was on the concession of the learned Counsel appearing for AICTE who has submitted that the appellant do not intend to deny the approval either on the ground of clause 3(1)(d) and shall grant approval as per the order of the Supreme Court dated 12.04.2012. The order of the Hon'ble Supreme Court, as stated supra, was pertaining to the academic year 2011-2012 and not for the academic year 2012-2013. Therefore, the Division Bench has also granted interim order to consider the application. But, that is not the case here; it is not a case of AICTE or the respondent that there was a challenge made to the very regulation, whereas here the very respondent having challenged the regulation and having failed to get an interim order in that writ petition, cannot now contend that since the Supreme Court has ordered for the academic year 2011-2012 and when the regulation was not incorporated, the same would apply for the academic year 2012-2013. Therefore, that argument of the respondent also cannot be accepted.

19. Yet another argument was made that mere charge sheet will not amount to take a plea of legal proof or conviction. He would mainly contend that merely because he was charge sheeted that by itself would not mean that the guilt is proved beyond any reasonable doubt and as per the Indian Jurisprudence so long as he is not convicted till he presumed to be innocence. Therefore, mere charge sheet cannot be a bar for considering the application. No doubt, the criminal jurisprudence gives the benefit of doubt to the party accused till he is being convicted and till he is proved beyond any reasonable doubt on the basis of any evidence. But when a regulation is made that if there is a charge sheet especially by CBI and in respect of the very approval when the charge is pending until it is cleared by way of an acquittal, the authorities will not consider their application only for renewal for that particular year cannot be construed as bad in law. The Government has the right to include certain regulations to maintain discipline.

20. In this connection, we are fortified by the judgment of the Hon'ble Supreme Court reported in (2011) 6 SCC 597, *State of Himachal Pradesh and Others v. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, wherein the Supreme Court has categorically held that Courts cannot interfere lightly the authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. The relevant portion is extracted hereunder:

It is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. With regard to the importance of human resources, especially manpower requirement in various professional and technical fields, the Government is free to frame its policy, alter or modify the same as to the needs of the society.

21. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

21. The learned Senior Counsel also made it very clear to the fact that non-granting of approval does not mean that the approval has been withdrawn and the college will be permitted to continue with the existing students. But what is prohibited was only for the current year they cannot admit students. Therefore, in the meanwhile, he can always move the Court for any acquittal. Under a regulation, there can always be an embargo fixed for consideration of an application if there is a charge sheet and especially in this case, the charge sheet is in respect of a very grant of approval itself in violation of the rules. When the very fundamental right to continue the approval by renewal is in question pending a criminal proceeding can that be stated to be an onerous condition? No. As the very regulation is now being challenged by the respondent, as long as it is not set aside by the competent Court, it cannot be stated that the same cannot be an embargo at all to consider the renewal.

22. Therefore, the respondent's argument now that merely because a person who has involved in a criminal case by itself cannot be an embargo at this stage

seeking for a mandamus to eschew, the same cannot arise at this stage as he has already challenged the very regulation which will be considered in detail by the Court. But, until then, the regulation is in force and therefore, the authorities are right in holding that the application could not be considered de hors the regulation. It is a prohibition for him to get the renewal for the next year. Since the regulation has been incorporated for the academic year 2012-2013, as long as it is in the Statute book, it has to be followed for the relevant year. Therefore, the respondent cannot maintain the writ petition seeking for a mandamus to direct the authorities to consider the renewal without recourse to the new regulation. Hence, the writ appeal is allowed and the order under challenge is set aside. The Writ Petition for mandamus is dismissed. No costs.

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