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Court : Mumbai

Decided On : Aug-22-2012

Judge : The Honourable Dr. Justice D.Y. Chandrachud & a.a. Sayed

Appeal No. : WRIT PETITION NO. 460 OF 2011 WITH NOTICE OF MOTION NO. 236 OF 2012 & NOTICE OF MOTION NO. 248 OF 2012

Appellant : Parshvanath Charitable Trust and Others

Respondent : All India Council for Technical Education and Others

Judgement :

Oral Judgment: (Dr. D.Y. Chandrachud, J.)

In these proceedings under Article 226 of the Constitution, there is a challenge to an order dated 7 January 2011 issued by the All India Council for Technical Education, the First Respondent, withdrawing the approval granted to the First Petitioner to conduct an Engineering College. The Petitioners seek a mandamus to the First Respondent to approve a proposal submitted on 24 May 2008 for a change in the location of the Engineering College. A direction has been sought to the State Government, the Directorate of Technical Education and the University of Mumbai to grant their 'No Objection' Certificate to the proposal for a change in location.

2. The First Petitioner was granted approval for setting up an Engineering College by the First Respondent on 11 June 1994 with an intake capacity of 140 students for the academic year 1994-95. The College was situated on land bearing Survey No. 27 (part) at Kasarvadavali, Ghodbunder Road in the District of Thane. The College is affiliated with the University of Mumbai and was granted approval by the Directorate of Technical Education of the State Government. Between 1994 and 2008, the College continued in premises for which it was approved and annual approvals were issued by the First Respondent.

3. On 24 May 2008, an application was made by the Petitioners to the Regional Office of the First Respondent stating that the Petitioners proposed to shift to a new location at Survey No. 12/1, 2, 4, 13/8, 9, 10A and 13/10B. Applications were made to the Directorate of Technical Education on 29 May 2008 for the grant of a No Objection Certificate and to the University on 29 April 2008 for its approval to the change in location. Admittedly, the Petitioners shifted to the new location without obtaining the approval of AICTE and without receiving No Objections of the University of Mumbai and the State Government. As a matter of fact, it is also an admitted position, that no occupation certificate was received from the Municipal Corporation of Thane. No occupation certificate has been received until date. The Engineering College has been conducted at the new location without the buildings in which the college is housed receiving an occupation certificate from the Municipal Corporation.

4. On 24 June 2008, the First Respondent appointed an Expert Committee to verify the infrastructure available at the new site to which the institution was shifted. The Expert Committee submitted a Report after a visit on 28 June 2008. The Committee noted that a no objection certificate of the affiliating university for a change in location had not been produced before the Committee but that it was informed that the matter was in process. As regards the title to the land, the Expert Committee noted that the registration of the land stood in the name of some other Trust which in turn had leased out the land to the First Petitioner. The prescribed proforma for the Report of the Committee contains a specific stipulation in clause 1.1 of Part II that a private lease for land is not acceptable and that the title must vest in the institution under a registered deed of sale or gift. The Committee noted

that the documents pertaining to the land were not in the name of the First Petitioner since the land had been leased out by another Trust. The Committee noted that the Trust had constructed a building consisting of a ground and four floors with a built-up area of 17,485 sq. mtrs. On the date of the visit, the Committee found that all the laboratories had been shifted from the old site to the new College building and that several other amenities including the class rooms were under finishing work. The view of the Committee was that the building constructed thus far was not suitable for running the classes of an Engineering College immediately.

5. On 30 June 2008, the First Respondent granted an extension of approval to the First Petitioner for conducting an Engineering College for the period 2008-11 with an intake capacity of 280 students. Clause 3 of the approval stipulated that the institution would operate only from the approved location. Subsequently on 20 August 2009, the First Respondent granted its approval for an enhancement of the intake capacity from 280 students to 360 students.

6. On 18 May 2010, a notice to show cause was issued by the First Respondent to the First Petitioner stating that according to AICTE norms, an institute has to run courses only from an approved site. Moreover, if an institution desires to shift to another location, due process had to be followed under AICTE norms to get the approval of AICTE. The allegation against the First Petitioner was that the Engineering College was shifted to another location together with a Pharmacy College without obtaining the approval of AICTE. The Petitioners submitted a reply on 21 May 2010 to the notice to show cause. In the reply, the Petitioners admitted in the following extract that after filing a proposal for shifting the engineering and pharmacy colleges, both the colleges were being conducted from the new premises :

“We have reason to state that after filing proposal for shifting the aforesaid colleges to the new premises, we have applied for permission for shifting the aforesaid colleges in the new premises in the year 2008 only and accordingly we are conducting engineering and pharmacy colleges in the new premises.”

However, the contention of the Petitioners was that AICTE had appointed an expert committee to visit the institution in order to verify the infrastructure available. Following this, the committee submitted a report and it was urged that it would be illogical to allege that the College had been shifted without approval. Extension of approval was granted, it was submitted, on 30 June 2008 and the intake capacity was increased on 20 August 2009. The Petitioners, therefore, submitted that permission had been granted and that neither the University of Mumbai nor the State Government had raised any objection.

7. Following the issuance of a notice to show cause, the engineering college was not included in the Centralised Admissions Process by the State Government. The Petitioners filed a Petition (Writ Petition No. 1776 of 2010) under Article 226 of the Constitution of India. By a judgment and order dated 11 August 2010, a Division Bench presided over by the Learned Chief Justice noted that though the Petitioners had submitted a reply to the notice to show cause, no decision had been taken by AICTE but when the admissions process was to commence, the Director of Technical Education was instructed not to include the engineering college in the list of participating colleges. Since no decision had been taken on the notice to show cause, the Division Bench set aside the communication issued by the Director of Technical Education informing the Petitioners that the college would not be included in the Centralised Admissions Process. The Director of Technical Education was called upon to permit the College to participate in the admission rounds.

8. Before the Division Bench, during the course of the hearing of the earlier proceedings, the Municipal Corporation of Thane had stated that an Occupation Certificate had not been granted to the engineering college. Counsel for the Municipal Corporation who had only been served with the papers on the previous day, was unable to inform the Court as to why the Occupation Certificate had not been granted. The Division Bench directed that the application for grant of an occupation certificate should be considered by the Municipal Corporation. There were certain internal disputes in the management of the First Petitioner involving the Sixth Respondent who was earlier a Managing Trustee and an order had been passed by the Joint Charity Commissioner on 9 April 2010 restraining him from

interfering in the administration of the College. The Division Bench directed the Municipal Corporation of Thane to consider the application for the grant of Occupation Certificate uninfluenced by any objection that may be raised by the Sixth Respondent.

9. On 7 January 2011, an order was passed by the First Respondent withdrawing the approval granted to the Petitioners under Clause 2.11 of the Approval Process Hand Book and the Guidelines for 2008-09. The principal findings on the basis of which the order has been passed are as follows:

(i) The State Government had informed the First Respondent by a letter dated 22 February 2010 that the First Petitioner had shifted the Engineering College to a new location for which no occupancy certificate had been issued by the Municipal Corporation of Thane. The State Government informed the First Respondent that an NOC had not been issued by it though it was required under AICTE Regulations;

(ii) The Expert Committee which had visited the new site of the institution on 28 June 2008 had come to the conclusion that the construction which had been thus far carried out was not suitable for immediately running the classes;

(iii) In reply to the notice to show cause, the College had admitted to having shifted to the new location without the approval of the State Government, the University and of AICTE;

(iv) In a subsequent Report of an Expert Committee dated 16 July 2010, the Committee had recommended a reduction in the intake capacity of each of the six branches of Engineering to 45 students and that the Trust should be called upon to obtain an occupation certificate by 30 April 2011 or to produce an acceptable legal alternative. The Expert Committee noted amongst other things that the College did not have an occupation certificate inspite of which the building was used since 2008. There appeared to be a dispute within the Trust involving the Managing Trustee;

(v) On 3 August 2010, the Principal of the College met the Chairman of AICTE and presented the land documents which could not be verified by the earlier Committee. A new Committee was constituted to examine those documents. The land documents indicated that the land had been leased out to the First Petitioner by another Trust;

(vi) Under AICTE Regulations, 2008, approval of AICTE is necessary before shifting or changing the location of a college. The Trust is also required to furnish the NOCs of the State Government and of the affiliating University. Clause 9.22 of the Approval Process Hand Book of 2008 stipulates that the land documents in original for the new site showing the ownership of the Trust either through a registered sale deed/gift deed or an irrevocable government lease for a minimum period of 30 years have to be produced;

(vii) In the present case:

(a) An NOC from the State Government and from the University of Mumbai was not obtained;

(b) The land in question, is not of the ownership of the Trust but has been leased out to it by another Trust. The Regulations of the Council allow a lease only from government for a minimum period of 30 years;

(c) The First Petitioner had shifted the College to a building despite the fact that a completion certificate had not been granted by the Municipal Corporation of Thane; and

(d) The College had been shifted without the mandatory approval of AICTE.

On these grounds, the approval has been cancelled.

10. During the pendency of these proceedings, an ad-interim order was passed by the Division Bench on 29 June 2011 staying the operation of the order passed by AICTE on 7 January 2011 subject to the direction that the Petitioners would be permitted a total intake of 270 students, namely, 45 students for each of the six branches for which approval was originally granted by AICTE.

11. Two Notices of Motion were taken out by the Petitioners. Notice of Motion No. 236 of 2012 is for enhancement of the intake capacity beyond what was allowed by the ad-interim order of the Court. Notice of Motion No. 248 of 2012 has been taken out for an extension of approval for academic year 2012-13.

12. During the course of the hearing, we indicated to Counsel appearing on behalf of the Petitioners and for the Respondents that having regard to the nature of the controversy and particularly having regard to the caution enunciated in several judgments of the Supreme Court against the grant of interim orders in such cases, it is appropriate and proper for this Court to hear and finally dispose of the Petition. Interim orders, as the Supreme Court has held, are liable to seriously affect the interests of education and encroach upon the domain which the law entrusts to expert bodies such as AICTE. The grant of interim orders, particularly mandatory interim orders permitting institutions to admit students, or directing a statutory body to grant approval causes serious hardship and prejudice especially if it is found at the final hearing that the cause is lacking in merit. Hence the Supreme Court has addressed a caution to the High Courts that it would be necessary to set down the proceedings for hearing and final disposal. In **Priya Gupta vs. State of Chhatisgarh**, (2012 (5) SCALE 328) the Supreme Court has held as follows:

“We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in the case of *Medical Council of India v. Rajiv Gandhi University of Health Science* [(2004) 6 SCC 76, para 4] in this regard.

As a matter of fact, when the Petition was originally admitted by an order dated 29 June 2011, it was listed for final hearing on 11 December 2011. The Petition could not be heard on that date due to the exigencies of work. In the circumstances, instead of confining the Court to another round of interlocutory proceedings, we have, by consent, heard learned Counsel for hearing and final disposal of the Petition. All the learned Counsel were placed on notice of the proposed course of action during the hearing and fairly, they have agreed to it and have addressed submissions on the merits of the Petition. By consent, the Petition has been heard

finally.

13. On behalf of the Petitioners, it has been submitted that an application was made on 24 May 2008 to AICTE for a change in location. Contemporaneously, applications were also made to the University of Mumbai and to the Directorate of Technical Education for their NOCs. AICTE, it was submitted, appointed an Expert Committee, to verify the infrastructure and the Committee submitted its Report with reference to the application for change in location. Following this, an extension of approval was granted on 30 June 2008 for an intake capacity of 280 students for 2008-11 and on 20 August 2009 for an increase in the intake capacity to 360 students. On this basis, it was urged, that the Petitioners were entitled to proceed on the basis that the proposal for a change in location has been accepted by the AICTE. Learned Counsel has been fair in drawing the attention of this Court to diverse aspects of the record and relied in particular on the subsequent reports of the inspection Committees. Learned Counsel submitted that the grant of an occupation certificate is being pursued with the Municipal Corporation and the Petitioners are seeking a partial occupancy certificate for that part of the building in which the Engineering College is housed.

14. On the other hand, Learned Counsel appearing on behalf of AICTE urged that the Petitioners shifted to a new location, without the permission of AICTE and without waiting for the NOCs of the State government and the affiliating university. Counsel urged that the provisions for shifting to a new location or site are distinct from those for extension of yearly approvals. Hence, the Petitioners could never have construed the extension of yearly approvals as a permission to shift the location of the college, particularly when they were specifically informed that the extension was in relation to the approved location. Counsel urged that the requirements enunciated by AICTE - which in any case are not under challenge - have been made with a purpose. Clause 9.22 of the Approval Process Handbook 2008 requires a registered sale or gift deed in favour of the institution and only a government lease of 30 years is acceptable. The careers and education of students cannot be left in a state of uncertainty which is why the requirements have been mandated. The Petitioners in this case did not have title to the land. It is urged that even until date, there is no permission in law to occupy the building

inspite of which the Engineering College was shifted. Moreover, as stated by the Counsel for the Municipal corporation, one entire floor is found on inspection to be beyond the sanctioned plans. Counsel urged that the Petitioners have been placed on due notice and AICTE having followed due process of law, the Court should not interfere under Article 226 with a bona fide decision of an expert body.

15. The Regulations which have been framed by the AICTE contain separate provisions for the extension of approval and for the change of site of an existing institution. Para 9.22 of the Hand Book for Approval Process issued by AICTE lays down the procedure for a change of site. Norms concerning lands and buildings with respect to a proposed new site have been set out. The relevant part of Para 9.22 reads as follows:

“9.22 Procedure for Change of Site and Norms Concerning Land and Building on New Site.

Changing of location/Station may be permitted after getting “No Objection Certificate” (NOC - from the concerned State Govt./UT Administration and Affiliating Body, by the Competent Authority in AICTE as per laid down procedure subject to the fulfillment of Norms and Standards of AICTE. No request/representation/Proposal for change of site will be considered after submission of application/proposal for establishment of a new Technical Institution, till the completion of at least two years after a new institution is started with the approval of AICTE. No partial shifting of institution to a different site shall be permitted.

The following procedure shall be followed:

The applicant shall have to submit a Proposal along with the following documents in original in one lot to the concerned Regional Office of AICTE.

- Registration document of the Trust/Society indicating members of Society/Trust and its Objectives.
- **Land document(s) in original for the new site showing ownership in the name of Trust/Society in the form of Registration Sale Deed/Irrevocable Gift**

Deed (Registered)/Irrevocable Government Lease (for a minimum of 30 years) by concerned authority of Government. In case, the land documents are in vernacular language, Notarized English translation of the document must to be produced.

- Land use Certificate/Land Conversion Certificate for the new site allowing the land to be used for educational purpose, from the Competent Authority along with Topo-sketch/Village Map indicating land Survey Nos. and a copy of city map showing location of proposal site of the institution.
- **Site Plan, Building Plan for the new site prepared by a registered Architect and duly approved by the Competent Plan Sanctioning Authority designated by the concerned State.**
- **Proof of completion of the building structure at the new site as per approved Engineering and Architectural Building Plan, in the form of Color photographs giving External and Internal views.**
- An undertaking by the Institution stating that the changes shall not affect the admission procedure and the fee that a student has to pay.”

(emphasis supplied)

Now, it is evident from these requirements that a change of location can be permitted only after a No objection Certificate has been issued by the State Government and by the affiliating body which, in this case, is the University of Mumbai. Land documents have to be submitted in original to the Regional Office of the AICTE. The norms which have been prescribed by AICTE stipulate that the land documents must show that the new site is in the ownership of the Trust/Society. Title to the land maybe in the form of a registered sale deed or a registered and irrevocable gift deed. Alternatively, the norms allow an irrevocable Government lease for a minimum period of 30 years executed by the concerned Authority of the Government. When AICTE grants its initial approval, it does so with reference to an approved location. The rationale is obvious. The infrastructure and amenities are verified with reference to a particular location. When an existing

institution seeks a change in location, AICTE is justified in seeking (i) The no objection of the State government and of the affiliating university; (ii) Proof of the clear title to the land so that disputes in relation to it do not introduce a cloud of uncertainty; (iii) Proof of the due sanctioning of plans and of authority to occupy the buildings from the planning authority; (iv) Availability of infrastructure at the new site; among other requirements. These requirements are framed in the interests of education. Courts should not dilute those standards. It is not the economic interest of the institution but the welfare of the students which is paramount. AICTE is the custodian of that welfare. Judicial review must not dilute the standards laid down by an expert statutory body.

16. In the present case, it is an admitted position that the new site on which the Engineering College is situate is not of the ownership of the First Petitioner. Even according to the Petitioners, the land had been leased out to the First Petitioner by another Trust. There is no challenge to the validity of the norms which have been prescribed. No challenge has been addressed before the Court during the course of submissions. The norms have been prescribed by AICTE in the considered exercise of its discretion as an expert Authority. The Court is informed that there were disputes within the Trust involving the Sixth Respondent who was then the Managing Trustee. The Sixth Respondent was restrained by an interim order passed by the Joint Charity Commissioner from interfering with the affairs of the College. According to the Petitioners, the Seventh Respondent which had originally executed a lease deed in favour of the First Petitioner had mortgaged the land to the Oriental Bank of Commerce. The Bank sold the land under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and accepted an offer for the purchase of the land by a partnership firm. One of the partners of the firm is stated to be the spouse while another partner is stated to be the son of the trustee of the First Petitioner. The partnership firm is stated to have entered into an MOU with the First Petitioner for the transfer of the land and an application has been filed before the Charity Commissioner in July 2012. A settlement was arrived between the First Petitioner and the Sixth and Seventh Respondents. The admitted position as it stands is that the transfer of title in favour of the First Petitioner is not complete. Consequently, a mandatory condition which forms part of the norms enunciated by AICTE in Para

9.22 of the Approval Process Hand Book has not been fulfilled. The location of the college was yet changed without waiting for the approvals of AICTE. An extension of yearly approval cannot be mistaken to be an approval for change in location. The procedures for and requirements of approval for a change in location under Clause 9.22 of the Approval Process Handbook are distinct.

17. But quite apart from the issue of ownership of land, it is an admitted position before the Court, that when the Petitioners shifted the site of the engineering college from the erstwhile location to the present location, no occupation certificate was received from the Thane Municipal Corporation. As a matter of fact, even as of date, no occupancy certificate has been received from the Municipal Corporation. During the course of hearing, the Court has been informed by Counsel for Thane Municipal Corporation that on 26 July 2012 the Municipal Corporation issued a communication addressing several requisitions to the First Petitioner for considering the grant of an occupancy certificate. The First Petitioner has now applied for a partial Occupancy Certificate for Wings "B" and "C". In response, the First Petitioner has through its Architect addressed a communication on 3 August 2012. An inspection was carried out by the Municipal Corporation on 9 August 2012 and the Court is informed by Counsel for the Corporation that during the course of inspection it is revealed that in the "C" Wing, the entire fifth floor consisting of an area approximately of 1000 sq. mtrs. has been constructed without sanction or permission. Following this, the Municipal Corporation has issued a notice under Sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 on 9 August 2012. On 13 August 2012, the Petitioners have submitted a proposal for regularisation. The admitted position before the Court which emerges from the record is that the Petitioners commenced the use of the new premises for the purposes of an engineering college in clear breach of the provisions of law and without an occupancy certificate. Contrary to what was indicated to the Court in the earlier proceedings, the want of an Occupancy Certificate is not only relatable to the internal dispute with the Sixth Respondent. The entire issue with regard to regularisation of the unauthorised construction is pending consideration before the Municipal Corporation. As far back as on 11 August 2010, the Division Bench had issued certain directions in regard to the processing of an occupation certificate. The Petitioners should have pursued the

matter and have themselves to blame for the present situation.

18. On behalf of the Petitioners reliance has been placed on the deficiency report dated 8 June 2012 and the Report of the Expert visiting Committee dated 6 August 2012. Even the Report of the Expert Visiting Committee notices the deficiency in respect of the ownership of the land.

19. The Regulations which have been prescribed by the AICTE are made with a purpose in view. If an institution seeks to be relocated at an alternative site, AICTE has to be satisfied that the interest of the students will not be jeopardised as a result of a dispute with regard to ownership or title. In the present case, as the facts before the Court would reveal, the First Petitioner has until date not been able to secure a valid title to the land on which the engineering college is situate. That apart, unless an occupation certificate is issued, the First Petitioner would not be entitled in law to utilise the building for the purposes of an engineering college. By the interim orders of this Court dated 25 July 2012 and 8 August 2012, an opportunity was granted to the Petitioners to comply with the requisitions of the Municipal Corporation so that the grant of Occupancy Certificate could be considered in accordance with law. In our order dated 8 August 2012, we had observed as follows:

“Obviously, before the Petitioners can assert an entitlement to conduct courses from the buildings constructed for the purpose, it is necessary to obtain an occupation certificate. In the absence of an occupation certificate, the premises cannot lawfully be occupied or used. The Court under Article 226 of the Constitution of India cannot issue a direction which would permit an institution to breach municipal regulations. Learned Counsel for the Petitioners states that the Petitioners would pursue the grant of an occupation certificate by the Municipal Corporation.”

20. In the exercise of the jurisdiction under Article 226 of the Constitution of India it would not be permissible for this Court to direct AICTE to grant its approval for conducting the engineering college at the new location particularly in view of the fact that no Occupation Certificate has been granted; the Petitioners have not established a clear title to or ownership of land and they have not obtained the

NOCs of the State government or of the University of Mumbai.

21. Learned Counsel appearing on behalf of AICTE has stated before the Court that AICTE will take all necessary steps to ensure that the welfare of the students who have been allotted to the Petitioners would be duly taken care of by making alternative allotments to other institutions in consultation with the Directorate of Technical Education of the State government.

22. For these reasons, it would not be appropriate to interfere with the decision which has been taken by the AICTE. The Petition shall stand dismissed. There shall be no order as to costs.

23. In view of the dismissal of the Petition, the Notices of Motion do not survive which shall accordingly stand disposed of.

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