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THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 1636/2006

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Date of Decision: 1st April, 2008

ADITYA COLLEGE OF PHARMACY & SCIENCE
AND ANOTHER

.....APPELLANTS

Through: Mr.Aseem Mehrotra, Advocate

Versus

GOVERNMENT OF DELHI & ANOTHER ...RESPONDENTS

Through:Mr. V.K.Tandon with
Ms.Manpreet Kaur, Advocates for R-1
Mr.Shobhit Mahant, Advocate for R-2
Mr.Ajay Verma, Advocate for DDA

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ?Y

DR. MUKUNDAKAM SHARMA, CJ

1. This appeal is directed against the judgment and order dated 10th May, 2006 passed by the learned Single Judge dismissing the writ petition of the appellants herein.

2. The second appellant is a society imparting higher education in the field of medicine and management. With the

intention of setting up a College of Pharmacy in Delhi, the second appellant established the Aditya College of Pharmacy & Science, the appellant No.1 herein, and in the year 1998 approached the DDA for the allotment of land. It also sought for permission from the respondent No.2-All India Council for Technical Education (AICTE for short) to set up the above Pharmacy College. Though AICTE granted the said permission to the appellants on 18th November, 1998, the same was only on a year to year basis, as certain conditions could not be fulfilled by the appellants. The terms and conditions which are imposed and are required to be complied with both for recommendation and also for granting approval are the minimum standards which a college of pharmacy must adhere to.

3. In April, 1999 the Land Allotment Committee of DDA considered the application filed by the appellant No.2 and took a decision to allot Plot No.2, Pocket-11, Sector-B, Vasant Kunj, New Delhi measuring about 1850 sq.mtrs to the second appellant. On 11th October, 1999, Guru Gobind Singh Indraprastha University, under their letter, granted provisional affiliation to the second appellant for intake of 30 students in the first appellant-college for the B.Pharm degree of the University. The said provisional

affiliation was subject to fulfilment of the conditions enumerated in the said letter. Counsel appearing for the the appellants has also placed before us copy of letter dated 5th July, 2007 conveying the approval of the competent authority for provisional affiliation of appellant No1-college to conduct B.Pharma programme of four years duration with maximum permitted intake capacity of 30 students for the academic session 2007-08, subject to the terms and conditions mentioned therein.

4. Although the Land Allotment Committee of the DDA took a decision to allot land, but the DDA did not make the allotment on the ground that the appellant No.1 did not have the requisite sponsorship. Appellant No. 1 is now imparting education in B.Pharma from a rented premises.

5. Aggrieved, the appellants filed a writ petition in this Court which was registered as WP(C) No.3694/2000. By judgment and order dated 18th December, 2002 the said writ petition was dismissed holding that till the appellants did not obtain necessary sponsorship from the State Government in compliance with Rule 20(e) of the Nazul Land Rules, allotment could not be made. Thereafter the appellants took up the issue of sponsorship with the Department of Training and Education, Government of Delhi.

On 12th January, 2004 an order was passed rejecting the request for sponsorship of the appellant No.1 College. The aforesaid order was challenged in this Court by filing the writ petition out of which the present appeal arises.

6. The learned Single Judge considering all the aspects and also the fact that the appellants filed seven successive writ petitions which were dismissed, dismissed the present writ petition also on the ground that AICTE has not continued with the approval granted to the appellants and that there are serious deficiencies in the institute established by the appellants. Being aggrieved by the said judgment and order, the present appeal is filed on which we have heard the learned counsel appearing for the parties.

7. There is no denial of the fact that the aforesaid writ petition which was dismissed and as against which the present appeal is filed was the eighth writ petition. The issue that was involved in the writ petition was regarding allotment of land to the appellants. The said allotment could be made by the DDA only when such institution has received sponsorship or recommendation by a department of the Government of the National Capital Territory of Delhi or a Ministry of the Central Government.

8. It can be clearly said that when the appellant No.2 sought for allotment of land, such allotment has to be necessarily of nazul land which would be governed by the provisions of Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981. Rule 20(e) envisages the pre-condition of sponsorship or recommendation by a Department of the Delhi Administration or a Ministry of the Central Government for allotment of land under Rule 5. The relevant Rules existing at the relevant time are reproduced below for reference:

“Rule 5: Rules of premium for allotment of Nazul land to certain public institutions:- The Authority may allot Nazul land to schools, colleges, universities, hospitals, other social or charitable institutions, religious, political, semi-political organisations and local bodies for remunerative, semi-remunerative or un-remunerative purposes at the permit and ground rent in force immediately before the coming into force of these rules, or at such rates as the Central Government may determine from time to time.”

“Rule 20: Allotment to certain public institutions:- (1) No allotment of Nazul land to public institutions referred to in rule 5 shall be made unless,

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(e) allotment to such institutions is sponsored or recommended by a Department of the Delhi Administration or a Ministry of the Central Government.”

9. The counsel for the appellants during the course of arguments referred to and relied upon the legal principles laid down by the Supreme Court in the case of ***Jaya Gokul Educational Trust v. Commissioner & Secretary to Govt Higher Education Department, Thiruvananthapuram, Kerala State***, reported in (2000) 5 SCC 23 in order to contend that in the matter of granting approval to new technical institutions and introduction of new courses or programmes, no State Government can have a policy outside the AICTE Act, and that such policy cannot be used as a ground for refusing permission for setting up of a technical institution when the Council set up under AICTE Act as already granted approval. We find that the said decision deals with the legal principles and parameters connected with affiliations and grant of approval for establishment of technical institutions. It also lays down that where fresh facts come to light after approval is granted by the Council, or some institution does not fulfil the conditions imposed

by the Council, the State Government may write to the Council for the latter to take appropriate action. In our considered opinion the aforesaid judgment would not be applicable to the facts of the present case as the question regarding granting approval to a technical institution is not in issue.

10. In the present case admittedly there was only a provisional affiliation granted by the University in view of non-fulfilment of certain conditions, which are required to be complied with by an institute before it can be given due recognition and affiliation. The approval which was granted by the AICTE for establishing the institution was also not permanent and was need based, as the appellants were unable to fulfil various mandatory requirements, which are required to be complied with. It is proved and established from the records that AICTE has dis-continued with the approval granted to the appellants. It is also proved that the appellants did not hold any certificate issued by the AICTE permitting the appellants to conduct a degree or diploma course in pharmacy. The Expert Committee of AICTE found serious deficiencies and non-compliance of the norms and standards of the AICTE in the running of the institute. Consequently, the Council passed an order keeping the institute under 'No Admission (LPA 1636/2006)

Category' during 2000-2001 and the students already admitted were shifted to the Government College of Pharmacy. As the institute still did not remove the deficiencies, based on the report of the Expert Committee, the AICTE decided to withhold fresh admissions to the appellant No.1 institution for the academic session 2002-2003 and the appellant No.1 institution was kept under the 'No Admission Category'. Even thereafter, the same conditions prevailed for the next academic year also i.e. 2003-04 when the AICTE placed the appellant No.1 institution again under the 'No Admission Category' for the said academic session. It was also the case of the AICTE that the appellant society deliberately violated the provisions of AICTE standards and norms and, therefore, was not entitled for any relief until all such deficiencies as pointed out by the AICTE are complied with. One of the conditions that was imposed by the AICTE for not giving approval seems to be that the appellant society failed to shift to its permanent site in spite of giving several opportunities. The stand of the appellants was that the appellant society could shift to a permanent site only if the students were allotted to its college, which condition was not acceptable to the AICTE as there was no such provision in the AICTE Regulations. Since the appellant

institute failed to comply with the norms and standards of the AICTE, the AICTE did not grant extension of approval to the appellants.

11. The State Government also filed the counter affidavit. It was submitted on behalf of the State Government that the Society was granted NOC in the year 1999 for B.Pharma course and the approval of the AICTE and affiliation with Indraprastha University was also granted to run the aforesaid course of B.Pharma. Pursuant to the aforesaid, admissions were also made for the B.Pharma course, with intake of 30 students for the academic sessions 1999-2000. It is the case of the State Government that the Society was allowed to operate from the temporary site for one year with the condition that the institute would shift to its permanent site within a period of one year. The State Government also sought for certain information from the Principal of the appellant No.1-college to process their application for sponsorship of land, but the Society failed to provide the same. It is further the case of the State Government that a number of complaints were received from students and parents regarding poor infrastructure and non-academic performance by the institute. Consequently, the Guru Gobind Singh Indraprastha University constituted a High (LPA 1636/2006)

Power Committee under the Chairmanship of Professor P.N.Shrivastava, Ex-Vice Chancellor, JNU for inspection of the institute. The said Committee visited the institute and submitted a report recommending that the college may not be allowed to run for the academic session 2000-2001 as the institute has failed to remove the deficiencies. Due to the protests of the students and the parents, the students who were admitted were also shifted to the Government College of Pharmacy. It is also stated in the affidavit that a High Power Committee was also constituted by the State Government to consider the application of the appellant-Society, and the said Committee decided not to recommend the case of the Society to the DDA for allotment of land for running B.Pharm course for various reasons as stated in the recommendations, which are extracted in the said affidavit and reproduced below for reference.

“Whereas, while examining the case of sponsorship for allotment of land the following facts came to light:

(i) The society was allowed to provisionally run a B.Pharm course with an intake of 30 students w.e.f. sessions 1999-2000. While granting provisional affiliation GGSIP University vide its letter dated 11.10.1999 had inter alia, laid down the conditions that the Institute will shift to its permanent site within a period of one year. The

society failed to fulfil this condition.

(ii) The Department of Training & Technical Education vide their letter No.196/27/land/97-98/DDTE/2302 dated 7.8.2000 sought certain information from the Principal, Aditya Institute of Technology, to process their application for sponsorship of land. The society did not bother to furnish complete information. Accordingly the sponsorship request of the society for allotment of land from the Govt. of Delhi which is mandatory could not be made.

(iii) A committee under the Chairmanship of Prof.P.N.Shrivastava, Ex.Vice Chancellor JNU, New Delhi visited the institute on 27.4.2000 to monitor and evaluate the academic functioning of the institute. The committee found the faculty including the Principal inadequate, the infrastructure in terms of lab, classrooms, library, equipment of poorest quality and the campus congested. The Institute was advised to remove the deficiencies but when a subsequent visit was made on 27.6.2000 by a committee consisting of Prof S.S.Aggarwal, Principal, College of Pharmacy, New Delhi, Prof.R.Zafar, Head of Department of Pharmacology Hamdard University, Dr.A.A.Siddique, Reader Professor. AIIMS and Shri Dalip Kumar, Deputy Registrar, IP University, the situation of lack of space, lack of faculty, poor condition of labs still persisted and the committee recommended that the College may not be allowed to admit students during the sessions 2000-2001. In the meanwhile the situation turned so ugly with the protest by the students and parents that the admitted batch of students had to be shifted to College of Pharmacy under Govt. of Delhi. Thereafter, no admission was made for the course w.e.f. 2000 as the society was unsuccessful in running the course.

(iv) The situation in other diploma courses being run by the society has been no better. Pharmacy Council of India not satisfied with the running of diploma course in Pharmacy withdrew the recognition affecting the career of large number of students. The intake in the disciplines of Electronics, Computer Engg. Medial Lab, Technology had to be reduced. For academic session 2003-2004 the State level Committee of the Government of Delhi had to stop admission to the Computer Engg. Course on account of deficiency in the matter of faculty, equipment, computer and space norms of AICTE. In fact the society was allowed to run these courses since 1995 under the condition that these courses will be shifted to the permanent site but the society has not bothered to construct a building even though DDA had long back allotted land to the society for this purpose. The present premises are not at all suitable to run the courses."

12. From the aforesaid, it appears that there were a number of complaints and non-compliance of various standards and norms and, therefore, the State Government thought it fit not to make a recommendation in favour of the appellants. Unless the State Government sponsors the case for allotment of land, under the Rule 20(e) prevailing at the relevant time no such allotment could be made by the DDA and, therefore, the DDA cannot also be held responsible for non-allotment of land, particularly for want of sponsorship by the State Government. It is also be be mentioned at this stage that there has been amendment to the aforesaid

Rules and as of now allotment of such land is to be made through auction procedure only. But in this case we are only concerned with the Rules prevailing at the relevant time which are reproduced hereinabove.

13. The decision taken by the State Government for not sponsoring the case of the appellants is a considered and conscious decision, based on cogent reasons, which are extracted herein-before. The said reasons are found also to be convincing in the light of the fact that they are based on the recommendations of the Committee, who after considering all the facts, submitted its recommendations. There is no error apparent on the face of the records. The appellants could not make out a case for interference. We find no merit in this appeal which is dismissed.

CHIEF JUSTICE

(REVA KHETRAPAL)
JUDGE

1st April, 2008
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