

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.3986/2008**

% **Date of Decision: 03.07.2009**

Aditya Institute of Technology Petitioner
Through Mr.Anshum Jain, Advocate for
Mr.Aseem Mehrotra, Advocate for the
petitioner.

Versus

Government of NCT of Delhi and others Respondents
Through Mr.V.K. Tandon, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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Learned counsel appearing on behalf of counsel for the petitioner seeks an adjournment on the ground that the counsel for the petitioner is not available and is out of town.

By order dated 26th May, 2009, it was specifically ordered that no adjournment shall be granted. The persistent prayer for adjournment of the counsel appearing for the counsel for the petitioner is, therefore, declined.

The petitioner is a college run by Shri R.N. Gupta Technical Educational Society, a society registered under the Societies Registration Act, 1860 and registered with Registrar of Societies, Agra. The petitioner is stated to be imparting technical education and is running Diploma Course in Electronics and Communication Engineering; Diploma in Computer Engineering; Diploma In Medical Lab Technology and Diploma in Pharmacy since 1995-1996. The petitioner has contended that it is conducting various courses with prior approval of All India Council for Technical Education.

The petitioner has asserted that by letter dated 30th July, 2007 All India Council for Technical Education had granted extension of approval to the college of the petitioner for making admissions for the sessions 2007-2008. The approval was subject to condition that if the letter is received by the institution after the closing date of the State counseling procedure for admission, the conditional approval would not be valid for making admission during the academic year 2007-2008. The petitioner contended that as the counseling was going to take place on 5th June, 2007, a writ petition was filed seeking a writ of mandamus against respondent No.3 to make admissions to the petitioner college in the light of the extension of the approval letter dated 30th July, 2007 issued by All India Council for Technical Education for academic session 2007-2008. The said writ petition was disposed of on 19th

September, 2007. While disposing of the writ petition, this court had held relying on the precedents of the Supreme Court that wherever time schedules are fixed and procedure indicated, the authorities have to conform to them and even the High Court, although possesses extraordinary powers under Article 226, yet it cannot ignore enacted law and specific provisions and therefore the petition was dismissed.

The petitioner has further asserted that North Western Regional Committee of All India Council for Technical Education carried out the inspection of the college in December 2007 and on the basis of 'experts' committee report', the Regional Committee of All India Council for Technical Education by letter dated 5th March, 2008 granted extension of approval for all the diploma courses being run by the petitioner college for the academic year 2008-2009 with an intake of 40 students for all the courses. The petitioner is said to have written to respondent No.3 to include its name in the information bulletin and for direction to the Chief Admission Officer, CET-2008 to make admissions to the first year in the college.

The grievance of the petitioner is that despite the letter sent by the petitioner to include the name of the petitioner in the information bulletin that was not done in flagrant violation of the rules. Despite the founder of the college seeking reason for not including the name of the

petitioner, no information was disclosed to the petitioner and the communications on behalf of the petitioner remained unanswered.

The act of the respondent was challenged by the petitioner in another writ petition being WPC No.2752 for 2008 which was disposed of by order dated 22nd July, 2008 directing the respondent to include the name of the petitioner college as one of the colleges offering the four courses, namely, Diploma Course in Electronics and Communication Engineering; Diploma in Computer Engineering; Diploma In Medical Lab Technology and Diploma in Pharmacy with maximum intake of 40 students for 2008-2009. The order passed by this court in W.P.C. No.2752/2008 dated 22nd July, 2008 is as under:-

“As per the separate detailed judgment passed today in the Court, I allow this petition and direct respondent No.1 to include the name of the petitioner college as one of the colleges offering the four course namely Diploma in Computer Engineering, Diploma in Electronics and Communication Engineering, Diploma in Medical Lab Technology and Diploma in Pharmacy with maximum intake of 40 students for the academic session 2008-2009. Since the petitioner institute's name was not included as one of the colleges offering the aforesaid four courses earlier, and the students could not undertake online registration in respect of courses offered by the petitioner in the petitioner institute, in the process of counseling to be held from 23.7.2008 onwards, at the time when the students appear for counseling, each of them would be made aware of the availability of the petitioner institute for the aforesaid four courses and would be permitted to opt for the courses offered by the petitioner institute without insisting upon online registration in that regard. The respondent No.1 shall display a notice to this effect prominently at each of the counseling centres and shall also issue a notice to the same effect on its website within

24 hours without waiting for a copy of the detailed judgment. Since the judgment has been dictated in the open Court in the presence of Mr.Tandon who is representing respondent No.1 and the same will take some time for the same to be prepared, I direct respondent No.1 to proceed to implement the judgment without waiting for copy thereof.

Copy of this order be given dasti to the counsel for parties under the signature of the Court Master today itself.”

During the pendency of above noted writ petition which was disposed of on 22nd July, 2008, the present petition was also filed on 22nd May, 2008 seeking a similar writ of mandamus directing the respondent to include the name of the petitioner college, being one of the private polytechnics running in Delhi from 1994-1995 with the approval of All India Council for Technical Education, in their website and other information bulletin being maintained by the respondent.

The petitioner, however, also sought holding of an enquiry by any retired judicial officer against the officials of respondents No.2 and 3 in respect of non-inclusion of the name of the petitioner college.

The petition is contested by the respondents contending inter alia that the name of the petitioner has already been included as one of the colleges where the students can opt for admission in various categories/course. The respondents have relied on the order dated 24th May, 2005 in Writ Petition No.4600 of 2005 after which the petitioner

was put under no admission category and which stage had continued till 22nd July, 2008 whereafter pursuant to order dated 22nd July, 2008, the name of the petitioner college had been put up on the website.

In the facts and circumstances, the relief of the petitioner to include the name of the petitioner college in their website and other information bulletin being maintained by the respondent does not survive as it has already been granted by order dated 22nd July, 2008 which has also been implemented as is contended by the counsel for the respondents.

The second relief prayed for by the petitioner is for an order directing an enquiry to be conducted by any retired Judicial Officer against the officials of Respondents No.2 & 3 in respect of the non-inclusion of the name of the petitioner-college in the information provided to Mr. Tejveer Singh pursuant to his application under the Right to Information Act, 2005 and for taking action against the officials who are responsible for giving incomplete and misleading information regarding the petitioner-college.

If the petitioner feels that the officials of the Respondents No.2 & 3 have provided incorrect information in response to an application filed under the Right to Information Act, 2005, the petitioner can prefer a

complaint against the respondents to the State Information Commission. Section 18(3) of the Right to Information Act, 2005 has conferred on the State Information Commission all the powers of a civil court while dealing with complaints of the above mentioned nature. When such an alternative and equally efficacious remedy is available to the petitioner, he should be required to pursue such a remedy rather than invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution. In *Thansingh Nathumal v. Superintendent of Taxes*, AIR 1964 SC 882 the Supreme Court has observed –

“The jurisdiction of the High Court under Art. 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort so that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Art.226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Art. 226 of the Constitution, the machinery created

under the stature to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.”

Even otherwise, on merits, I am of the opinion that the petitioner has failed to make out a case for ordering an enquiry into the conduct of the officials of respondents No. 2 & 3. The allegation against respondent No.2 is that in their response to the RTI application by Mr. Tejveer Singh they have intentionally given incomplete information in so far as the petitioner-college's name was not given in the list of polytechnics. The query posed to and answered by the Respondent No.2 is as follows –

‘There are how many polytechnics, their names, year of establishment, type of affiliation (temporary or permanent with their present status) and total intake in each polytechnic as on 29.2.2008’.

Perusal of the response dated 8th April, 2008 given by the Respondent No.2 reveals that the respondent No.2 had given the names of 10 approved polytechnics, their year of inception, intake for 2007-08 and their type of affiliation. Admittedly the approval granted by the AICTE to the petitioner for the academic year 2007-08 vide letter dated 30th July, 2007 was held to be not valid for making admissions during the academic year 2007-08 by this court vide order dated 19th September, 2007 in WP(C) No. 6536 of 2007 as the letter was received by the petitioner after the closing date of the State counseling procedure. The subsequent approval of the AICTE, for the academic

year 2008-09, of all the courses being run by the petitioner was granted vide letter dated 5th March, 2008. Therefore, as on 29th February, 2008, i.e the date prescribed by the RTI applicant, the petitioner could have been in the list of AICTE approved polytechnics. Consequently the Respondent No.2 cannot be faulted for not including the name of the petitioner-college in the response given to the RTI application.

As regards Respondent No.3, the petitioner has merely made a bald allegation that the response of the Respondent No.3 to question (b) of the RTI application is incomplete. There is no averment anywhere in the petition as to in what regards the response is incomplete.

Therefore, considering the facts and circumstances the other relief prayed by the petitioner is not sustainable and petitioner is not entitled for any enquiry into the alleged act of the respondents No.2 and 3 for non-inclusion of the name of the petitioner college.

For these reasons the petitioner is not entitled for any relief and the petition is disposed of in terms hereof. Parties are also left to bear their own costs.

July 03, 2009
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