

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

Date of decision: 16th July, 2010.

+ **W.P.(C) No.4407/2010 & CM No.8762/2010 (u/S 151 CPC for interim relief)**

% **ADITYA INSTITUTE OF TECHNOLOGY** Petitioner
Through: Mr. Aseem Mehrotra, Advocate.

Versus

GOVERNMENT OF NCT OF DELHI Respondent
Through: Ms. Zubeda Begum with Ms. Sana Ansari, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner Institute seeks quashing of the Minutes of Meeting dated 28th June, 2010 of the State Level Committee of the Govt. of NCT of Delhi rejecting the proposal of the petitioner Institute for change of course, from Diploma Programme in Pharmacy to Diploma Programme in Information Technology Enabled Service & Management Course (ITESM) from the academic session 2010-2011; the petitioner also seeks mandamus commanding the Govt. of NCT of Delhi to include the name of the petitioner Institute in their website in all counselling centres as an Institution offering

admission in ITESM course with intake capacity of 40 students for the academic session 2010-2011 and also to make admissions in the petitioner Institute for the said course.

2. It is the case of the petitioner Institute that it has been imparting technical education and running diploma courses in (i) Electronics & Communication Engineering (ii) Computer Engineering (iii) Medical Lab Technology (iv) Pharmacy, since 1995-96 with prior approval of All India Council for Technical Education (AICTE). It is further the case of the petitioner Institute that for the academic session 2010-2011 the petitioner Institute submitted application for additional courses in ITESM with intake capacity of 60 students, in lieu of the Diploma in Pharmacy; that it upgraded its infrastructure for running the said course by purchasing instruments, equipments, machineries, computers, peripherals, library etc; that the Govt. of NCT of Delhi constituted an Inspection Committee for carrying out inspection of the petitioner Institute for the academic session 2010-2011; that the said Inspection Committee besides recommending extension of the courses aforesaid in which the petitioner Institute was already imparting education, also recommended ITESM course in place of the existing programme of Pharmacy but with intake capacity of 40 students only; that the State Level Committee however in its meeting held on 23rd June, 2010, while recommending extension of other courses, in respect of ITESM course asked for a detailed report from the Inspection Committee; that the

Inspection Committee in its detailed report *inter alia* stated that the infrastructure and other requirements for running the ITESM course existed in the petitioner Institute; that notwithstanding the said report, the State Level Committee in its meeting dated 28th June, 2010 (Minutes of Meeting whereof are impugned in this writ petition) took a decision that the petitioner Institute shall be allowed to complete the present batch of Pharmacy Programme and the request of the petitioner Institute for ITESM course will be considered only after the Pharmacy course is completed.

3. The petitioner Institute contends that the said decision of the State Level Committee in its meeting dated 28th June, 2010 is without application of mind inasmuch as the Inspection Committee found the infrastructure, necessary for imparting education in the said course existing in the petitioner Institute. It is further contended that though in the earlier meeting a detailed report was sought from the Inspection Committee but in the subsequent meeting, the report of the Inspection Committee was disregarded and permission denied on issues on which no clarification was sought. *Mala fides* are attributed to the State Level Committee.

4. The State Level Committee in its Minutes of Meeting dated 28th June, 2010 impugned in this writ petition has given the following reasons for rejecting the request aforesaid of the petitioner Institute:-

- (i) that the report of the Inspection Committee is not elaborative so as to ascertain that the new programme can be run in the Institute with the present infrastructure.
- (ii) the Inspection Committee had not given the details of the actual area of labs and classroom to accommodate the new programme.
- (iii) the important aspect of availability of faculty to teach the new programme was overlooked by the Inspection Committee.
- (iv) the calculation of circulation area to ascertain adequate availability was not indicated in the report.
- (v) shortage of circulation area was highlighted earlier also and with additional course it could become scarce.
- (vi) by allowing the Pharmacy course to be substituted with the ITESM course, the fate of the existing students in the Pharmacy course would be adversely affected, causing hardship and mental agony to the students.

Hence, it was concluded that the petitioner Institute shall be allowed to complete the present batch of Pharmacy programme and ITESM course will be considered only after the Pharmacy course completed.

5. The Pharmacy course is for a period of two years. Thus the students admitted to the Pharmacy course in the previous academic session 2009-2010 would remain in the College for another year, though the petitioner does not propose to admit fresh students in Pharmacy course in the academic session 2010-2011.

6. The writ petition came up first before this Court on 7th July, 2010. On the contention of the counsel for the petitioner Institute that no opportunity of hearing was given to the petitioner Institute by the State Level Committee before turning down the request of the petitioner Institute, notice of the writ petition was issued.

7. The respondent has filed a counter affidavit. In the counter affidavit, it is at the outset stated that the writ petition is liable to be dismissed for non-joinder of AICTE which is a necessary party. The counter affidavit otherwise seeks to justify the rejection of the request of the petitioner Institute besides on the grounds aforesaid, also on the following grounds:-

(a) that in a writ petition being W.P.(C) No.12724/2009 preferred before this Court with respect to another course in which the petitioner Institute is imparting education, this Court had observed in the order dated 5th May, 2010 that the petitioner Institute is not providing basic infrastructural facilities required for the courses conducted by it.

(b) that the students admitted to the other courses being run by the petitioner Institute had filed W.P.(C) No.4045/2010, seeking transfer from the petitioner Institute to any other Institute averring that the petitioner Institute lacks basic infrastructural facilities, faculties, books, computes, chemicals etc.

(c) availability of land in starting any course/additional course is the basic requirement which the petitioner Institute does not meet.

(d) that the procedure for processing of proposal for new technical institutions is of submission of application to the Directorate of Technical Education of the concerned State Government/Union Territory with a copy to the concerned Regional Office of AICTE; that the Director of Technical Education of the concerned State Government/Union Territory is required to scrutinize the application by appointing a committee of experts including Regional Officer of AICTE as members and Director of Technical Education or his nominee as convener; that the recommendations of the Scrutiny Committee are to be considered by the State Level Committee comprising of Secretary of Higher Education/Technical Education, Regional Officer of AICTE or AICTE representative not below the rank of Deputy Director, two Subject Experts to be nominated by the State Govt./Union Territory and Director of Technical Education of the concerned State Govt./Union Territory; based on the recommendations of the State Level Committee, the Regional Officer of AICTE is to issue a letter of intent valid

for a period of three years during which time the institution is required to complete all requirements; that upon compliance of the prescribed requirements, the letter of approval is to be issued to the applicant to whom the letter of intent had been issued; thereafter the Institute is to be inspected by an Expert Committee and the report of the Expert Committee is to be placed before the State Level Committee and based on the recommendations of the State Level Committee, the Regional Officer of AICTE is to issue the letter of approval. It is thus contended that it is the responsibility of the Department of Training and Technical Education to satisfy itself that the applicant Institute has capability to impart the education in the course in which permission is sought and meets the required parameters therefor.

(e) that the respondent is concerned with the welfare of the students.

(f) that the attitude of the petitioner Institute is “non-cooperative and indifferent” and it has denied inspection a number of times and has not shown improvement in standards.

(g) that the report of the Inspection Committee was duly considered along with previous reports as well as compliance report of the petitioner Institute vis-à-vis. other courses and on consideration of the entire material, the decision impugned in this writ petition was taken.

(h) that the petitioner Institute not having the approval of AICTE for the ITESM course, cannot seek a direction for admissions to the said course.

8. The petitioner Institute has filed a rejoinder to the aforesaid counter affidavit. The counsels have been heard.

9. The counsel for the petitioner Institute during the hearing has also contended that the constitution of the State Level Committee which took the decision on 28th June, 2010 on the request aforesaid of the petitioner Institute was not as prescribed. It is shown from the said Minutes of Meeting that the Regional Officer of the AICTE and one of the Subject Experts were missing. It is urged that the decision is liable to be set aside on this ground alone.

10. It is also contended by the counsel for the petitioner Institute that the respondent cannot justify the decision on grounds other than those taken in the impugned order. Reliance in this regard is placed on ***Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi*** (1978) 1 SCC 405 and ***Krishan Kumar Bangur Vs. Director General of Foreign Trade*** 2006 (88) DRJ 680.

11. The counsel for the petitioner Institute also relies on the judgment dated 22nd July, 2008 of this Court in W.P.(C) No.2752/2008 titled ***Aditya Institute of Technology Vs. Govt. of Delhi*** observing that the requirement of the Institute running on its own land allotted on institutional basis has not

been made strictly applicable and that there is no reason to discriminate against the petitioner when at least six other Institutions not satisfying the said norms are being permitted to run the technical courses year after year and condemning the conduct of the respondent in scuttling the endeavour of the petitioner in admitting the students to other courses.

12. It is further contended that the procedure for recognition elaborated as aforesaid is for an institution seeking recognition from AICTE for the first time and is not applicable to the case in hand. It is urged that the petitioner Institute is already recognized by AICTE and imparting technical education in various courses and only seeking recognition for additional course; the procedure therefor is much simpler. Attention is invited to Chapter 4 titled “Introduction of new courses or Programmes and / or for Variation / Increase in the Intake Capacity of the Existing Courses in Existing AICTE – Approved Technical Institutions (diploma)” of the Booklet titled “Approval Process for Diploma Institutions.

13. The counsel for the respondent has contended that the final approval has to be granted by the AICTE and the respondent merely sends its recommendations to the AICTE and without AICTE having taken a decision on the request of the petitioner Institute, the writ petition is premature. It is stated that the respondent has already sent its recommendation to the AICTE. It is further contended that in the procedure prescribed, the

petitioner or any other applicant has no right of hearing and in any case there was no time for hearing inasmuch as academic session was about to start. Reference is made to the other writ petitions concerning the petitioner Institute and it is contended that since the students of the other courses in the petitioner Institute had expressed dissatisfaction with the petitioner Institute and other irregularities had come to light, the respondent was fully entitled to refuse the request of the petitioner Institute. It is urged that though the requirement for such an Institute is to have an electricity generator, the petitioner had provided only an inverter which is incapable of allowing continuous running of computers; that the built-up area of the petitioner Institute is not as per norms; the petitioner Institute does not have any common room, canteen, offices, servers; that new course in lieu of an old course, students whereof are still in the petitioner Institute could not be permitted.

14. The counsel for the petitioner Institute has rejoined by contending that the petitioner Institute cannot be expected to wait till the decision of the AICTE and the present writ petition is maintainable in any case since the composition of the State Level Committee was not as prescribed.

15. I may notice that there has been a subsequent event also. This Court has in other writ petitions concerning the petitioner Institute, permitted the students in the Pharmacy course of the petitioner Institute to migrate to other

Institutes/Colleges. Thus as of today the reason given, of it being not appropriate to allow the ITESM course in lieu of the Pharmacy course till the present batch of Pharmacy programme has completed its course, has disappeared. The matter therefore in any case requires re-consideration. I also find merit in the contention of the counsel for the petitioner Institute that the constitution of the State Level Committee in the meeting dated 28th June, 2010 in which the impugned decision was taken, was not as prescribed. The procedure prescribed for introduction of new courses or programmes in existing AICTE approved Technical Institutions as the petitioner Institute is, for evaluation of the proposal by a State Level Committee comprising of the persons aforesaid and all of whom were not present in the meeting.

16. I am also of the opinion that it is essential for the State Level Committee to give a hearing if dissatisfied with the proposal submitted before it. The contention of the counsel for the respondent that the State Level Committee is required to make its recommendation only on the basis of the proposal submitted, is not found to be correct. The procedure prescribed provides for the issuance of a letter of approval/rejection by the Regional Officer of AICTE, based on the recommendation of the State Level Committee. Thus, if the State Level Committee finds any lacuna/deficiency in the proposal submitted to it, it cannot condemn the applicant unheard. Considering the nature of parameters, it is quite possible that the documents

may not convey the needful. There may be instances where clarifications may be required. The Regional Officer of AICTE being required to approve/reject the proposal solely on the basis of the recommendations of the State Level Committee, it cannot be said that the opportunity of hearing has to be at that stage and not at the stage of the State Level Committee. Even in the absence of any provision therefor, the same is a necessary ingredient of the principles of natural justice with which the State Level Committee is bound.

17. The Minutes of Meeting dated 28th June, 2010 of the State Level Committee are therefore quashed and the matter remanded to the State Level Committee for decision afresh in the light of the subsequent events.

18. In so far as the relief claimed of grant of recognition, in my opinion, this Court in the exercise of writ jurisdiction cannot on its own grant recommendation to the petitioner Institute and which would tantamount to usurping the functions of the State Level Committee which is a body of experts and whose wisdom and expertise, the Court cannot match.

19. The writ petition is therefore allowed. The State Level Committee is directed to reconsider the proposal of the petitioner Institute after giving an opportunity of hearing to the petitioner. If the academic session for the current year has not commenced, endeavour be made to take a decision as

soon as possible so as to enable the petitioner Institute, if its proposal is to be accepted, to admit the students in the ITESM course for the current academic session.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16th July, 2010

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(checked & released on 12th August, 2010)