

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

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Date of decision: 1st August, 2014

+ LPA 524/2013 & CMs No.11259/2013 (directions), 11263/2013 (additional facts), 11828/2013 (additional facts) & 12834/2013 (Order 1 Rule 10)

IMS ENGINEERING COLLEGE

..... Appellant

Through: Mr. Vijay Hansaria, Sr. Adv. with
Mr. Aseem Mehrotra, Adv.

Versus

**ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ANR**

..... Respondents

Through: Mr. Amitesh Kumar with Ms. Priti
Kumari, Adv. for R-1.
Mr. Anil Mittal with Mr. Anuj Kumar
Ranjan, Adv. for R-2.
Mr. Anshuman Jain, Adv. for the
applicant.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the judgment dated 12th July, 2013 of the learned Single Judge of this Court of dismissal of W.P.(C) No.320/2013 filed by the appellant and directing the respondent Mahamaya Technical University to transfer the students who were admitted by the appellant/writ petitioner in the academic year 2012-13 in the courses for which the appellant writ petitioner

had no approval, to the nearby All India Council for Technical Education (AICTE) approved technical institutions affiliated to the said University. The respondent AICTE was also directed to allow supernumerary seats in the institutions in which the said students were so accommodated.

2. Notice of the appeal was issued and vide interim order dated 6th August, 2013, the transfer of the students as ordered by the learned Single Judge was stayed. We have heard the counsel for the appellant on 14th July, 2014 and the senior counsel for the appellant on 17th July, 2014 as well as the counsel for the respondent AICTE and reserved judgment giving liberty to both the parties to file their written submissions. Written submissions have been filed by the counsel for the appellant.

3. During the hearing, it was informed that the respondent Mahamaya Technical University has now merged in U.P. Technical University. Though the counsel for the appellant had faintly suggested that an opportunity be given to substitute and serve the said U.P. Technical University but finding the same not to have been done till date inspite of sufficient time having elapsed and further finding the appellant to be enjoying the interim stay in this proceeding and yet further being of the view that further delay if any will hurt the students,

who vide the judgment of the learned Single Judge had been ordered to be transferred to the other Institutes and who owing to the interim order in this appeal were continuing in the institute of the appellant if ultimately the appeal were to be dismissed, we proceeded with the hearing.

4. We must also record that though on 14th July, 2014, a counsel claiming to be representing the said students had appeared and had also stated that he was supporting the appeal but upon our enquiring from the said counsel as to how it was in the interest of the students to continue in the Institute of the appellant, if the same does not have approval from the respondent AICTE and as to how the said students hoped to get a degree, the counsel had stated that he will obtain instructions. He failed to appear on 17th July, 2014 though we find that on the basis of the appearance given by him, his name has been recorded in the order dated 17th July, 2014.

5. The appellant filed the writ petition, pleading:

- (i) that it is a self financed private college established in the year 2002;

- (ii) that the appellant while applying for extension of approval for the academic year 2012-13 qua the engineering courses / subjects for which it had already been granted approval by the respondent AICTE in the previous years, also sought approval of the respondent AICTE for increasing the intake of students in B. Tech (Electrical & Electronics Engineering) from 60 to 120 and for commencing new course of B.Tech (Civil Engineering) in two shifts with intake of 60 students in each shift;
- (iii) that the appellant, again in accordance with the prescribed procedure of the respondent AICTE, was to view the status of its application for extension of approval and for approval for increased intake and for new course, on the respondent AICTE's web portal;
- (iv) that the respondent AICTE on 10th May, 2012 uploaded on its web portal the status of the application submitted by the appellant for extension of approval and approval for increased intake and for new course and the approval displayed, besides showing grant of extension, also showed the respondent AICTE to have granted

approval / permission to the appellant for increasing the intake in B.Tech. (Electrical & Electronics Engineering) course from 60 to 120, as well as for starting B. Tech (Civil Engineering) in two shifts of 60 students each;

- (v) the appellant immediately approached the Mahamaya Technical University, Noida to expedite the grant of affiliation for the academic years 2012-13;
- (vi) that prior to 10th May, 2012, on 25th April, 2012, the respondent AICTE had conducted a surprise inspection of the college premises of the appellant; the respondent issued a show cause notice dated 24th May, 2012 to the appellant pointing out certain deficiencies;
- (vii) the appellant gave a detailed reply to the show cause notice and also availed of the opportunity of personal hearing on 11th June, 2012;

- (viii) on 16th July, 2012, the respondent AICTE got conducted another surprise inspection of the college premises of the appellant by the Expert Visiting Committee (EVC);
- (ix) that the EVC reported the appellant to be complying with all the requirements;
- (x) that the Mahamaya Technical University, Noida also inspected the college premises of the appellant on 21st July, 2012 and 29th August, 2012 and *inter alia* granted permission to the appellant for increasing the intake of students in B.Tech. (Electrical & Electronics Engineering) from 60 to 120 and for starting B.Tech. (Civil Engineering) with intake of 60 student in each shift, for which appellant had been granted approval by the respondent AICTE;
- (xi) that on 21st October, 2012, the appellant was telephonically asked to come to the office of the respondent on 22nd October, 2012 with a list of faculty members; however the officials of the appellant on reaching the office of the respondent AICTE were asked to appear before a Hearing Committee and submitted the list of faculty

members; however on 29th October, 2012 a protest was lodged as to the manner in which the appellant was called to appear on 22nd October, 2012, without prior notice;

- (xii) the appellant on 7th November, 2012 received communication asking the appellant to appear before the Standing Complaint Committee (SCC) / Standing Appellate Committee (SAC) of the respondent AICTE on 8th November, 2013 again with the list of faculty members; the appellant again submitted documents;
- (xiii) that the appellant on 5th December, 2012 also made a representation to the respondent AICTE;
- (xiv) on 12th December, 2012, the appellant received a communication to attend the hearing before the SAC of the respondent AICTE on 17th December, 2012 with supporting documents; the appellant again appeared and submitted all the documents;
- (xv) that Mahamaya Technical University also on 17th December, 2012 issued affiliation letter to the appellant with respect to the academic session 2012-13 including for the new course of B.Tech.

(Civil Engineering) & increased intake in B.Tech. (Electrical & Electronics Engineering);

(xvi) that the respondent AICTE vide letter dated 4th January, 2013 to the appellant informed the appellant that the respondent AICTE had not acceded to the request of the appellant for introduction of the new course in B.Tech. (Civil Engineering) and increased intake in B. Tech. (Electrical & Electronics Engineering) as aforesaid.

6. The writ petition was entertained and a response thereto was filed by the respondent AICTE. During the hearing before the learned Single Judge on 13th January, 2013 an agreement was reached between the appellant / writ petitioner and the respondent AICTE that the appellant / writ petitioner shall appear before the Committee constituted by the respondent AICTE on 7th February, 2013 along with the documents, comprising of list of faculty (discipline wise / course wise), original selection proceedings, approval receipts from the University, Form 16A and attendance register and salary slips for the last six months and the hearing of the writ petition was adjourned. The appellant so appeared before the Court directed Committee and the said Committee

submitted its report to the Court. It appears that the Vice Chairman and Director of the appellant had also misbehaved before the said Committee and for which conduct they appeared in person before the learned Single Judge on 15th February, 2013 and apologized and which apology was accepted. In the meanwhile, Mahamaya Technical University addressed a letter dated 7th February, 2013 to the respondent AICTE stating that the list of faculty members / Director / Principal as submitted by the appellant to the University had not been approved by the University. The said letter was brought to the notice of the learned Single Judge on 21st February, 2013 and which resulted in the said Mahamaya Technical University which till then was not a party to the writ petition being impleaded as a party thereto. The appellant / writ petitioner during the hearing before the learned Single Judge on 30th April, 2013 again sought an opportunity of hearing before the AICTE to satisfy the respondent AICTE that it complied with all the requirements. However, the said suggestion was not acceptable to the respondent AICTE. The Mahamaya Technical University also filed an affidavit before the learned Single Judge.

7. The learned Single Judge has vide impugned order dismissed the writ petition, finding / observing / holding:

- (a) that the Court directed Committee comprising of Justice P.C. Jain (Retd.), Professor B.B. Ahuja, Deputy Director, College of Engineering, Pune and Professor K. Thirumaran, NIT, Trichi had reported:
- (i) that the appellant claimed that 17 faculty members to be on study leave but was unable to show any documents in that regard including of payment of salary to them;
 - (ii) that the Director of the appellant institute / college was not qualified as per Regulations; he was required to be a Graduate in Engineering / Technology with post graduate qualification also in Engineering/Technology and PhD in Engineering / Technology but was not even a Engineering / Technology graduate;
 - (iii) that the appellant college had been unable to show that it had any recruitment process for selection of faculty;
 - (iv) that the appellant had admitted that no individual approval letters as required had been given by Mahamaya Technical

University with respect to appointment of faculty members though each faculty member had been given an ID by the said University;

- (v) however the University on enquiries had informed that none of the teachers in the appellant including the Director had been approved by the said University;
- (vi) that though the appellant ought to have had 228 faculty members but had only 215; out of the said 215 also, 39 had been appointed after the commencement of the academic session 2012-13 and out of which 38 were appointed only in January, 2013 i.e. five months after the commencement of the academic session; thus prior to January, 2013, as against the requisite 228 faculty members, there were only 180 faculty members;
- (vii) that for B.Tech. (Civil Engineering) first and second shift, there were no faculty members available as against the requirement of four faculty members for each shift;

- (viii) that though as per the Rules / Regulations, the Selection Committee for recruitment of faculty members was required to have a nominee of the University but the University had informed that the appellant had never approached it for nominating anyone on the Selection Committee;
- (ix) that the University had also informed that it does not allot any ID number to any faculty members of any affiliated college and only for the purpose of examination, a teacher code and a password which is not ID number is issued;
- (b) that there is no reason to reject the report aforesaid of the Court directed Committee; though the appellant had filed certain objections thereto but there was no substance in the said objections;
- (c) that the conduct of the appellant before the Committee was also totally unacceptable;

- (d) as against the requirement of 228 faculty members, only 76 faculty members were found present in the campus of the appellant College;
- (e) it was therefore evident that the overall faculty strength of the appellant college was much less than the required strength and respondent AICTE cannot be expected to grant approval for start of a new course; the same also constitute justification for withdrawing the 'System Generated Approval';
- (f) that though the appellant sought to explain the shortage in faculty members by saying that the course in all subjects / streams of B.Tech. in the first year is common but the same could not be accepted in the face of the Regulations of AICTE;
- (g) that the students which were admitted by the appellant for the academic year 2012-13 on the strength of System Generated Approval were thus required to be transferred / accommodated in the neighbouring AICTE approved colleges.

8. The counsel for the appellant during the hearing on 14th July, 2014 argued that the 120 students admitted by the appellant to the B.Tech (Civil Engineering) and the additional 60 students admitted by the appellant to the B. Tech. (Electrical & Electronics Engineering) courses in the year 2012-13, and who vide the impugned order had been ordered to be transferred to other colleges and of which order in this appeal interim stay has been granted, have already completed two out of the four years course and are now in their third year. Attention was drawn to the download taken on 17th May, 2012 from the website of the respondent AICTE of the letter dated 10th May, 2012 of the respondent AICTE to the Principal Secretary, Technical Education, Government of Uttar Pradesh according approval to the appellant to admit 120 students in B.Tech. (Electrical & Electronics Engineering) as against the intake of 60 sanctioned for the said course in the previous academic year 2011-12 and to admit 120 students in B.Tech. (Civil Engineering) in two shifts with intake strength of 60 in each and in which course no students were admitted in the previous academic year 2011-12. It was argued that the respondent AICTE, after having so granted approval on 10th May, 2012, and in pursuance where to 180 students i.e. 120 in B.Tech (Civil Engineering) (two shifts) and additional

60 students in B. Tech (Electrical & Electronics Engineering) were admitted, could not have on 4th January, 2013 withdrawn the said approval.

9. We had on 14th July, 2014 enquired from the counsel for the appellant the status of the academic year 2013-14 with respect to the said two courses. We were informed that the appellant, in the academic year 2013-14, did not apply only for extension of approval dated 10th May, 2012 (though withdrawn on 4th January, 2013) for admission of any students in B.Tech. (Civil Engineering) or for admission of additional 60 students in B. Tech (Electrical & Electronics Engineering) and resultantly no students in B.Tech. (Civil Engineering) were admitted in the academic session 2013-14 and in B. Tech (Electrical & Electronics Engineering) only 60 students were admitted.

10. We also enquired from the counsel for the appellant the position with respect to the academic year 2014-15. We were told that the appellant has been granted approval for admission of only 60 students in B. Tech. (Civil Engineering) and the position of B. Tech. (Electrical & Electronics Engineering) remains the same i.e. the approval is for admission of 60 students only.

11. We had as such enquired from the counsel for the appellant that when the appellant in the academic year 2013-14, subsequent to the academic session 2012-13 qua which these proceedings are concerned, did not even apply for admitting any students in B.Tech. (Civil Engineering) or for additional strength of 60 in B.Tech. (Electrical & Electronics Engineering), was it not indicative of the appellant in the academic session 2012-13 also being not eligible for commencing the new course in B. Tech. (Civil Engineering) and for additional strength of 60 students in B. Tech. (Electrical & Electronics Engineering). We further enquired from the counsel for the appellant on 14th July, 2014 that whether not the fact that the appellant even in the current academic year 2014-15 has approval for only 60 students instead of 120 students in B.Tech (Civil Engineering) and 60 students in B.Tech (Electrical & Electronics) instead of 120, also *re ipsa loquitor* is indicative of the appellant even in the year 2012-13 being not eligible for the approvals in dispute inasmuch as if the appellant was so eligible, the said eligibility would have continued in the subsequent academic sessions 2013-14 and 2014-15. It is not the case of the appellant that though the appellant was eligible in 2012-13 for the new courses in B. Tech (Civil Engineering) and for increased strength in B. Tech (Electrical & Electronics Engineering) but made itself ineligible therefor in the subsequent

academic years 2013-14 and 2014-15. Faced therewith, the counsel for the appellant had sought adjournment.

12. During the hearing on 17th July, 2014, the senior counsel for the appellant purported to respond to the aforesaid query by contending that the appellant could not have applied for approval in the year 2013-14 for B.Tech (Civil Engineering) or for increased in strength in B. Tech (Electrical & Electronics Engineering) owing to the pendency of the writ petition.

13. We are unable to agree. The Regulations of the AICTE require approval for each academic year. The appellant admittedly applied for approval qua other courses. The appellant if deemed itself equipped and eligible in the academic year 2013-14 for admitting students in B.Tech (Civil Engineering) or for admitting additional strength of students in B.Tech. (Electrical & Electronics Engineering) could have very well so applied or sought a direction from this Court for consideration of its application for the academic year 2013-14. Similarly, the fact that the appellant in the academic session 2014-15 applied for admission of only 60 students instead of 120 in B. Tech (Civil Engineering) and 60 instead of 120 students in B.Tech (Electrical & Electronics Engineering) is unequivocal admission of the appellant of being not equipped /

eligible for admitting 120 students in B.Tech (Civil Engineering) and additional 60 students in B.Tech (Electronic & Electricals Engineering) for the academic year 2012-13.

14. Though the senior counsel for the appellant also sought to poke holes in the proceedings conducted by the respondent AICTE, resulting in the letter dated 4th January, 2013 which was impugned in the writ petition but we do not deem it expedient to deal with the said arguments inasmuch as inspite of the learned Single Judge, during the pendency of the writ petition having given yet another opportunity to the appellant to prove its eligibility before a Committee comprising of a retired High Court judge and two Professors, was unable to do so.

15. The counsel for the respondent AICTE has drawn our attention to the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012. With reference to Regulations 4.1, 4.9, 4.11, 4.27, 4.28 and 4.31, it is argued that the process of according approval for extension of approval and / or for increase in intake in existing course and / or for adding course is without manual / human intervention and web portal based; if the institution fills all the columns of the prescribed form, approval is

automatically given though is not visible till the Expert Committee has accorded approval; that the grant of approval is on the basis of self disclosure and without any scrutiny and the institutions are expected to provide true and complete information and documents; however if the information given and / or the documents provided are found to be false or incomplete, the Regulations provide for withdrawal of approval and other actions.

16. It is further argued by the counsel for the respondent AICTE that though on the basis of disclosure by the appellant, the respondent AICTE on 10th May, 2012 displayed approval having been granted to the appellant for the fresh additional course in B. Tech (Civil Engineering) and for increased intake in B. Tech (Electrical and Electronics Engineering) but on scrutiny of documents, the appellant was not found eligible to commence the fresh course in B.Tech (Civil Engineering) and to additional intake in B. Tech (Electrical & Electronics Engineering) and thus correction was made on the website of the respondent AICTE in the evening of 17th May, 2012 itself and as per which correction, the appellant was not accorded approval for commencing the fresh course in B. Tech (Civil Engineering) and for additional strength of 60 students in B. Tech (Electrical & Electronics Engineering). This is so stated in the additional

affidavit dated 26.02.2013 of the respondent AICTE filed before the learned Single Judge.

17. We then enquired as to when the appellant admitted 120 students in B. Tech (Civil Engineering) and for additional strength of 60 students in B. Tech (Electrical & Electronics Engineering).

18. We were informed it was in July-August, 2012.

19. We then enquired as to why the appellant so admitted the students when the respondent AICTE had in the evening of 17th May, 2012 itself withdrawn the approval. Though the counsel for the appellant faintly sought to controvert the above but on enquiry whether the appellant had filed or was in possession of any download from the website of the respondent AICTE after 17th May, 2012 to show that thereafter also the appellant was shown as having approval for admitting 120 students in B. Tech (Civil Engineering) and additional 60 students in B. Tech (Electrical & Electronics Engineering), the counsel for the appellant stated that he had none. We may notice that the appellant has filed a printout of the download done on 22nd October, 2012 and as per which the said approval does not exist. The appellant has also filed a reply dated 11th March, 2013 to the additional affidavit aforesaid of the respondent AICTE and a

perusal thereof also shows the appellant to have not controverted the removal on evening of 17th May, 2012 of approval dated 10th May, 2012 from the website of the respondent AICTE. All that is pleaded is that notice of such removal of approval was not given, neither to appellant nor to the University nor to the State Govt. to whom the approval dated 10th May, 2012 had earlier been communicated. The appellant has also admitted learnt of withdrawal of approval on 6th August, 2012.

20. What thus emerges is that the appellant, lacking advantage of the approval accorded by the respondent AICTE on 10th May, 2012 but which was withdrawn in the evening of 17th May, 2012 and of which withdrawal the appellant, if not earlier, at least on 6th August, 2012 was made aware, went ahead with the admission of students and for which admission the appellant, on the date of admission had no approval of the respondent AICTE. The communicated dated 6th January, 2013 of the respondent AICTE impugning which the writ petition was filed, was merely a rejection by the respondent AICTE of the representation of the appellant against withdrawal/non-grant of the approval sought for additional students in B.Tech (Electrical & Electronics Engineering) and additional course in B.Tech (Civil Engineering).

21. The Mahamaya Technical University also filed an affidavit in May, 2013 before the Single Judge to the effect that the appellant, as required to as an affiliate college/institution of the University, had not involved the University in the appointment of a single faculty member. The same also raises doubts as to the genuineness/merit even of the faculty members which exist in the appellant college.

22. In the aforesaid scenario when the bodies entrusted with regulating/controlling education have found deficiencies in the appellant college, we find no reason to interfere. There is another aspect. The challenge by the appellant to the decision of the respondent AICTE communicated vide letter dated 6th January, 2013 of rejection of representation of appellant against withdrawal/non-grant of approval for additional students in existing course and for additional course, in our view ended upon the appellant as well as respondent AICTE agreeing before the learned Single Judge for consideration of the matter by the Court directed Committee. The report of the Court directed Committee also is against the appellant. The appellant is deemed to have agreed to be bound by the said report and cannot, after the said report is against it, revive the challenge.

23. From the aforesaid, it will be clear that the appellant is not entitled to any relief.

24. The appeal is accordingly dismissed.

25. The Mahamaya Technical University having now merged with the Punjab Technical University, the said Punjab Technical University will be bound by the directions issued by the learned Single Judge and the respondent AICTE and the Punjab Technical University to immediately take steps for so transferring the students.

26. We also impose costs of Rs.50,000/- on the appellant for misrepresenting the facts and for abuse of the process of this Court.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

AUGUST 01, 2014

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