

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

Date of decision: 7th November, 2014.

+ **LPA No.665/2014 & CM No.16288/2014 (for stay)**

**GURU PREMSUKH MEMORIAL COLLEGE
OF ENGINEERING & ANR.**

..... Appellants

Through: Mr. Jatan Singh, Mr. Soayib Qureshi
& Mr. Mudit Gupta, Advs.

Versus

**ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION & ORS.**

..... Respondents

Through: Mr. Amitesh Kumar & Ms. Mamta
Tiwari, Advs. for R-1.
Mr. Mukul Talwar with Mr.
Sradhananda Mohapatra & Mr. Vipin
Singh, Advs. for GGSIPU.
Ms. Bandana Shukla for Ms. Ruchi
Sindhwani, Adv. for R-3.

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 15th September, 2014 of the learned Single Judge of dismissal of W.P.(C) No.4007/2014 preferred by the appellants.

2. This appeal came up before this Court first on 29th September, 2014, when the counsels for the respondents having appeared on advance notice,

we, with consent, heard the appeal finally and reserved judgment.

3. The writ petition from which this appeal arises was filed impugning the order dated 24th June, 2014 of the respondent No.1 All India Council for Technical Education (AICTE) placing the appellant No.1 Guru Premsukh Memorial College of Engineering, established by the appellant No.2 Bhagwan Mahavir Education Society (Registered), under “withdrawal of approval status” for the academic year 2014-2015 and seeking a direction to the respondent No.1 AICTE to grant approval to the appellants for extension of affiliation for the academic year 2014-2015 for engineering courses, pleading:

- (i) that the appellant No.1 College was granted affiliation by the respondent No.2 Guru Gobind Singh Indraprastha University (GGSIPU) from academic session 2000-2001 and had been functioning since then i.e. for the past 13 years;
- (ii) that the appellant No.1 College from its inception has been functioning from a temporary site and though had taken all reasonable steps to shift to a permanent location but for the reasons not attributable to the appellants, has not been able to do so;
- (iii) that in the National Capital Territory (NCT) of Delhi,

institutional land was under the control of Delhi Development Authority (DDA) and to establish an institution, land was required to be procured from the DDA;

(iv) that the appellants on 13th March, 2000 applied to the DDA for five acres of land for construction of a college building as per the respondent No.1 AICTE's norms;

(v) that the application aforesaid of the appellants was sponsored / recommended by the Govt. of NCT of Delhi (GNCTD) (respondent No.3);

(vi) that in the meeting of Institutional Allotment Committee of the DDA held on 13th February, 2003, allotment of three acres of land in PSP Area No.2 in between Sectors 21 & 23, Rohini, Delhi to the appellants was approved;

(vii) that however due to change of Union Government, all allotments made during the period of previous government came to be scrutinized and a committee was constituted for the said purpose;

(viii) that on the basis of the report of the said committee, the allotment approved in favour of the appellants was cancelled;

(ix) that due to the aforesaid cancellation, the respondent No.1

AICTE started threatening the appellants with the withdrawal of affiliation;

(x) that the appellants filed W.P.(C) No.2459/2005 seeking a direction to the DDA to give effect to the recommendation dated 13th February, 2003, of allotment of land aforesaid to the appellants and also seeking a direction to the respondent No.1 AICTE to not withhold the approval to the appellants for running the Engineering Degree College for the academic session 2005-2006; vide interim order dated 5th February, 2005 in the said writ petition, DDA was restrained from disposing of the plot earlier allotted to the appellants and it was also observed that the respondent No.1 AICTE could not unreasonably withhold the approval on appellants' application for Engineering Courses for the academic year 2005-2006, only on the ground that the appellants did not possess the permanent site;

(xi) that due to the pendency of the aforesaid writ petition, the appellants were not able to procure the permanent site and were on the contrary threatened by the respondent No.1 AICTE before the start of each academic session with cancellation of approval, compelling the appellants to approach the Court for grant of approval before the start

of every academic year and the interim order dated 5th February, 2005 was continued for the academic years 2006-2007, 2007-2008, 2009-2010 and 2010-2011;

(xii) that W.P.(C) No.2459/2005 was vide order dated 25th March, 2011 disposed of owing to the respondent No.1 AICTE vide its order dated 18th February, 2011 having extended the approval in favour of the appellants for academic years 2011-2012 as well as 2012-2013; it may be mentioned that the respondent No.3 GNCTD also issued Policy Circular dated 6th May, 2011 to the effect that the institutions being run on rented premises be allowed to run for two academic years i.e. 2011-2012 and 2012-2013;

(xiii) that the appellants acquired 16.7 acres of land at Moorthal, Sonapat, Haryana and constructed the required building and infrastructure thereon and applied to the respondent No.2 University for grant of affiliation at the said address; however the respondent No.2 University did not agree, taking a stand that its affiliation could not extend beyond the borders of NCT of Delhi;

(xiv) that the appellants filed W.P.(C) No.1566/2012 challenging the said decision of the respondent No.2 but which could not succeed;

- (xv) that the appellants thus, in or about the year 2014 disposed of the Moorthal campus;
- (xvi) that the appellants are still in search of suitable land for the purpose of running the appellant No.1 College;
- (xvii) that the respondent No.1 AICTE in the year 2012, without any basis, on its website showed the status of the appellant No.1 College as “CBI”; the appellants immediately protested but without avail;
- (xviii) that the respondent No.1 AICTE issued a show cause notice dated 14th June, 2013 to the appellants and to which a reply dated 27th June, 2013 was given; the respondent No.1 AICTE vide letter dated 11th July, 2013 called the appellants for a hearing;
- (xix) that the respondent No.1 AICTE thereafter vide letter dated 16th / 22nd July, 2013 informed the appellants of its decision to conduct inspection by Expert Visiting Committee (EVC) to ascertain the infrastructural requirement as per norms;
- (xx) that the respondent No.1 AICTE thereafter served the appellants with another notice dated 24th September, 2013, asking the appellants to show cause as to why they should not be proceeded against for failure to disclose factual information and / or for having suppressed /

misrepresented information and be held to be in violation of terms and conditions contained in the letter of approval;

(xxi) that a reply dated 4th October, 2013 was given to the aforesaid show cause notice and a hearing was held on 21st October, 2013;

(xxii) that the respondent No.1 AICTE vide letter dated 30th October, 2013 informed the appellants of its decision to place the appellant No.1 College under “No Extension of Approval 2013-2014” Status, even though the respondent No.1 AICTE had vide its earlier letter dated 13th April, 2013 extended the approval for affiliation for the academic year 2013-2014;

(xxiii) that no further action was taken by the respondent No.1 AICTE and the students already admitted by the appellants for the academic year 2013-2014 continued with the course;

(xxiv) that the appellants on 15th May, 2014 applied for approval for the academic year 2014-2015 and were intimated of the inspection proposed of their premises on 23rd May, 2014;

(xxv) that on 23rd May, 2014, the appellant No.1 College was closed due to vacation;

(xxvi) that the respondent No.1 AICTE vide letter dated 2nd June,

2014 called the appellants for hearing before the Standing Appellate / Complaint Committee on 5th June, 2014; and,

(xxviii) that the appellants attended the hearing of 5th June, 2014 but the same was held with a pre-determined mind and the reply tendered by the appellants was also not taken / considered and without any hearing, the impugned order dated 24th June, 2014 (*supra*) was passed.

4. The petition was entertained and a counter affidavit filed by the respondent No.1 AICTE and whereafter the appellants as well as respondent no.2 University filed an additional affidavit. The learned Single Judge, vide the impugned judgment dated 15th September, 2014, dismissed the writ petition, finding / observing / holding:

(a) that W.P.(C) No.2459/2005 (*supra*) filed by the appellants had been dismissed vide a detailed judgment dated 25th March, 2011; however extension of approval for two academic years i.e. 2011-2012 and 2012-2013 was granted to the appellants;

(b) that in the meanwhile, on 29th January, 2010, Central Bureau of Investigation (CBI) vide its letter informed the Chief Vigilance Officer, AICTE that from 1999, the appellants had been continuing to operate from temporary accommodation despite significant shortage of

area and marginal shortage in built-up area and paucity of students cadre ratio, computer, internet etc.; that in pursuance thereto, the respondent No.1 AICTE issued the show cause notice dated 14th June, 2014 to the appellants and to which the reply dated 27th June, 2014 (supra) had been given by the appellants and after hearing the representatives of the appellants, the Standing Complaint Committee of the respondent No.1 AICTE had furnished its report dated 12th July, 2013 recommending that the appellants be directed to shift to a permanent campus and an EVC be sent to ascertain the infrastructural requirement;

(c) that after the report dated 29th July, 2013 of the EVC, the show cause notice dated 24th September, 2013 (supra) had been issued to the appellants and to which reply dated 4th October, 2013 had been given; a detailed hearing was given to the appellants before the order dated 30th October, 2013 (supra);

(d) that the said order dated 30th October, 2013 of the respondent No.1 AICTE was not challenged by the appellants and had attained finality;

(e) that inspite of the aforesaid, the appellants filed application for

extension of approval for the academic year 2014-2015;

(f) that the said application of the appellants was accordingly considered as per the procedure prescribed for the “restoration against punitive action”;

(g) that the EVC by its inspection on 23rd May, 2014 also had reported, (I) that the building from which the appellant No.1 College was functioning, appeared to have been constructed for a hotel; therefore the room sizes are not as per norms; (II) that the infrastructure and neatness needs to be improved; (III) that the faculty-cadre ratio is to be maintained and more Doctorates in Domain areas are required; and, (IV) that the college to be shifted to own building;

(h) that in accordance with the aforesaid report another show cause notice dated 2nd June, 2014 (supra) was issued and to which reply was given and hearing held on 5th June, 2014 as per record of which the appellants did not produce any explanation for the deficiencies and accordingly the impugned order dated 24th June, 2014 (supra) was passed;

(i) that this Court in exercise of the power of judicial review was not to examine the correctness of the decision dated 24th June, 2014

but only the decision making process;

(j) that the argument of the appellants that the decision dated 24th June, 2014 had been taken without affording any hearing to the appellants is contrary to facts; the said decision was taken after following a very elaborate procedure;

(k) that the Standing Appellate / Complaint Committee of the respondent no.1 AICTE which had given hearing to the appellants comprises a retired High Court Judge, a Principal and a Professor and does not include any serving officer or employee of AICTE; no allegation of bias or malice has been levelled against any member of the Standing Appellate / Complaint Committee; consequently the contention of the appellants that their reply or documents were not taken on record could not be accepted;

(l) the contention of the appellants that they were unaware of the CBI report prior to the issuance of the decision dated 24th June, 2014 was also incorrect; the said CBI report was extensively referred to in Show Cause Notices dated 14th June, 2013, 24th September, 2013 and in AICTE's order dated 30th October, 2013.

(m) in any case, CBI's report dated 29th January, 2010 was only a

starting point of inquiry and the decision dated 24th June, 2014 was based on deficiencies pointed out by the AICTE's EVC's report dated 23rd May, 2014;

(n) that the principles of natural justice have been complied before taking the decision dated 24th June, 2014;

(o) the contention of the appellants that the report of the EVC dated 23rd May, 2014 points out only minor deficiencies, also cannot be accepted in as much as EVC had reported deficiencies like shortfall in building area and qualified faculty as well as cadre ratio, boys' common room, girls' common room, cafeteria, classrooms, tutorial rooms, computer centre, libraries, seminar halls etc. The said deficiencies are major in nature.

(p) reliance by the appellants on respondent no.2 University's Inspection Report dated 16th June, 2014 was misplaced as the respondent no.1 AICTE had taken the decision dated 24th June, 2014 in accordance with the procedure prescribed in its regulations and which procedure did not provide for inspection by the affiliating University;

(q) the respondent no.2 University also in its affidavit had admitted

that its inspection was purely an annual exercise to evaluate academic standards and teaching methods and not for evaluating the infrastructure and other physical parameters; thus the respondent no.2 University's inspection report cannot be taken into account;

(r) the contention of the appellants, of Amity School of Engineering and Technology also inspite of similar deficiencies having been granted approval was also of no avail as Amity College was granted permission on self assessment basis while the appellants' application for approval was rejected after EVC inspected the appellants' premises in accordance with procedure prescribed under Clause 11 of Chapter IV of AICTE Approval Process Handbook; there could also be no negative equality; and,

(s) that the appellants' institute thus suffers from deficiencies which had not been cured.

5. We have perused the records and considered the rival contentions. Besides the reasoning given by the learned Single Judge, what immediately struck us about the matter was that the appellant no.1 College since the year 2000 and till the year 2013-14 has been functioning from a premises from which it was temporarily allowed to commence functioning in the year 2000

on the condition that it will make arrangements for a permanent location as per the prescribed norms within two years therefrom.

6. Though the said time of two years expired in the year 2002 but it appears that the appellants, on the basis of their plea that the allotment of land for permanent site applied for to the DDA was under process, were allowed till the year 2005 to so function from the said temporary site. However the respondent no.1 AICTE in the year 2005 refused to allow the appellants any further from functioning from the temporary site and withdrew the approval and which led to W.P.(C) No.2459/2005. The appellants thereafter continued to function from the said temporary site under the interim orders aforesaid in W.P.(C) No.2459/2005. The said writ petition also however stands dismissed on 25th March, 2011 and which order has attained finality. Though the interim orders in the writ petition came to an end on dismissal of the writ petition but the appellants continued to function till the end of the Academic Year 2013-14 owing to the policy decision taken by the respondent no.3 GNCTD to allow such institutions to function from temporary site till 31st December, 2014. The appellants now, by filing this appeal, want this Court to perpetuate the functioning of the appellant no.1 College from the premises from which the appellant no.1

College was allowed to function temporarily and which premises does not fulfil the norms prescribed and from which the appellants, under the interim orders of the Court in W.P.(C) No.2459/2005, continued to function till the end of the Academic Year 2013-14.

7. The appellants thereby want to make the accommodation, which was 'temporary', 'permanent'. We thus straightaway enquired from the counsel for the appellants as to how the same can be permitted.

8. The counsel for the appellants first took a strange argument that the appellants having been so allowed to function for the last 13 years, should be continued to be allowed to function. The said argument has to be recorded, only to be rejected. The appellants forget that the respondent no.1 AICTE had pulled the strings on the appellants as far back as in the year 2005. The continued functioning of the appellants thereafter was under the interim order in W.P.(C) No.2459/2005 and which stands dismissed and the order of dismissal whereof the appellants have not even placed before the Court.

9. We have further enquired from the counsel for the appellants whether these proceedings do not amount to re-litigation. Though the appellants have not placed copy of W.P.(C) No.2459/2005 also before us but from the

narrative it can safely be assumed that the claim of the appellants in the said earlier writ petition which stands dismissed was the same as in this proceeding. Once the order of dismissal in the earlier proceeding has attained finality, the appellants cannot be permitted to re-agitate the same issues contending that the approval sought is for a subsequent academic year. The decision in a proceeding for a previous academic year for the reason of the appellants being not entitled to continue functioning from a site / accommodation from which they were temporarily so allowed would be binding for the subsequent academic years also till the appellants shift to a proper premises. We may further notice that though at the time of filing of W.P.(C) No.2459/2005, the cancellation by the DDA of allotment of land earlier approved in favour of the appellants was also in issue and perhaps for which reason interim orders were granted in favour of the appellants, the said issue has also been now finally decided against the appellants. Today, there is no possibility of the appellants being allotted any land by the DDA. The DDA in or about the year 2004 changed its policy qua institutional land and the same is now disposed of only by auction. It is not the case of the appellants that they have participated in any auction or taken any steps for acquiring land for shifting to a permanent site as they were required to even

as a condition of grant of the initial approval.

10. When the matter is seen in this light, all arguments raised by the appellants, of non-compliance of the principles of natural justice, bias, wrong procedure having been followed by the respondent no.1 AICTE in reaching the decision dated 24th June, 2014, pale into insignificance. The hard reality is that the appellant no.1 for the last 13 academic years has been functioning from a premises not fit for functioning of such an institution and obviously to the detriment of the students who owing to an extreme paucity of educational institutions are compelled to take admission therein. However the norms prescribed qua the accommodation, infrastructure etc., required to be satisfied to be entitled to approval for running such an institution, and to which there is no challenge and which the appellants admittedly do not satisfy are not to be reduced to an empty formality. The Supreme Court in *State of Maharashtra v. Vikas Sahebrao Roundale* (1992) 4 SCC 435 noticed the mushroom growth of ill-equipped and under staffed educational institutions, at times in complicity with the statutory authorities who fail to effectively enforce the provisions of the statutes, all as a result of least capital outlay by the government for education. The Supreme Court recently in *Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM B.Ed. College*

v. National Council for Teacher Education (2012) 2 SCC 16 also held that inadequacy of space and staff is something which disqualifies any institution from seeking recognition. The Supreme Court further expressed surprise as to how the institution could have reported compliance with the requirements of the Regulations and complete removal of the deficiencies when the institution had neither the land standing in its name nor the building constructed in which it could conduct the courses and that the said fact was sufficient to justify withdrawal of recognition.

11. In any case the appellants having obtained initial approval in the year 2000 on the promise and condition to, within two years therefrom, shift to its permanent site, cannot now be heard to contend that the said temporary site fulfils the requirements. These proceedings, after the dismissal of earlier proceeding being W.P.(C) No.2459/2005 and after the decision dated 30th October, 2013 of the respondent no.1 AICTE of refusal of approval for the year 2013-14 (but inspite of which the appellants were allowed to complete the academic session which had by then begun) having remained unchallenged, are clearly an abuse of process of the Court.

12. We accordingly in accordance with the above and which is in addition to the reasons given by the learned Single Judge, dismiss this appeal with costs of Rs.20,000/- payable by the appellants to the respondent no.1 AICTE.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

NOVEMBER 7, 2014

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