Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3727 of 2023

Applicant :- Vashishth Memorial Trust, Thru. Its Authorized Signatory, Sri Amar Nath Tiwari
Opposite Party :- Sri Ajit Kumar Mishra, Secy. Board Of Technical Education, Lucknow
Counsel for Applicant :- Paavan Awasthi

Hon'ble Rajesh Singh Chauhan,J.

1. Heard learned counsel for the parties.

2. This Court has passed the order dated 19.10.2023 which reads as under:

"1. Heard Sri Paavan Awasthi, learned counsel for the applicant/ petitioner.

2. Sri Paavan Awasthi has drawn attention of this Court towards the order dated 13.10.2023 passed by this Court in one identical contempt petition bearing Contempt Application (Civil) No.3454 of 2023, Robin Memorial Edu. Welfare and Charitable Trust, Thru. Its Authorized Signatory, Smt. Sunaina Vs. Sri Ajit Kumar Mishra, Secy. Board of Technical Education, Lko. For the convenience, the aforesaid order dated 13.10.2023 is being reproduced herein below:-

"1. Heard Sri Paavan Awasthi, learned counsel for the petitioner and Sri Sunil Bajpai, learned Additional Chief Standing Counsel.

2. This Court has passed the order dated 12.10.2023, which reads as under:-

"1. Heard.

2. This Court has passed the order dated 10.10.2023, which reads as under:-

"1. Heard Sri Paavan Awasthi, learned counsel for the applicant/ petitioner.

2. Sri Awasthi has referred the order of the writ court dated 14.09.2023 passed in Writ-C No.7820 of 2023, which reads as under:-

"1. Heard learned counsel for the petitioner, learned Standing Counsel for the State respondents and perused the material brought on record.

2. This writ petition has been filed by the petitioner with the following prayers:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned decision of the Respondent No. 2 i.e. the Board of Technical Education, rejecting the application of the petitioner for grant of affiliation for the academic session 2023-24, after summoning the same.

(b) Issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 2 i.e. the Board to grant the requisite affiliation to the petitioner for conducting Diploma in Engineering and Technology for 5 courses namely -Electrical Engineering (60 seats), Mechanical Engineering (60 seats), Computer Science (120 seats), Civil Engineering (60 seats) and Artificial Intelligence (60 seats) for the academic session 2023-24 as per the approval granted by the AICTE.

(c) Issue a writ, order or direction in the nature of mandamus commanding the

Respondent No.2 i.e. the Board to allow the petitioners' institution to participate in the counselling process for the academic session 2023-24 and take admission as per the approval granted by AICTE."

3. The instructions filed by the learned Standing Counsel are taken on record. The order dated 24.08.2023 whereby the request for affiliation was rejected is also annexed with instructions.

4. The contention of the learned counsel for the petitioner is that the petitioner's college was established with an aim to impart technical education and infrastructure was accordingly established. It is on record that the respondent no. 3- All India Council of Technical Education, New Delhi (in short "AICTE") is the statutory apex body which governs the grant of approval to the colleges imparting technical education with a view to maintain standards of technical education throughout the country, however the respondent no. 2, which is a Board is basically an examining body and is entitled to grant diploma in various courses. It is on record that ultimately it is the AICTE-respondent no. 3 which is empowered to control the technical standards of education as has been held by the Supreme Court in the following cases:-

(i) Parshvanath Charitable Trust and others Versus All India Council for Technical Education and others (2013) 3 Supreme Court Cases 385;

(ii) State of T.N. and another Versus Adhiyaman Educational & Research Institute and others (1995) 4 Supreme Court Cases 104;

(iii) Jaya Godul Educational Trust Versus Commissioner & Secretary to Government Higher Education Department, Thiruvanathapuram, Kerala State and another (2000) 5 Supreme Court Cases 231.

5. My attention is drawn to paragraph nos. 24 & 25 of the judgment passed by the Apex Court in the case of Parshvanath Charitable Trust and others Versus All India Council for Technical Education and others (Supra), which reads as under:-

24. The consistent view of this Court has been that where both Parliament and State Legislature have the power to legislate, the Central Act shall take precedence in the matters which are covered by such legislation and the State enactments shall pave way for such legislations to the extent they are in conflict or repugnant. As per the established canons of law, primacy of the Central Act is undisputable which necessarily implies primacy of AICTE in the field of technical education. Statutes like the present one as well as the National Council for Teachers Education Act, 1993, the Medical Council of India Act, 1956, etc. fall within the ambit of this canon of law. The AICTE is the authority constituted under the Central Act with the responsibility of maintaining operational standards and judging the infrastructure and facilities available for imparting professional education. It shall take precedence over the opinion of the State as well as that of the University. The concerned department of the State and the affiliating university have a role to play, but it is limited in its application. They cannot lay down any guidelines or policies in conflict with the Central statute or the standards laid down by the Central body. The State can frame its policies, but such policy again has to be in conformity with the direction issued by the Central body. Though there is no such apparent conflict in the present case, yet it needs to be clarified that grant of approval by the State and affiliation by the University for increased intake of seats or commencement of new college should not be repugnant to the conditions of approval/recommendation granted by the AICTE. These authorities have to work in tandem as all of them have the common object to ensure maintenance of proper standards of education, examination and proper infrastructure for betterment of technical educational system.

25. It is also a settled principle that the regulations framed by the central authorities such as the AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act. In the case of AICTE v. Surinder Kumar Dhawan

[(2009) 11 SCC 726], this Court, while stating the principles that the courts may not substitute their opinion in place of opinion of the Council, held as under:-

"The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In Dr. J.P. Kulshreshtha v. Chancellor, Allahabad University: (1980) IILJ 175 SC this Court observed:

Judges must not rush in where even educationists fear to tread... While there is no absolute bar, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.

In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth: [1985] 1 SCR 29, this Court reiterated:

..the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

18. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four year Advance Diploma holders who had passed the entry level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one time measure was extended for several years and was also extended to Post Diploma holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education."

6. In the present case, after establishment of the institution for imparting the technical education by the petitioner, an inspection was carried out by the respondent no. 3- AICTE and in terms of the report which is on record as Annexure No. 5, a detailed inspection was carried out and the report was granted in favour of the petitioner noticing 'Nil deficiency'.

7. On perusal of the said report which is record, all the parameters were found to be fulfilled by the petitioner- institution. In terms of the said report, the respondent no. 3-AICTE granted approval as contained at Annexure No. 6 vide communication dated 25.06.2023. On receiving the said approval, the petitioner institution approached before the respondent no. 3 for granting approval in terms of the provisions contained in regulations framed under the Uttar Pradesh Pravidhik Shiksha Adhiniyam-1962 as amended. In terms of the said request made by the petitioner, an order came to be passed holding that the application filed by the petitioner was liable to be rejected, reasons for rejection as uploaded on the website are contained at page no. 28 of the writ petition which record "Rejected by Inspection Team". It further record that inspection was done on 31.07.2023. After uploading all the reasons for not granting the affiliation, the petitioner approached this Court seeking liberty to entertain this writ petition out of turn. In terms of the said mention, the matter is being taken up today.

8. Learned Standing counsel has produced the instructions which contains the reasons for rejecting the request made by the petitioner. In terms of the said instructions, the power to refuse the approval can be exercised after the inspection to be carried out in terms of the regulation 12, which empowers the State to prescribe standards for buildings and equipment of affiliated institutions.

Instructions further record that the inspection was carried out on 27.07.2023 and in the said inspection, the deficiencies were observed by the committee, which are as under:

(1) As per local information , a private school is also running in the same premises. (2) Room sizes are below norms. (3) Lab equipments are insufficient. Not ready to start. (4) Library size below norms. (5) Ramps slope not available as per norms. (6) Trust minutes not provided hence resolution is under doubt.

In the light of the said deficiencies pointed out and extracted above, the learned Standing Counsel emphasized that the request of affiliation was rightly rejected.

9. Learned counsel for the petitioner argues that the last date as per the orders passed by the Hon'ble Supreme Court in the case of Parsvanath Charitable Trust Versus All India Council for Technical Education & Others in Miscellaneous Application No. 1927 of 2023 in C.A. No. 9048/2012, the Supreme Court has fixed the cut-off date for grant of affiliation upto 15.09.2023. He further argues that reasons for rejecting the request for affiliation, although not uploaded on the website, however even in terms of the instructions are totally arbitrary as in the inspection carried out by the AICTE, the petitioner was found to have fulfilled all the eligibility conditions. In the light of the judgment of the Supreme Court, it is argued that it is the decision and inspection carried out by AICTE which will prevail. He further draws attention the reasons with regard to not having library room, computer centre etc were inspected by the AICTE and were found to be in order. He further argues the manner in which the rejection order has been passed is wholly arbitrary and even the instruction is contrary to the inspection carried out by the AICTE and this is nothing but harassment by the respondent and thus rights of the petitioner to impart the technical education in accordance with law has been adversely effected.

10. Learned Standing counsel on the other hand justified the order in the light of the powers vested in the State by virtue of regulation framed under the Act for grant of affiliation and it is argued that on inspection, the building in question was found to be improper in several aspects and thus the same has been rightly rejected, as such, the present writ petition is liable to be rejected.

11. Considering the submissions made at the Bar, the law is reasonable well settled that it is the AICTE which is the body empowered to regulate the standard of technical education in the country and in terms of the said powers conferred upon them by virtue of the Act, they have framed several guidelines which have to be adhered by the institutions seeking affiliation. The respondent no. 2 mainly acts as an examination conducting authority. In terms of the regulation framed by the respondent no. 2, although the power of inspection and power of recording satisfaction is prescribed, however, in view of the scheme of the AICTE and the Board, clearly AICTE would have supremacy in taking the decision with regard to grant of affiliation subject to conditions that are prescribed. In the present case, even the inspection report although never served upon the petitioner, is in clear contradiction with the inspection report of the AICTE. No basis for inspection report are forthcoming even in the instructions as to how the inspection committee found various labs to be not ready; rooms are not as per norms; library size below norms, whereas in the inspection report carried out by AICTE, the size of library room is depicted as 303 sqm and the labs were found to be in order so also the rooms were found to be in order.

12. Thus on both the reasons i.e. that supremacy of AICTE in granting affiliation on the technical parameters specified by them as well as the report of the State Government being contrary to the report of AICTE cannot be held to be valid exercise of power of the State Government, as such, the order dated 24.08.2023 rejecting the request of affiliation deserves to be quashed and is accordingly quashed. The respondent no. 2 is directed to pass an order granting affiliation to the petitioner institution for the courses as sought based upon the report of the AICTE positively by tomorrow. This Court also notices that no objections were ever filed by the State Government before the AICTE for recalling the affiliation granted by them.

13. The writ petition, on the reasonings contained herein above, is allowed.

Consequently, the respondent no. 2 shall permit the petitioner to take part in the counselling as and when it starts.

14. Learned Standing counsel shall communicate this order to the respondent no. 2 for its compliance."

3. In the aforesaid order, vide para-13, this Court has directed the respondent no.2 to permit the petitioner to take part in the counselling as and when it starts and vide para-14, learned Standing Counsel was directed to communicate the order to the respondent no.2 for its compliance. Sri Paavan Awasthi has stated that as soon as the aforesaid order was uploaded, the petitioner immediately e-mailed that order on 14.09.2023 itself (Annexure No.10) and on the same date i.e. 14.09.2023, the petitioner preferred a representation, which was duly received on 16.09.2023. Sri Awasthi has further submitted that since learned Standing Counsel was directed to communicate the order to the respondent no.2, therefore, learned Standing Counsel must have communicated the order to respondent no.2.

4. Sri Awasthi has further submitted that the Hon'ble Apex Court in bunch of petitions, leading petition bearing Miscellaneous Application No.1927/2023 in C.A. No.9048/2012; Parshavnath Charitable Trust vs. All India Council for Technical Education & Ors., passed an order dated 06.09.2023 extending the date for the counselling for further one month. As per Sri Paavan Awasthi, initially, the date for counselling was 15.09.2023, now the last date for counseling is 15.10.2023. Sri Paavan Awasthi has drawn attention of this Court towards para-24 of the contempt petition wherein he has categorically stated that despite the categoric direction issued by this Court, the sole respondent has not issued the requisite affiliation order to the petitioner till date nor has included the petitioner's institution in the ongoing counselling process till date.

5. In view of the above, in the interest of justice, this Court feels it appropriate that the specific instructions be sought from the sole respondent.

6. Sri Paavan Awasthi, learned counsel for the petitioner is directed to provide two copies of the contempt petition to Sri Sunil Bajpai, learned Addl. Chief Standing Counsel, who shall seek specific written instructions from the sole respondent within two days, to be more precise on or before 12.10.2023.

7. List/ put up on 12.10.2023.

8. This case shall be taken up at 3:45 PM on 12.10.2023.

9. In the aforesaid instructions, the concerning authority shall apprise the Court as to whether the order of the writ court has been complied with in its letter and spirit or not and if the same has not been complied with, the specific reason shall be shown to the Court so that any appropriate order could be passed on the next date."

3. In compliance of the aforesaid order, Sri Sunil Bajpai, learned Additional Chief Standing Counsel has produced a copy of letter dated 12.10.2023 preferred by the Secretary, Board of Technical Education, U.P. Lucknow, the same is taken on record.

4. As per the aforesaid letter, the opposite parties of the writ petition are proposing to file special appeal.

5. Sri Paavan Awasthi, learned counsel for the petitioner has stated that last date of counselling is 15.10.2023 and as per his information the aforesaid date has not been extended.

6. On being asked Sri Sunil Bajpai, learned Additional Chief Standing Counsel as to whether the date of counselling has been extended or not, he has stated that he is not having any instructions on that.

7. In view of the aforesaid fact, if the last date of counselling expires and the

petitioner is not permitted in on going counselling process, the petitioner shall suffer irreparable loss and injury and without knowing the fate of the special appeal, if the same is filed, he would be defeated despite having specific order of the Writ Court in his favour.

8. In view of the above, list/ put up this case tomorrow i.e. 13.10.2023 to be taken up at 2:30 p.m.

9. The Secretary, Board of Technical Education, U.P., Lucknow shall appear in person tomorrow i.e. 13.10.2023 to explain as to why the order of the Writ Court has not been complied with till date.

10. Sri Sunil Bajpai, learned Additional Chief Standing Counsel shall intimate this order to the authority concerned forthwith telephonically and shall provide the Computer generated copy through Fax/ Email/WhatsApp or any other convenient mode, today itself."

3. In compliance of the aforesaid order, Sri Ajit Kumar Mishra, Secretary, Board of Technical Education, U.P., Lucknow is present in person before the Court.

4. Sri Sunil Bajpai, learned Additional Chief Standing Counsel, on the basis of instructions from the officer who is present today before the Court, has stated that in fact the order of the Writ Court would be complied with by the Committee and he cannot solely permit the petitioner to take part in the counselling and he can also not pass any order regarding affiliation.

5. However, on specific query being put to learned Additional Chief Standing Counsel and to the officer who is present today before the Court as to whether any application has been filed before the Writ Court seeking clarification/ modification of order dated 14.09.2023, it has been informed that no such application has been filed.

6. Sri Sunil Bajpai, learned Additional Chief Standing Counsel has informed that decision has been taken to file special appeal challenging the order dated 14.09.2023 passed by the Writ Court and the aforesaid appeal may likely be filed very soon.

7. On being put the further query on the point that the date of counselling is 15.10.2023 and that date has not been extended then in that situation if any special appeal is filed after 15.10.2023, the petitioner may lose his claim despite having the judgment and order in his favour and admittedly that order has not been stayed by the Superior Court, on that Sri Sunil Bajpai has submitted on the basis of instructions that appropriate order may be passed in favour of the petitioner within 24 hours permitting to grant affiliation to the petitioner provisionally and to permit him in the counselling provisionally. The officer, who is present before the Court today, has also stated that such provisional permission shall be subject to final outcome of the special appeal which has been proposed to be filed very soon.

8. On that learned counsel for the petitioner has no objection.

9. Learned counsel for the petitioner has stated that the petitioner shall abide by the order / judgment, if any, being passed in a special appeal, if the same is filed.

10. Having considered the aforesaid submissions of learned counsel for the parties and having regard to the orders being passed by the Writ Court and the Contempt Court, list/ put up this case on 17.10.2023 in the additional cause list-I.

11. On that date, learned counsel for the parties shall intimate the Court as to what order has been passed by the authority concerned.

12. The officer, who is present in person today need not to appear again on the next date unless his presence is required by any order of this Court."

3. Sri Awasthi has further drawn attention of this Court towards the order dated

13.10.2023 passed by the Apex Court in re; Miscellaneous Application Diary No(s).41406/2023, Parshavanath Charitable Trust & Others vs. All India Council for Technical Education & Ors., whereby the last date of counselling has been extended for one month. Thereafter, a Revised Academic Calendar 2023-24 has been issued by the Member Secretary of All India Council For Technical Education as the photocopy thereof has been shown, which is taken on record, wherein it has been indicated that the last date for counselling and affiliation would be 30.10.2023.

4. Sri Paavan Awasthi is directed to provide two copies of the contempt petition to Sri Mohit Jauhari, learned Standing Counsel, who shall seek specific written instructions from the sole opposite party as to whether the order of the writ court dated 15.09.2023 passed in Writ-C No.7847 of 2023 has been complied with or not.

5. Since in the aforesaid matter, which has been referred by Sri Awasthi, the conditional compliance has been done, therefore, if the conditional compliance in the present case is done, in case the issue is identical, the said order may be shown to the Court by the learned Standing Counsel on the next date.

6. List on 27.10.2023 as fresh."

3. Sri Sunil Bajpai, learned Additional Chief Standing Counsel has filed the affidavit of compliance of Sri Ajit Kumar Mishra, presently serving as Secretary, Board of Technical Education, U.P., Lucknow, the same is taken on record.

4. Sri Bajpai has submitted that the direction of the Writ Court has been complied with subject to final outcome of the proposed Special Appeal.

5. In the wake of aforesaid development, nothing remains to be adjudicated in the present contempt petition.

6. Accordingly, the instant contempt petition is ***dismissed.***

[Rajesh Singh Chauhan,J.]

Order Date :- 27.10.2023
kkv/

Digitally signed by :-
KRISHAN KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench