

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

WP(C).No. 13969 of 2015 (U)

PETITIONER :

**IRINJALAKUDA DIOCESAN EDUCATIONAL TRUST
KODAKARA, THRISSUR-680 121
REPRESENTED BY THE ASSOCIATE EXECUTIVE DIRECTOR
SAHRDAYA COLLEGE OF ADVANCED STUDIES.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S) :

- 1. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
7TH FLOOR, CHANDERLOK BUILDING, JANPATH
NEW DELHI-110 001
REPRESENTED BY THE MEMBER SECRETARY.**
- 2. THE APPELLATE COMMITTEE
ALL INDIA COUNCIL FOR TECHNICAL EDUCATION, 7TH FLOOR
CHANDERLOK BUILDING, JANPATH, NEW DELHI-110 001.**
- 3. THE REGIONAL DIRECTOR
ALL INDIA COUNCIL FOR TECHNICAL EDUCATION,
REGIONAL OFFICE, THIRUVANANTHAPURAM – 695 001.**

R1 TO R3 BY STANDING COUNSEL SRI.S.KRISHNAMURTHY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1. TRUE COPY OF THE APPLICATION GIVEN BY THE PETITIONER TO THE RESPONDENT ON 26/2/2015.
- EXT.P2. TRUE COPY OF THE REPORT OF THE SCRUTINY COMMITTEE DATED 9/3/2015.
- EXT.P3. TRUE COPY OF THE REPORT OF THE RE-SCRUTINY COMMITTEE.
- EXT.P4. TRUE COPY OF THE REPORT OF THE EXPERT COMMITTEE DATED 20/4/2015.
- EXT.P5. TRUE COPY OF THE PROCEEDINGS NO.SOUTH-WEST/2015/1-2469917501_LOR DATED 30/4/2015.
- EXT.P6. TRUE COPY OF THE INTERIM ORDER IN WPC NO.15119/2014 DATED 20/6/2014.
- EXT.P7. TRUE COPY OF THE NOTIFICATION ISSUED FOR THE YEAR 2014-15 ISSUED BY THE 1ST RESPONDENT.
- EXT.P8. COPY OF THE CERTIFICATE NO. B4-2220/15(4) DATED 9-4-2015.
- EXT.P9. COPY OF THE NO OBJECTION CERTIFICATE DATED 12-3-2003 ISSUED BY THE KODAKARA GRAMA PANCHAYAT.
- EXT.P10. COPY OF THE CERTIFICATE NO. B2-1688/2015 DATED 7-3-2015 ISSUED BY THE KODAKARA GRAMA PANCHAYAT.
- EXT.P11. COPY OF THE PROCEEDINGS OF THE APPELLATE COMMITTEE DATED 25-5-2015.
- EXT.P12. COPY OF THE APPLICATION GIVEN FOR M.B.A. COURSE.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R1(a) COPY OF THE PROCEEDINGS OF THE STANDING APPELLATE COMMITTEE (SAC) DATED 25-5-2015.

//TRUE COPY//

P.S. TO JUDGE

Mn

K. Vinod Chandran, J.

W.P(C) No.13969 of 2015-U

Dated this the 11th day of June, 2015

JUDGMENT

The petitioner, a Trust carrying on educational institutions and at present carrying on courses *inter alia* in Engineering and also MBA; the later having been sanctioned by All India Council for Technical Education [for brevity "AICTE"] for the present academic year, assails the rejection of Letter of Approval [LoA] by the AICTE, to the MCA course.

2. Before noticing the facts, it is to be noticed that the learned Standing Counsel appearing for the AICTE would caution this Court that no consideration on merits would be required in this writ petition, since the Hon'ble Supreme Court has, in ***Parshavanath Charitable Trust and Others v. All India Council for Tech. Edu. and Others* [2013 (3) SCC 385]**, approved the schedule notified by the AICTE in matters of approval, affiliation, admission and so on and so forth and has specifically directed that none could extend the scheduled dates and no person or authority would have the power to interfere with such schedule as approved by the Hon'ble Supreme Court. The learned counsel appearing for

the petitioner, however, would contend that the said directions in the afore-cited decision would not apply to a Court, herein the High Court, exercising powers under Article 226 of the Constitution of India. ***Asha v. Pt.B.D.Sharma University of Health Sciences*** [AIR 2012 SC 3396] is pressed into service to also contend that even the Supreme Court has permitted transgression of the cut-off-date in rare cases where overall merit demands it. The question of law has to be decided after examining the facts and only if facts commend such a course.

3. The petitioner had made an application for MCA course as also MBA course for the academic year 2015-16 by Exhibit P1 on 26.02.2015. The schedule of the AICTE requires an application to be made before 28.02.2015. The AICTE, as is the approved procedure, first scrutinises the documents and intimates the defects if any, to the applicant. There were very many scrutinies so conducted and defects notified, as is indicated in Exhibits P2 and P3, wherein the documents were examined and defects were noticed, which the petitioner rectified. Eventually, the scrutiny of the application and the documents being over, the Regional Committee is said to have rejected the approval on 20.03.2015 and an LoR

issued on 07.04.2015. Both the petitioner and AICTE have not produced the same. But a reading of the statement filed on behalf of the AICTE would indicate that the rejection was for the following reasons:

S.No.	Sub:	Advanced Studies (MCA)	Management Studies (MBA)
1	Deficiencies	YES 1. Documents showing possession of the land in the name of the Trust/Society not presented. 2. Master plan of land is contiguous, issued by competent authority not presented. 3. FSI/FAR certificate not presented. 4. Certificate of Collector/Tahsildar not submitted.	YES a. Master plan of land is contiguous, issued by competent authority not presented. b. FSI/FAR certificate not presented. c. Certificate of Collector/Tahsildar not submitted.

Hence, both the applications for MBA and MCA courses stood rejected. The matter was then referred to the Standing Appellate Committee [for brevity "SAC"]. The SAC at its meeting held on 13.04.2015 recommended that an Expert Visiting Committee [for brevity "EVC"] be appointed. The EVC inspected the petitioner's College on 20.04.2015 and forwarded Exhibit P4 recommendation to the Regional Committee [for brevity "RC"], who, in turn, transmitted the same again to the SAC. Exhibit P4 did not notice any deficiencies and the report was forwarded to the Regional

Committee clearly indicating that there are no deficiencies noticed. The SAC in spite of such recommendation in its meeting held on 23.04.2015. rejected the petitioner's application. A final Letter of Rejection [for brevity "LoR"] was issued by the AICTE on the basis of the order of the SAC by Exhibit P5, dated 30.04.2015.

4. The petitioner challenged the above order at Exhibit P5 on the ground that the ground on which the rejection is made is not sustainable, since the land details are to be verified at the initial stage of scrutiny. It is contended that the reason for rejection by the RC on 07.04.2015 does not survive after the report of the EVC. The main objection was with respect to the buildings for the MBA and MCA courses being in the said land. That is factually incorrect as can be verified from the documents and the MBA course was recommended by the SAC, pleads the petitioner. It was also contended that there was little time granted to respond to the notice issued by the SAC for reason of the notice having been received only on the previous day evening. Despite that the petitioner had attended the SAC, on which the only query raised was with respect to the earlier defect noticed as to the land being in the name of the educational institution itself. There is no dispute on that respect,

since on such a defect being intimated, the petitioner-Trust had conveyed the land in the name of the educational institution, which document was also available with the AICTE.

5. Noticing the fact that the petitioner had little time to respond and further noticing that there is some confusion in the land details, this Court, by an interim order dated 12.05.2015, directed that the SAC be re-constituted to conduct a review of the case of the petitioner. The learned Standing Counsel for the AICTE would specifically urge that this order was issued despite the AICTE bringing to the notice of the Court, the prescription in ***Parshavanath*** (*supra*). It must be on taking note of the said decision, the learned Single Judge, who passed the order, observed that, “if there is any fundamental mistake on the part of the respondents, necessarily that has to be set at right in order to give justice to the parties”.

6. The said order has in any event been complied with and the SAC is also said to have been convened in accordance with the directions and a decision arrived at. The decision is produced at Exhibit P11, wherein the application has again been rejected; but, however, for different reasons. The confusion with respect to the land details as noticed in Exhibit P5 seems to be no more in

existence. The recommendation at Exhibit P11 indicates mainly two defects, that, the format of the Building Permit issued by the Grama Panchayat is not as prescribed under the AICTE norms and the Kerala Panchayat Raj Act, 1994 though provides for an approval from the Chief Town Planner for construction of a building beyond 500 sq.m., there is no such approval produced by the petitioner. The sustainability of such recommendation which resulted in affirming the LoR is to be tested, in adjudication of the above writ petition.

7. The statement of the AICTE dated 28.05.2015 specifically raised a contention that the rejection on 07.04.2015 was on account of the petitioner's institution having applied for a MBA course and MCA course in the very same building. The MBA course having been allowed, the LoR with respect to the MCA course is perfectly valid, was the contention taken. However, when the matter was argued, the learned Standing Counsel for the AICTE very fairly submitted that, on verification of the files it was disclosed that the buildings are situated in two different Villages as indicated in the title deeds available among the records. Hence, obviously the rejection made on 07.04.2015 was not proper and consequently the decision of the SAC communicated as per Exhibit P5 has to be found to be

unsustainable.

8. The objection regarding the 'Other Land Details' in Exhibit P5 though couched in very vague terms, all the same would be no more in existence, since the SAC, which was held pursuant to the interim order, also did not raise any such objection. Though the learned Standing Counsel for AICTE would contend that the detailed report of the SAC, which led to Exhibit P5, containing the deficiencies noticed is available in the web portal, nothing is seen produced herein by the AICTE. Definitely the SAC, a remedy of appeal, invoked by the petitioner, could not look into anything more than the objection noticed in the rejection issued by the RC, on 07.04.2015, as extracted hereinabove.

9. The petitioner had challenged Exhibit P5 dated 30.04.2015, which, according to the petitioner, was the only document issued to the petitioner, that too obtained from the website. The learned Standing Counsel for AICTE would, however, assert that besides the LoR issued by the AICTE, the rejection of the recommendation of the SAC which met on 23.04.2015 would also be available in the website. However, no such contention has been raised in the statement filed by the AICTE; nor is any document

produced before this Court by way of a communication of the SAC rejecting the application having been sent to the petitioner.

10. In any event, that issue would not be relevant for consideration herein for the following reasons. The petitioner could have challenged only the LoR, which the petitioner has produced at Exhibit P5. Then again on orders of this Court, the SAC met again and the recommendations of such meeting is available in Exhibit P11; which is a copy of the minutes produced by the AICTE before this Court. Since the defect noticed at Exhibit P5 is not noticed in Exhibit P11; the former is deemed to be no more in existence. The recommendation at Exhibit P11 is extracted hereunder:

“The application is for establishment of new MCA Institute/Programme. The Scrutiny Committee dated 09.03.2015 amongst others raised objection that building plan is not approved from competent authority. SAC held on 13.04.2015 pointed out two objections, i.e. Certificate-4 is not produced and building plans are not approved by competent authority. The SAC further recommended on EVC to physically verify the issues concerned. Accordingly EVC was conducted on 20.04.2015 and reported that “other land details not verified”. Thereafter the matter was placed before SAC review on 23.04.2015 wherein, due to non-submission of “other land details not verified”, the case was Originally certificate-4 was verified and is not in the format of AICTE. A copy of the certificate is placed on record. The certificate is not as per format in as much name of the Competent Authority approving building plan is not mentioned. As per the

certificate from Tahsildar the land is free from all encumbrances. The building plan is approved by Gram Panchayat as the land is situated in Rural area. However, as per Kerala Panchayat Raj Act 1994, any "building having more than 500 sq.m. Carpet area, the Secretary of the Gram Panchayat refers it to Chief Town Planner of the State and only after the Technical scrutiny under Municipality Rules and Town Planning Act, the lay out permission/modifications are to be done, then Secretary of Gram Panchayat has to follow such orders, to get the proposal modified accordingly, before issuing a building permit.

However, before us, no material is furnished to show that Gram Panchayat has taken the clearance from Chief Town Planner of the State as required, which is mandatory.

In view of this the committee is not satisfied. Hence not recommended".

11. The first defect noticed is with respect to the certificate, which is produced at Exhibit P8. On a verification of the format of the certificate to be issued by the Sub Divisional Magistrate, Collector or Tahsildar as available in the Manual of the AICTE, this Court does not discern any infirmity insofar as Exhibit P8 certificate produced before the AICTE. As to the other defect noticed, no provision in the Kerala Panchayat Raj Act, 1994, as extracted in the order, wherein with respect to a building having more than 500 sq.m. carpet area, the issue of building permit would

have to be referred to the Chief Town Planner of the State; is brought to the notice of this Court. In fact, the Panchayat specifically had, by Exhibit P9, in the year 2003 itself issued a No Objection Certificate. The approval by the Chief Town Planner seems to be a stipulation in the Kerala Municipal Building Rules, which was not applicable to Grama Panchayats till 06.06.2007; before which the construction of the petitioner's building was started. On a query raised by the AICTE, a further certificate was issued, which is produced at Exhibit P10, indicating that Building Rules were not applicable to the Panchayat till 06.06.2007.

12. In this context, Exhibit P4 report of the EVC also assumes significance. The EVC, which carried on the inspection on 20.04.2015, had forwarded its report to the Regional Committee without noting any deficiencies. A perusal of the report would also indicate that the buildings were verified and from pages 66 to 68 the specifications as per the AICTE norms with respect to the Principal/Director's office, Central Store, Maintenance, Security, Housekeeping, Exam Control Office, Boys Common Room, Girls Common Room, Cafeteria, Stationery Store, First aid cum Sick room Class Rooms-PG, Tutorial Rooms-PG, Laboratory-PG, Seminar

Halls, etc. were verified and found correct. Hence, it is very evident that the buildings were completed and the various facilities were noticed by the EVC to be in accordance with the norms of the AICTE. In such circumstance, this Court finds that there is an obvious illegality and the SAC has not considered the report of the EVC in its proper perspective in the original meeting held on 23.04.2015 and the review meeting held on 25.05.2015 in accordance with the directions of this Court.

13. The question now arises as to whether, even in the teeth of such illegality having been perpetrated, this Court would be prevented from invoking the jurisdiction under Article 226 of the Constitution. The learned Standing Counsel for the AICTE has also handed over across the Bar various orders of the Hon'ble Supreme Court by which the schedule was extended, wherein it was clearly stated that the same shall not be considered as a precedent. All those cases where matters in which the issue was sub judice, before the decision in ***Parshavanath*** (*supra*), and the Supreme Court permitted approvals beyond the cut-off dates as permitted by the various High Courts. Definitely that cannot be a precedent to tinker with the cut-off dates. However, those cannot also be relied on

to fetter the jurisdiction of this Court in appropriate cases. The Hon'ble Supreme Court has permitted such exercise in **Asha** (*supra*), wherein the power was permitted to be exercised in rare cases, of unequivocal discrimination, arbitrariness or pressing emergency.

14. The learned counsel for the AICTE would specifically refer to paragraph 46 of **Parshvanath** (*supra*), wherein *inter alia* the following directions were issued:

- “(i) Both grant / refusal of approval and admission schedule, as aforesaid, shall be strictly adhered to by all the authorities concerned including the AICTE, University, State Government and any other authority directly or indirectly connected with the grant of approval and admission.
- (ii) No person or authority shall have the power or jurisdiction to vary the Schedule prescribed hereinabove.

xxx

xxx

xxx

- (vi) If the appellate authority decides the matter prior to 30th April of the concerned year and grants approval to a college, then alone such institution will be permitted to be included in the list of colleges to which admissions are to be made and not otherwise. In other words, even if the appellate authority grants approval after 30th April, it will not be operative for the current academic year. All colleges which have been granted approval / affiliation by 10th or 30th April, as the case may be, shall alone be

included in the brochure / advertisement / website for the purpose of admission and none thereafter”.

15. This Court is inclined to accept the contention of the learned counsel for the petitioner that the Hon'ble Supreme Court has cautiously and carefully refrained from prohibiting such interventions by the Courts. The persons or authority referred to in the afore-cited directions does not take within its ambit the High Courts which exercise jurisdiction under Article 226. The direction at item No.(6) above also would indicate that it is to keep the AICTE and the authorities, exercising jurisdiction with respect to grant of approval of institutions and to keep them within the bounds of the schedule that such direction has been issued; so as to avoid any allegation of caprice or nepotism by such authorities. This Court, in taking such a view, is fortified on a reading of the judgment as a whole. After indicating the appropriate schedule, it was held so in paragraph 43:

“43. We find that the above Schedule is in conformity with the affiliation / recognition schedule afore-noticed. They both can co-exist. Thus, we approve these admission dates and declare it to be the law which shall be strictly adhered to by all concerned and none of the authorities shall have the power or jurisdiction to vary these dates of admission. Certainty

in this field is bound to serve the ends of fair, transparent and judicious method of grant of admission and commencement of the technical courses. Any variation is bound to adversely affect the maintenance of higher standards of education and systemic and proper completion of courses”.

16. Hence, a scrupulous compliance of the schedule was held to be intended at serving the ends of a fair, transparent and judicious method of grant of admission and commencement of the technical course. It is such lack of judicious consideration that is projected by the petitioner before this Court in the matter of grant of approvals. Relevant also would be paragraph 36, which is extracted hereunder:

“36. Non-adherence of this Schedule can result in serious consequences and can jeopardize not only the interest of the college students but also the maintenance of proper standards of technical education. The authorities concerned, particularly the AICTE, should ensure proper and timely action upon the applications submitted to it. It must respond to the applicant within a reasonable time period and should not let the matter drag till the final date giving rise to avoidable speculations by all stakeholders. Thus, it would be appropriate for these authorities to bring to the knowledge of the parties concerned, the deficiencies, if any, and the defects pointed out by the Expert Committee during the inspection within three weeks from the date of such inspection or pointing out of defects, as the case may be. For better administration, the AICTE should also state the time within which such deficiencies / defects should be removed by the

applicant. This will help in building of a coherent and disciplined method of working to ensure the proper implementation of the entire formulated scheme of technical education. The AICTE will not have any jurisdiction or authority to issue approval for commencement of a new course or for additional intake of students beyond 30th April of the year immediately preceding the commencement of an academic year”.

This further fortifies the view taken by this Court that the authorities as indicated by the Hon'ble Supreme Court in the directions issued, did not take in the Constitutional Courts and the impediment is solely on the AICTE and its authorities who have absolutely no jurisdiction or authority to deviate from the schedule prescribed.

17. What is essentially sought to be avoided by the Hon'ble Supreme Court is the method of 'pick and choose' by the authorities at their whim and caprice so as to avoid altogether; approvals and rejections beyond the last date specified in the schedule. This could be, by considering applications filed beyond time, giving certain applicants more time to cure the defects in excess of that prescribed under the schedule, while denying it to some others and even with approvals granted in the midst of an academic year; all of which would do violence to a judicious consideration of the applications for approvals and put in jeopardy

the high standards required in the matter of education.

18. Equally injudicious would be an attempt on the part of the authorities to effect a rejection of an application without valid reasons and do it at the fag end of the schedule, thus frustrating the applicants remedies against such an injudicious approach. The schedule prescribed would not have been intended, so as to permit the AICTE to keep approvals pending till the last date and make rejections without any application of mind or by perpetrating an illegality or on totally irrelevant considerations and then claim immunity on the strength of the schedule. That would go against the principle behind the judgment of the Hon'ble Supreme Court in ***Parshvanath*** (supra) and its spirit and tenor.

19. This court is of the opinion that, the facts as indicated above and the law on the aspect as dilated upon would warrant an indubitable conclusion that the rejection of approval at Exhibit P5 and the recommendation at Exhibit P11 are not proper. The Scrutiny Committee had examined the documents and noticed defects, which were rectified by the petitioner. The petitioner has cured the defects and eventually the rejection by the RC dated 07.04.2015 was for the reasons enumerated in the statement of the AICTE and extracted

hereinabove. The ground of rejection being that the MBA and MCA courses being intended to be carried on in the new building does not survive, since the title deeds indicate the situs of the lands to be in two different villages. The EVC at its report noticed absolutely no defects and forwarded the same to the Regional Committee, which placed it before the SAC. The SAC held on 23.04.2015 rejected the application of the petitioner for vague reasons and referred to land details, which even going by the submission of AICTE, no longer survives. It is the specific assertion of the petitioner that the defect noticed being only of the land being not in the name of the educational institution was cleared and property conveyed to the institution's name sufficiently early.

20. The Review Committee, as directed by this Court, held on 25.05.2015 also misdirected itself in finding that the certificate issued by the Tahsildar was not in the format prescribed by the AICTE and that the Building Rules required the sanction of the Chief Town Planner. The certificate has been found to be in the format as prescribed by the AICTE and the provision for approval by the Chief Town Planner was not applicable to the petitioner's building. Further, it is also to be noticed that the reference to the

approval of the Chief Town Planner is redundant insofar as the EVC having specifically noticed the buildings and the same being in conformity with the norms prescribed, for such facilities, by the AICTE. Illegality is writ large and the rejection of the RC on 07.04.2015, by the SAC on 30.04.2015 and in its review meeting on 25.05.2015 cannot be sustained on any of the grounds stated therein.

21. The only consequence, hence, is the setting aside of Exhibits P5 and P11. The AICTE shall constitute a SAC within two weeks from the date of receipt of a copy of this judgment and the EVC report at Exhibit P4 shall be considered afresh, keeping in mind the observations made herein. This Court has directed constitution of the SAC with such expedition only noticing that the last date for commencement of the academic session is 1st August and the last date of admission of students is 15th August.

The writ petition is allowed. No costs.

Sd/-

K. Vinod Chandran,
Judge

vkul

[true copy]