

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 14925 of 2015 (M)

PETITIONER(S):

**MALANKARA CATHOLIC EDUCATIONAL SOCIETY
OF THE ARCH DIOCESE OF THIRUVANANTHAPURAM,
ARCH BISHOP'S HOUSE, PATTOM, THIRUVANANTHAPURAM,
PIN-695 004,
REPRESENTED BY THE DIRECTOR OF CARDINAL MAR CLEEMIS
SCHOOL OF MANAGEMENT STUDIES.**

**BY ADVS.SRI.K.JAJU BABU (SR.)
SRI.V.VARGHESE**

RESPONDENT(S):

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

BY ADV. SRI.S.KRISHNAMURTHY,SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2015,
ALONG WITH WPC. 16885/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE REPORT ISSUED BY THE SCRUTINY COMMITTEE.
- P2 - TRUE COPY OF THE LETTER E-MAIL MESSAGE DATED 12.03.2015 OF THE 3RD RESPONDENT
- P3 - TRUE COPY OF THE REPORT OF THE RE-SCRUTINY COMMITTEE.
- P4 - TRUE COPY OF THE LETTER NO.F.NO.SOUTH-WEST/2015/1-2510000941/LOR DATED 07.04.2015 OF THE 1ST RESPONDENT ALONG WITH THE APPENDED REPORT.
- P5 - TRUE COPY OF THE E-MAIL COMMUNICATION DATED 18.04.2015 SENT BY THE 3RD RESPONDENT INFORMING THE PETITIONER THAT THE EXPERT COMMITTEE OF AICTE WOULD VISIT THE INSTITUTION ON 19.04.2015
- P6 - TRUE COPY OF THE EVC REPORT.
- P7 - TRUE COPY OF THE E-MAIL MESSAGE DATED 22.04.2015 RECEIVED BY THE PETITIONER HE SHOULD APPEAR BEFORE ONE MORE APPEAL COMMITTEE ON 23.04.2015
- P8 - TRUE COPY OF THE E-MAIL COMMUNICATION DATED 30.04.2015 ISSUED BY THE 1ST RESPONDENT IN WHICH IT IS STATED THAT THE APPLICATION OF THE PETITIONER FOR STARTING THE MBA COURSE IS REJECTED.
- P9 - TRUE COPY OF THE INTERIM ORDER DATED 20.06.2014 OF THIS HON'BLE COURT IN WPC. NO.15119 OF 2014
- P10 - TRUE COPY OF THE NOTIFICATION ISSUED BY THE AICTE
- P11 - TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- P12 - TRUE COPY OF THE AFFILIATION GRANTED TO THE PETITIONER'S COLLEGE BY THE COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY.
- P13 - TRUE COPY OF THE INTERIM ORDER GRANTGED BY THIS HON'BLE COURT IN WPC. NO.13969/2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

PJ

P.S. TO JUDGE

K. VINOD CHANDRAN, J.

W.P.(C) Nos. 14925 & 16885 of 2015

Dated this the 18th day of June, 2015

J U D G M E N T

Both the writ petitions, though slightly different on facts, agitate the issue of rejection of an appeal by the Standing Appellate Committee (for brevity 'SAC') as constituted by the All India Council for Technical Education (for brevity 'AICTE'). The procedure by which the applications are scrutinised and eventually considered by the SAC is the issue raised by both the petitioners, who are respectively a Society and a Trust carrying on educational institutions.

2. W.P.(C) No. 14925/2015 raises the question of approval of an MBA course which the petitioner seeks to start in their educational institution under the Cochin University of Science and Technology. The petitioner is, at present running an engineering college and the MBA course was sought to be commenced in the academic year 2015-16.

The petitioner had made an application well within the time prescribed for the same, as per the schedule of the AICTE. The application was scrutinised by the Scrutiny Committee, the initial report of which is found at Ext.P1. Deficiencies were noticed, an enumeration of which is not necessary. The petitioner is said to have rectified the defects and again was before the Scrutiny Committee. The report of the Re-Scrutiny Committee is produced at Ext.P3, wherein also certain deficiencies were noticed. The petitioner having been issued with the 'Letter of Rejection' (LOR), as per Ext.P4 by the AICTE, was before the SAC; the notice for appearance before whom is also enclosed along with Ext.P4, with date of hearing indicated as 13.4.2015. The SAC constituted an Expert Visiting Committee (for brevity 'EVC') who visited the premises for inspection on 19.4.2015. Ext.P6 is the report of the EVC, which noticed the following defects:

- “1) Building drawing do not bear the approval date and approval no. by competent authority.
- 2) The existing building is more than 25 years old and was used as hostel building.
- 3) The 0.5 acres of land is not marked on the site plan with boundaries and does not bear the dimensions with area calculations of plot.
- 4) Gents toilets do not have urinals
- 5) Toilet for specially-abled are not provided. the building does not comply barrier free environment.”

The SAC, by recommendation dated 30.4.2015 (Ext.P8), rejected the application of the petitioner which is challenged herein.

3. W.P. (C) No. 16885/2015 sought for commencement of a college for management studies with an MBA course, affiliated to the Calicut University. The petitioner therein also is running an engineering college affiliated to the very same University. The application

having been made within time, the Scrutiny Committee by Ext.P2 noticed some deficiencies and directed rectification of the same. Ext.P3 is the Re-Scrutiny Committee report which also pointed out various deficiencies. The petitioner, as per the procedure, was before the SAC, which constituted an EVC, which inspected the premises on 21.4.2015 and noticed various defects in Ext.P4. The SAC rejected the request of the petitioner and the petitioner assails the recommendation of the SAC, dated 30.4.2015 at Ext.P6.

4. I have heard the learned Senior Counsel Sri. Jaiju Babu instructed by Sri. V.Varghese in W.P.(C) No.14925/2015 and the learned counsel Sri. C.A. Majeed in the W.P.(C) No.16885/2015, for the petitioners and the learned Standing Counsel Sri.S.Krishnamoorthy, for the AICTE.

5. The petitioners primarily challenge the procedure by which the appeals are heard and decided which, according to them, is in an arbitrary manner. The SAC is constituted at the fag end of the period stipulated for granting approval and the manner in which the appeals are summarily rejected, according to the learned counsel, frustrate the institution's remedy to challenge the appellate orders, especially since the time schedule prescribed for granting of approvals, commencement of course and admission of students has been held to be sacrosanct by the Hon'ble Supreme Court. A strict adherence to the time schedule is hence stipulated. Both the petitioners' pointed out that the notices to appear before the SAC was served on them just prior to the day on which the appeal was to be heard; despite which, they were present in New Delhi for the same. However, to their consternation, the appeals were summarily decided without any query being put to them and without verification of the materials produced by

them to show that the defects noticed by the EVC had been rectified. It is also submitted that, in both the cases, the Appellate Committee has gone beyond the scope of their powers in finding out defects which were not noticed by the EVC. The argument seems to be that, when the petitioner institutions are the appellants before the SAC, on specific defects noticed by the EVC, then there is no warrant for the SAC to re-scrutinise what has already been approved and ferret out further deficiencies.

6. Both the learned counsel urge that a second opportunity is warranted insofar as the consideration of their appeals and if need be, a further EVC be appointed for verification of the rectifications made. It is also submitted that even otherwise the entire materials, substantiating the rectification of defects, were available with the SAC. The petitioners would urge that even if they are unable to commence the course in 2015-16, the SAC be directed to consider the case at least for the next academic year, since

considerable procedural advancement has been effected on the applications and it would be unfair to send back the petitioners to the initial scrutiny.

7. The learned Standing Counsel for the AICTE however, would, on the basis of the decision of the Hon'ble Supreme Court in **Parshavanath Charitable Trust and others v. All India Council for Tech. Edu. and others - 2012 KHC 4746** argue that the time schedule having expired, it would not be proper for this Court to invoke the extraordinary remedy, especially in these cases where the defects were noticed by the EVC constituted by the SAC; and in any event the appeal could not have gone into rectification of the deficiencies noticed. It is also argued that, the rectification of defects are entertained and considered only at the stage of the scrutiny and re-scrutiny and there could be no such exercise at the time of the appeal before the SAC; especially when the SAC too has

constituted an EVC, the order of which too noticed various factual deficiencies in the infrastructure. The time frame stipulated for approvals would not commend such an exercise and there could be no consecutive EVCs appointed to verify rectifications, is the plea. If after initial scrutiny and re-scrutiny the petitioners have not cured the defects, then there ends the matter. The Appellate Committee would only consider as to whether the deficiencies noticed are, in fact, in existence. It is also urged by the learned Standing Counsel that there can be no fault found in the SAC noticing deficiencies, over and above that noticed by the EVC, since as a matter of practice the AICTE grants approval only after the recommendation of the SAC. The contention seems to be that even in cases where the Regional Committee approves the application, the AICTE would, even then, refer it to the SAC for final recommendation.

8. Considering the contention, of all applications being referred to the SAC, this Court is unable to find such a procedure as is disclosed in the All India Council For Technical Education Approval Process Handbook (2015-2016) (for brevity 'Handbook') of the AICTE. The procedure for approval indicates that, initially a Scrutiny Committee is constituted by the Regional Officer of the AICTE and all applicants are invited for the presentation of their proposals. The deficiencies are then communicated to the applicants and a review/appeal, by way of re-scrutiny, is provided by the AICTE itself, before which the deficiencies noticed on initial scrutiny could be rectified. Clause 4.6 of the Handbook specifically provides that the Scrutiny Committee, during re-scrutiny, shall verify only the deficiencies pointed out by the Scrutiny Committee (initial one). The procedure contemplates the applications which are found to be in order, to be recommended for Expert Visiting Committee (EVC) visit, a report of which is

submitted to the Regional Committee (RC). It is the Regional Committee, after consideration of the report of the Scrutiny Committee, Re-scrutiny Committee and the Expert Visiting Committee, who recommends the application for further processing. The grant of approval, as per clause 7.1, is made by the Executive Committee of the AICTE on the recommendation of the Regional Committee.

9. The appeal procedure is seen under the heading: “Procedure for submission of appeal and evaluation by the Standing Appeal Committee for applications rejected at Executive Committee”. Hence, it is difficult to countenance the argument of the learned Standing Counsel that all applications, invariably and regardless of the recommendation of the RC, is placed before the SAC. The learned Standing Counsel would assert that the same is done in actual practice, but this Court does not find such a procedure prescribed in the Handbook. It is difficult,

hence, for this Court to find that the Appeal Committee could go behind the reports of the Scrutiny Committee, the Re-Scrutiny Committee and of the EVC to ferret out further deficiencies not noticed in either or any of these. Even the Re-scrutiny Committee has to confine itself to the deficiencies noticed by the Scrutiny Committee. Hence, the appeal before the SAC is to be restricted to the objections, if any, noticed by the Re-Scrutiny Committee and the EVC, before rejection. A further opportunity for rectification is offered to the applicants before the EVC, as recommended by the SAC, visits the institution.

10. In such circumstance, the question arises as to the exact role of the SAC, especially when the AICTE takes a stand that there could be no rectification of defects at the stage of hearing by SAC. The answer could be put in the proper perspective, looking at the defects noticed in W.P. (C) No.14925/2015. The first two defects noticed by the

EVC, as extracted above, from Ext.P6 produced in that Writ Petition, are with respect to the building drawing neither bearing the approval date nor the approval number by the competent authority, as also the further defect that the existing building is more than 25 years old and was used as hostel building. This could be tested with the report of the Re-scrutiny Committee at Ext.P3. The Re-scrutiny Committee specifically notices that the building in which the Management Studies is intended to be housed is an existing 25 year old building with adequate area for first year requirements. It was also specifically noticed that the building being an old existing structure, the Office of the Superintending Engineer, Corporation of Thiruvananthapuram, has issued a fitness certificate, after an inspection conducted of the building. The original building permit, obviously, was noticed to be not available, since the building itself was 25 years old. An SAC could definitely take note of the rejection, with respect to the two

items and find that the Re-scrutiny Committee's recommendations deal with it and the objections noticed in Ext.P6 are of no consequence. This definitely is the purport and intend behind an SAC being constituted.

11. The petitioner's claim however, has to be tested on the procedure asserted by them; enabling a rectification of defects and substantiation of the same before the SAC. It is clear that the approval procedure is a many tier exercise with a Scrutiny Committee initially processing the application and indicating the deficiencies which are allowed to be rectified before further scrutiny by the Re-Scrutiny Committee. An EVC is also contemplated before the Re-Scrutiny Committee finally gives a report. The Regional Committee considers the report of the Scrutiny Committee, Re-Scrutiny Committee and that of the EVC. A recommendation is made to the Executive Committee of the AICTE, which is acted upon by such

Executive Committee resulting in either a 'Letter of Approval' or a 'Letter of Rejection'. An appeal could only be what an appeal normally indicates; being the examination of records to find any infirmity in the consideration and it cannot, as the petitioners argue, lead to a further exercise of rectification of defects. The SAC also, on examination of the various reports and the recommendations of the Regional Committee as also the rejection of the Executive Committee; in certain cases, recommends an EVC. The applicants hence, have a further opportunity to rectify the defects in the EVC appointed by the SAC. But the said report of the EVC being placed before the SAC, the petitioners cannot urge any further rectification; after the EVC inspects the applicant's premises and before the SAC considers the matter itself. The applicants have sufficient opportunities prior to the consideration of the SAC to rectify the defects noticed at various stages.

12. The judicial review which is contemplated in the challenge made herein, also would hence have to be confined to its accepted boundaries and cannot result in a re-appreciation of facts which are being done by the lower authorities, that too in a many tier system. The SAC, has to be found competent to enquire into the deficiencies as noticed by the Re-Scrutiny Committee juxtapositioned with the report of the EVC; constituted at the instance of the SAC. In the case of both the petitioners there was an EVC constituted by the SAC. The applicant institutions would have time to rectify any deficiencies, on which LOR is issued by the AICTE, till the EVC constituted by the SAC, inspects the premises and not thereafter. There could be no rectification claim before the SAC, which its EVC has noticed.

13. There cannot be any infirmity found in the consideration before the SAC being at the fag end of the entire procedure, since the time for scrutiny, re-scrutiny,

the EVC visits at re-scrutiny and at the SAC stage have to be completed within the time frame, i.e. between 28.2.2015 to 30.4.2015. The applicants are expected to be ready with their institutions, as provided in the norms even at the time of application and they are given sufficient opportunity to rectify the deficiencies noticed; and it is such opportunities and various scrutinies permitted, that pushes the SAC to the fag end of the period stipulated. It is also in this context the individual cases has to be examined.

14. In W.P.(C) No. 14925/2015 the deficiencies noticed by the EVC on 19.4.2015, as constituted by the SAC, were extracted herein above. The first two defects, as has already been considered, could be taken as not existing since the report on Re-Scrutiny, takes care of the said deficiencies and the same cannot be held against the petitioner. However, the infrastructural deficiencies noticed therein cannot be ignored. Ext.P6 indicates that the original of the deed registered in the name of Educational

Society was not presented. The barrier free environment and toilets for physically challenged had not been provided at the time of the inspection. Even ignoring other objections, as raised in Ext.P8, the infrastructural deficiencies stand confirmed on 19.4.2015, at the inspection of the EVC. There can be no question of any rectification being made to the infrastructural facilities and the same being presented before the SAC, for reason of there being no time available for physical verification. The videographs, said to have been presented before the SAC, is insufficient to verify the rectification of deficiencies.

15. W.P.(C) No.16885/2015 stands on the same footing, to a slightly worsen extend, for reason of many more deficiencies having been noticed in the EVC inspection on 21.4.2015. Language laboratory, first aid room, barrier free environment and toilets for physically challenged and all weather approach road were not in existence. As for the Library Management Software and the

Journals, they were not available and the contention was that orders were placed for obtaining the same. There was no effective security system in place and furnishings were not available in many of the facilities including the seminar hall. Hence, there can be no infirmity found in the recommendation made by the SAC in the said case also.

16. The only conclusion, on a review of the procedure adopted by the AICTE in considering the applications of the petitioners and the specific contentions raised herein, is that the Writ Petitions are devoid of merit.

The Writ Petitions would stand dismissed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE