

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2015

DATE OF DECISION : 22 .07.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A.No.496 of 2015

and

M.P.No.1 of 2015

All India Council for Technical Education,
rep by its Chairman /Advisor-I,
7th Floor, Chanderlok Building,
Janpath, New Delhi-110 011.

... Appellant

Vs.

John Bosco Polytechnic College,
rep by its Founder and Chairman,
having office at John Bosco Building
No.2B, Babu Jagan Street,
Kannan Bala Nagar, 100 Feet Road,
Arumbakkam,
Chennai-600 106.

.. Respondent

The Writ Appeal is preferred under Clause 15 of the Letters Patent against the order dated 10.02.2015 passed in W.P.No.26755 of 2014.

writ petition filed under Article 226 of the constitution of issue a writ of certiorarified mandam to call for the records of the respondent in their Letter of Rejection F.No.Southern/ 1-455243423/ 2014/AB dated 9.8.2014 quash the same and consequentially direct the respondent to process the application for approval of the petitioner institution for the Academic year 2014-2015 and grant approval to the petitioner institution for the Academic year 2014-2015

For Appellant .. Ms.AL.Gandhimathi

For respondent .. Mr.M.L.Ramesh

JUDGMENT

In the instant appeal, the appellant / respondent in the writ petition has come forward to impugn the order dated 10th February, 2015 passed in the writ petition, being W.P.No.26755 of 2014 preferred by John Bosco Polytechnic College (hereinafter referred to as "writ petitioner"), questioning the rejection of the application for approval of the writ petitioner institution for the academic year 2014-15 by the appellant herein.

2 The learned Single Judge, considering all facts available, allowed the writ petition, quashing the said impugned order dated 9th August, 2014 with a direction to the writ petitioner to resubmit the application along with demand draft and on receipt of the same, the appellant herein was directed to consider the same and grant approval for the year 2014-15 within a period of two weeks from the date of resubmission.

3 The facts as manifest from the perusal of the documents placed before us are that the writ petitioner institution was running a polytechnic college on the basis of the approval granted since the academic year 2000-2001. The writ petitioner was required to make application every year for renewal of the approval, which according to the writ petitioner was granted for all 13 years till the academic year 2013-14 by order dated 19th March, 2013. In the meantime, the jurisdiction of the appellant herein for grant of approval came into consideration in the matter of Jayamatha Engineering College Vs. Union of India and others before the Supreme Court in W.P. (Civil) No.538 of 2014. The Supreme Court disposed of the said writ petition on 26th June, 2014, holding as under :

"The AICTE is granted seven days within which to take a decision on all the applications pending before it. It shall first take up the applications in which it has already expressed willingness to grant approvals, but have not done so in deference of the Orders of this Court. Thereafter, the concerned Universities/State Authorities/Bodies which have the powers of granting affiliation shall take a decision on that subject within one week. It is for these reasons that the first round of counselling/admission for allotment of seats which was to be completed by 30th June, 2014 will now be completed by 15th July, 2014. The second round of counselling shall be completed by 22nd July, 2014 and the last round by 29th July, 2014. In this manner, the date of commencement

of the Academic Session, as laid down by this Court above, shall not be disturbed."

4 The cut off date for making application for the year 2014-15 initially was in the month of February, 2014, which was extended upto 18th May, 2014. Indisputably, the writ petitioner could not file an application before 18th May 2014. The Supreme Court, while disposing of the matter in Jayamatha Engineering College (supra), granted seven days time to the appellant to take a decision in all applications pending before it and take up those applications first, wherein the grant of approval has already been expressed, but, the same could not be communicated in view of the pendency of the matter before the Supreme Court. The concerned Universities and State authorities were also granted one week time to take a decision for grant of affiliation.

5 According to the writ petitioner, by the public notice, the period for making online application was extended upto 18th May 2014. The writ petitioner could not make online application on account of non opening of web portal. The web portal was opened only for the Engineering colleges, not for the Polytechnic colleges. In that event, the writ petitioner had sent the application for renewal of approval on 23rd June 2014 by speed post, which was received on 26th June 2014, as per the postal website acknowledgement. The application of the writ petitioner was rejected by the impugned order on the ground that no application submitted by the writ petitioner was pending before the AICTE as on 26th June, 2014. The appellant considered all applications with processing fee for technical institutions pending before it. It was also observed that the letter dated 14th August, 2014 sent by the writ petitioner was received in the office on 19th August 2014, which was rejected. The petitioner came forward to question the legality of the impugned order dated 9th August, 2014 by filing the writ petition on 25th September, 2014.

6 The learned counsel appearing for the appellant would submit that the application of the writ petitioner was not received before the cut-off date, as on that date, i.e., on 18th May, 2014, no application was on record and available on 26th June, 2014, as observed by the Supreme Court in Jayamatha Engineering College (supra) and as such, no decision could be taken and the subsequent representation was rejected. It is further contended that the direction issued by the learned Writ Court is contrary to the well settled guidelines and directions issued by the Supreme Court from time to time. The cut-off date for counselling had come to an end even after extension by 29th July, 2014. There was no reason for the writ petitioner not to make application before 26th June, 2014 when initially the cut off date was upto February, 2014 and thereafter, extensions were granted for making application upto 18th May, 2014. Thus,

the direction to resubmit the application and further consideration to accord approval is not proper and valid.

7 It is further contended that the Supreme Court in Jayamatha Engineering College (supra) had directed to consider only those applications, which were pending on 26th June, 2014, but on that date, the application of the writ petitioner was not pending consideration and as such, granting extension and reconsidering would tantamount to violation of the Supreme Court's order. The writ petitioner had not made online application as per the regulations of the AICTE. The contention of the writ petitioner that the web portal was not opened is factually incorrect. The learned Writ Court has wrongly recorded the finding that the contention of the writ petitioner in respect of non opening of web portal was not denied by the appellant / respondent therein. The grant of approval on the basis of the previous approval may defeat the purpose of renewal in every year to ensure that infrastructure and other facilities continue with the institution for maintaining the educational standard.

8 Per contra, the learned counsel appearing for the writ petitioner / respondent herein would submit that the web portal for polytechnic colleges was not opened till 18th May, 2014, the last date for submission of online application. The students have been admitted on the basis that the writ petitioner was granted extension of approval for the last 13 years. The writ petitioner had made the application, which was duly received on 26th June, 2014, as on that date, as per the direction of the Supreme Court, all applications available were required to be considered. Thus, the contention of the appellant that the application was not on record is contrary to the facts on record. The learned Single Judge has rightly considered the case from all angles and granted permission to the writ petitioner to resubmit the application along with the fee with a direction to the appellant herein to consider the same and grant approval. The direction was passed in the larger interest of students, who were admitted and have undertaken proper course and also participated in the examination. Thus, the appeal deserves to be dismissed.

9 We have considered carefully the submissions advanced by the learned counsel for the parties and perused the pleadings and documents appended thereto.

10 It is undeniable and undisputed that the writ petitioner was granted renewal of approval till academic year 2013-14. The appellant, vide public notice dated 11th May, 2014, recording the order dated 17th April, 2014 passed in Orissa Technical Colleges Association Vs. AICTE and another [SLP (Civil) No.7277 of 2014], invited applications for approval from all technical institutions, including affiliated technical

colleges and also new technical colleges, stating therein that the period for submission of the application for extension of approval, for variation of intake and addition of new course by existing technical institutions, including affiliated technical colleges was 10th May, 2014 to 18th May, 2014. It was clearly stated that no application shall be permitted to be submitted after the cut-off date, i.e., 18th May, 2014 in any circumstances. All the applicants were required to read the AICTE approval process hand book 2013-14 as adopted for 2014-15 and regulations of All India Council for Technical Education (Grant of approval for Technical Institution) Regulation, 2012, before submitting the online application on AICTE web portal www.aicte-india.org.

11 Before the instant extension granted under the aforestated public notice, the cut off date for filing the online application was 14th February, 2014, which was extended subsequently upto 28th February, 2014. The said date was further extended to 15th March, 2014 with late fee. Subsequently, the last date for submission of online application by the existing institutes for approval in the academic year 2014-15 was extended upto 24th May, 2014, maintaining the last date of 18th May, 2014 in case of submission of applications by the new institutes.

12 The fact of non submission of the online application till 24th May, 2014 is not controverted to by the writ petitioner institute. The writ petitioner institute sent the application dated 23rd June, 2014, stating therein that the writ petitioner made an attempt to submit the application for extension of approval through web portal in the month of February, 2014. However, the same could not be made as the web portal page of the writ petitioner was not opening properly. There is no mention of any attempt on the part of the writ petitioner to make online application in the month of May, 2014. According to the writ petitioner, the said application has been received on 26th June, 2014 at 15.20 hours. Thus, it is manifest that the writ petitioner had not made any online application before 24th May, 2014. During that period, the writ petitioner has not even made any endeavour to send the application by post. The application was made only after a period of about one month, i.e., on 23rd June, 2014, much after the last date for making online application came to an end.

13 The contention of the learned counsel for the writ petitioner that the application of the writ petitioner was received on 26th June, 2014 and as such, the order rejecting the application on the ground that the application was not on record is not correct, is noted to be rejected. Even if the application was received at 15.20 hours, it cannot be held that on the relevant date, i.e., on 26th June, 2014 the application of the writ petitioner was pending before the AICTE and the AICTE was

obligated to consider the same in terms of the order dated 26th June, 2014 passed by the Supreme Court in Jayamatha Engineering College (supra).

14 The second contention that the web portal of the appellant for polytechnic college was not available, is also noted to be rejected, as even in the application dated 23rd June, 2014, the writ petitioner did not mention about non opening of web portal between 10th to 18th May, 2014 or thereafter upto 24th May, 2014. It appears that some attempt on the part of the writ petitioner was made during the month of February, 2014 for making online application, which the writ petitioner could not succeed, because of the web portal page of the writ petitioner was not opening properly. The said letter reads as under :

"We submit to state that, we established our polytechnic college during 2000-01 and our college permanent ID with AICTE is 1-455243423. During the month of Feb 2014, we made an attempt to submit our application for extension of Approval through Web portal. But we are not able to proceed because of our web portal page not opening properly and not accepted to lodge any data. In the mean time, the employee who deals this matter is not reported to duty without any intimation and he is not completed the work within the stipulated time."

15 The appellant in its counter affidavit dated 09th February, 2015 had categorically denied the allegation of non opening of web portal for polytechnic college in the following terms :

"8.I respectfully submit admittedly the petitioner had not filed application for extension of approval within the stipulated time in spite of the fact that public notices has been issued from time to time and the allegation by the petitioner that the website was not open when they tried to apply online is false and the website was open and all the colleges all over India had applied online. While so it is not correct to say that the petitioner is not able to apply online."

16 In view of the foregoing, the findings of the learned Single Judge that the appellant / respondent therein had not made any specific denial in respect of non opening of web portal for polytechnic colleges is not correct.

17 In the conspectus of the above said background, we proceed to examine the other facts relating to the case. The writ petitioner filed a writ petition, being W.P.(C)No.694 of 2014 before the Supreme Court under Article 32 of the

Constitution of India seeking for consideration of the application and grant of approval, which was dismissed summarily without granting any liberty to take recourse to either appropriate forum or move the appropriate jurisdictional court. In the meantime, the writ petitioner has made one more application on 14th August, 2014 to the AICTE, stating therein that the application was sent on 23rd June, 2014, which had reached the office of the appellant in time. Since the time for payment of fees for considering the proposal to extend the approval was extended till 2nd July, 2014, a representative of the writ petitioner institute approached the office in person on 2nd July, 2014 for payment of the fees by cash, which was refunded by the authorities. In the said application, it was stated as under :

"x x x x x x x x we had approached the Supreme Court seeking extension of time for payment of the requisite fees to process the extension of approval for the academic year 2014-2015. The Supreme Court dismissed the petition. The petition was not heard on merits, it is presumed that since no issue of fundamental right is involved in the writ petition the same had been dismissed."

18 The writ petitioner filed one more writ petition in this court, being W.P.No.23398 of 2014, seeking direction to the respondent to accept the fee sent to the respondent by the petitioner institution under Demand Draft dated 14th July, 2014 and sent to the respondent on 19th August, 2014 for the purpose of processing the application for approval of the petitioner institution for the academic year 2014-2015 and grant approval to the petitioner institution for the academic year 2014-2015.

19 The learned single Judge of this court by order dated 16th September, 2014 dismissed the writ petition holding as under :

"11.It is true that the principles of procedure such as Res Judicata traceable to the Civil proceedings may not be strictly applicable to the proceedings under the Constitution. But, the Hon'ble Supreme Court has consistently pointed out that the principles analogous to Res Judicata can always be imported. If the writ petition is dismissed in limine on the ground of limitation or alternative remedy or such as those, a fresh writ petition may be maintainable if there is subsequent cause of action. But, when there is no subsequent cause of action, the principle of finality to litigation has to be necessarily invoked in case of this nature.

Therefore, the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs."

20 Thereafter, the instant writ petition was filed on 25th September, 2014, questioning the legality of the rejection order dated 9th August, 2014. The learned Single Judge, recording the fact which has been specifically denied that the web portal for polytechnic college did not open and thereafter, the application was sent on 23rd June, 2014, which was delivered in the office of the appellant on 26th June, 2014 and as such, the same was within time, in the peculiar circumstances of the case, directed the writ petitioner to resubmit the application along with the demand draft with further direction to the appellant to consider the grant of approval.

21 The writ petitioner has approached the Supreme Court under Article 32 of the Constitution of India, which was dismissed without reserving any liberty to the petitioner to file any fresh petition or move the appropriate court. However, in view of the well settled proposition of law that even when a writ petition is dismissed as withdrawn summarily without liberty, the petitioner is competent to move any other appropriate forum for the same relief. [See: Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others¹ and Bakshi Dev Raj (2) and another Vs. Sudheer Kumar²].

22 However in the case on hand, once the writ petition was dismissed summarily by the Supreme Court and not withdrawn, the petition was not maintainable in this court under Article 226 of the Constitution of India. The learned Single Judge has rightly dismissed the writ petition being W.P. No.23398 of 2014 for identical relief vide order dated 16th September 2014. Thus, this is indicative of the fact that the writ petitioner was well aware that the writ petitioner had not filed earlier application for renewal of approval before the cut off date, i.e., 24th May, 2014, as stated in the preceding paragraphs.

23 When the web portal did not respond, the writ petitioner has not made any attempt to send the application before the cut off date, i.e, 24th May, 2014. The petitioner had also not stated about non opening of web portal subsequently in the application dated 23rd June, 2014 and as such, we have no hesitation in holding that the reasons of non opening of web portal for polytechnic colleges is an afterthought. In fact, no attempt was made on the part of the petitioner institution to make online application before the cut off date. The subsequent application by speed post or any other method was not admissible even if it was delivered at a later part of the day. Thus, it

1 (1987) 1 SCC 5

2 (2011) 8 SCC 679

cannot be held that the application was very much on record on the day when the appellant was required to consider the pending applications as per the order of the Supreme Court in Jayamatha Engineering College (supra). For want of mandatory application for renewal of approval within the time, the appellant cannot be directed to consider the resubmitted application with late fee for the reason that students were admitted in the academic year 2014-15 without renewal of approval granted by the competent authority, i.e., the appellant herein.

24 For the reasons stated herein-above, the impugned order of the learned Single Judge dated 10th February, 2015 passed in W.P.No.26755 of 2014 is set aside. The writ appeal stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vvk

To

The Chairman /Advisor-I,
All India Council for Technical Education,
7th Floor, Chanderlok Building,
Janpath, New Delhi-110 011.

+1cc to Mrs.A.L.Ganthimathi, Advocate, sr.no.35778.
+1cc to Mr.M.L.Ramesh, Advocate sr.no.37235.

सत्यमेव जयते

W.A.No.496 of 2015

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