

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

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Date of decision: 17th July, 2015

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W.P.(C) 5943/2015

INSTITUTE OF INTERNATIONAL EXCELLENCE Petitioner

Through: Mr. Sanjay Sharawat and Mr. Ratish
Kumar, Advs.

Versus

**ALL INDIA COUNCIL FOR
TECHNICAL EDUCATION**

.....Respondent

Through: Mr. Anil Soni and Mr. Naginder
Benipal, Advs. for AICTE.

AND

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W.P.(C) 6138/2015

ACN COLLEGE OF PHARMACY

..... Petitioner

Through: Mr. Mayank Manish, Mr.
Chandrashekhar Singh and Mr. Ravi
Kant, Advs.

Versus

**ALL INDIA COUNCIL FOR
TECHNICAL EDUCATION**

..... Respondent

Through: Mr. Anil Soni and Mr. Naginder
Benipal, Advs. for AICTE..

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner institutions in both the petitions applied to the respondent All India Council for Technical Education (AICTE), within the prescribed time, for approval for imparting education in the course of

Diploma in Pharmacy, with effect from the academic year 2015-16 but the application of both the petitioners was rejected by the Scrutiny Committee of the respondent AICTE on 7th April, 2015. In accordance with the Handbook of Procedure of the respondent AICTE, both petitioners appeared before the Standing Appellate Committee (SAC) of the AICTE on 13th April, 2015 which ordered the institutions of the petitioners to be visited by the Expert Visiting Committee. The Expert Visiting Committee, pursuant to visit, pointed out deficiencies in the institution of each of the petitioners and on the basis thereof the SAC of the respondent AICTE also, vide orders dated 30th April, 2015 rejected the application of each of the petitioners.

2. Both petitioners preferred writ petitions (W.P.(C) No.4884/2015 and W.P.(C) No.4707/2015 respectively) and vide orders dated 18th May, 2015 in each of the said petitions, the matter was remanded to the SAC of the respondent AICTE and it was further observed that in the event of the SAC being satisfied with the explanations offered by the petitioners, the applications of the petitioners for commencing imparting education in the said course would be accepted. Opportunity was also given to each of the petitioners to appear before the SAC and the SAC of the respondent AICTE

was directed to pass speaking order, if again rejecting the application of the petitioners.

3. The SAC of the respondent AICTE vide order dated 29th May, 2015 in W.P.(C) No.6138/2015 and vide order dated 28th May, 2015 in W.P.(C) No.5943/2015 has now held that though all the deficiencies pointed out have been cured, but since the last date stipulated of 30th April, 2015 for granting approval was over, permission cannot be granted for the academic year 2015-16. Accordingly, the applications have again been rejected with liberty to each of the petitioners to apply for the next academic year if so desire.

4. Notice of W.P.(C) No.5943/2015 was issued on 9th June, 2015 and the respondent AICTE has filed a counter affidavit pleading, i) that the Supreme Court in ***Parshvanath Charitable Trust Vs. All India Council for Technical Education*** (2013) 3 SCC 385 has laid down the time schedule and in accordance therewith, AICTE could not have granted approval to the petitioner for the year 2015-16; ii) that if approval is given at this late stage, there may be cascading effect thereof in taking university approval / application which was to be done by 15th May and further schedule of

conduct of entrance examination and counseling / admission for allotment of seats etc.; iii) that admittedly deficiencies existed in the petitioner institutions and some of the said deficiencies existed even till 18th May, 2015 as is evident from the order of the said date in W.P.(C) No.4707/2015; iv) that though the Supreme Court vide judgment dated 16th February, 2015 in W.P.(C) No.1034/2014 titled ***Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research Vs. All India Council for Technical Education*** had directed AICTE to grant approval for the academic year 2014-15 beyond the stipulated date but the same was done in exercise of powers under Article 142 of the Constitution of India; v) that the fact that the Supreme Court invoked its power under Article 142 is indicative of Supreme Court acknowledging that the time schedule is solemn and strict adherence thereto required.

5. W.P.(C) No.6138/2015 came up first before this Court on 30th June, 2015 when the counsel for the petitioner therein, faced with the query as to what could be said to be wrong with the order of the SAC – though finding the petitioner therein to have removed all the deficiencies and on account of which earlier the application of the petitioner was rejected, having refused

approval for the reason that the deadline laid down by the Supreme Court for grant of approval had expired. It was asked, how the respondent AICTE could be expected to notwithstanding the date fixed by the Supreme Court for grant of approval having passed, grant approval. On the request for adjournment by the counsel for the petitioner to show a judgment of a Single Judge of the High Court of Kerala holding that even the High Court could relax the said time schedule, the matter was adjourned to 2nd July, 2015 when W.P.(C) No.5943/2015 was also listed. The counsel for respondent AICTE was also asked to obtain instructions whether any appeal / SLP had been preferred against the said judgment of the Kerala High Court.

6. On 2nd July, 2015, the counsels for the petitioners referred to ***Irinjalakuda Diocesan Education Trust Vs. All India Council for Technical Education*** MANU/KE/0781/2015. Myself, having in the interregnum come across the order dated 12th June, 2015 of the Division Bench (Vacation) of this court in LPA No.397/2015 titled ***Jamia Hamdard (Deemed University) Vs. Union of India*** observing that in the event of a party aggrieved by a refusal of permission by the Central Government successfully challenging such refusal in a writ petition, the date on which

such party should be held to have been granted permission would relate back to the last date fixed in the schedule – subject however to adherence to the other time schedule as regards admission of students, attention thereto was also invited of the counsel for the parties and arguments were heard and judgment reserved.

7. It is not in dispute that the Supreme Court in *Parshvanath Charitable Trust* (supra) has provided for the following schedule:

Event	Schedule
“Last date of granting or refusing approval by AICTE	10 th April
Late date of granting or refusing approval by University / State Government.	15 th May
Conduct of entrance examination (AIEEE / State CET / Management quota exams, etc.)	In the month of May
Declaration of result of qualifying examination (12 th exam or similar) and entrance examination.	On or before 5 th June
1 st round of conselling / admission for allotment of seats.	To be completed on or before 30 th June.
2 nd round of counseling for allotment of seats	To be completed on or before 10 th July
Last round of counseling for allotment of seats	To be completed on or before 20 th July
Last date for admitting candidates in seats other than allotted above	30 th July However, any number of rounds for counseling could be conducted depending on local requirements, but all the grounds shall be completed before 30 th July.
Commencement of academic session	1 st August

Last date up to which students can be admitted against vacancies arising due to any reason (no student should be admitted in any institution after the last date under any quota)	15 th August”
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and ordered that the same shall be strictly adhered to by all the authorities concerned including AICTE, University, State Government and any other authority directly or indirectly connected with the grant of approval and admission and that no person or authority shall have power or jurisdiction to vary the schedule. In the light thereof, no error can be found with the orders impugned of the respondent AICTE, of though holding the petitioners to, upon removal of the deficiencies earlier pointed out, having become eligible for approval, being not entitled thereto by that date.

8. The only question which thus arises is, whether this Court in exercise of powers under Article 226 (and which the Supreme Court in ***B.C. Chaturvedi Vs. Union of India*** (1995) 6 SCC 749, ***State of West Bengal Vs. The Committee for Protection of Democratic Rights, West Bengal*** (2010) 3 SCC 571 and ***Asha Sharma Vs. Chandigarh Administration*** (2011) 10 SCC 86) has held are as wide as the powers of the Supreme Court under Article 142) should direct AICTE to grant approval.

9. I had in this context enquired from the counsel for the petitioners that even if such a direction was to be issued to the respondent AICTE, what else remained to be done by the petitioners before they could be said to have become entitled to commence imparting education in the current academic session. It was in this context enquired whether affiliations from the University or State Board as may be applicable had been obtained.

10. The counsels for the petitioners though stated that affiliation from the University / State Board had not been received till now and further informed that the University / State Board does not grant affiliation without the respondent AICTE approval, however stated that obtaining the said affiliation from the University would take not more than 3/4 days after the grant of approval by the respondent AICTE. They further stated that they will be able to still join in the counseling / admission which is to go on till 20th July, 2015 and would be able to admit the students, the last date whereof is 30th July, 2015 and would be able to commence the academic session on 1st August, 2015.

11. I however further enquired from the counsels as to how they expect the University / State Board, even if willing to grant affiliation, to so grant

affiliation, the last date for grant of which stipulated in the schedule aforesaid was of 15th May, 2015. It was enquired whether not the University / State Board would also be bound by the restrain aforesaid by the Supreme Court not to grant the approval after the stipulated date of 15st May, 2015.

12. The counsels fairly agreed that they may have to approach the High Court again vis-à-vis the University.

13. As far as *Mahatma Education Society's Pillai's Institute of Information Technology, Engineering, Media Studies & Research* (supra) is concerned, the applicant institute therein had been imparting education for the previous 15 years and was denied approval for the year 2014-15 owing to not meeting with the requirement of land as per All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2012. It was for the reason of finding that approximately 550 students were pursuing their studies and that because of non-grant of approval their academic year 2014-15 would be ruined and they would be put to great inconvenience and difficulties for no fault on their part, that the Supreme Court invoked its power under Article 142 of the Constitution of India and directed grant of approval.

14. As far as the judgment aforesaid of the Single Judge of the High Court of Kerala is concerned, the finding therein is of the SAC having not considered the report of the Expert Visiting Committee in its proper perspective and the rejection by the respondent AICTE of approval being thus not proper and which was set aside. It was as a corollary to the said finding, that even after the stipulated last date had expired, on 11th June, 2015 direction was issued for consideration of the matter afresh by the SAC, expeditiously, since the last date for commencing of the academic session was 1st August.

15. The counsel for the respondent AICTE informed that an SLP had been preferred to the Supreme Court against the aforesaid judgment of the Kerala High Court though had not been listed till then.

16. Similarly, as far as the order dated 12th June, 2015 of this Court in *Jamia Hamdard (Deemed University)* supra is concerned, the same also proceeds on the premise of the Central Government having wrongfully refused approval and which wrong had to be set right by the High Court on its jurisdiction under Article 226 being invoked. It is for this reason that it was held that the order of the High Court in exercise of powers of judicial

review over the decision of the Central Government, reversing the decision of the Central Government would relate back to the date of the order when the approval was wrongly refused or the last date prescribed for grant of approval.

17. Neither of the petitioners here, can be said to be in the same position as the petitioner in *Mahatma Education Society's Pillai Institute of Information Technology, Engineering, Media Studies & Research* (supra) for it to be said that a case for invoking power under Article 226 is made out. The reason which prevailed with the Supreme Court was of Institute in that case being 15 years old, approval being denied owing to change in Regulations and the suffering which 550 students already admitted were likely to suffer therefrom for no fault of theirs. Here, in both matters, we are concerned with applications for establishing new Institutes and no students are involved. So the said judgment / order of the Supreme Court has no application to the facts of these cases.

18. Considered in the light of *Irinjalakuda Diocesan Education Trust* and *Jamia Hamdard* supra also, the petitioner in W.P.(C) No.6138/2015 has not placed before us any material on the basis of which we can conclude that

the denial of approval to the petitioner on 30th April, 2015 was wrongful and owing to which the fresh decision dated 29th May, 2015 impugned in this petition should relate back to 30th April, 2015 for it to be said that the petitioner on the stipulated date was entitled to approval which had been wrongfully refused by the respondent AICTE. All that the petitioner has placed before us is the copy of the writ petition earlier filed and the order dated 18th May, 2015 therein besides of course the impugned decision dated 29th May, 2015 and its related documents. The copy of the writ petition earlier filed is also not accompanied with the annexures thereto. I am thus not in a position to know on what grounds the Scrutiny Committee had rejected the application on 7th April, 2015 and on what ground the SAC had rejected the application on 30th April, 2015. Though undoubtedly vide order dated 18th May, 2015 in the earlier writ petition the order dated 30th April, 2015 was set aside but on the basis of the documents shown to the Court and which were not before the SAC. It was for this reason only that the matter was remanded to the SAC for consideration afresh in accordance with the said documents. The SAC in its order dated 29th May, 2015 has noted that the representative of the petitioners who had earlier appeared before it could not even explain properly the enquiries made with respect to the land and in

the hearing pursuant to the order dated 18th May, 2015 (supra) fresh documents had been placed before it to explain the queries which had been earlier put and which had remained unexplained and on the basis of which fresh explanations the SAC was satisfied of the petitioner institute having fulfilled all the requirements. It would thus be seen that no fault in rejecting the application for approval on 30th April, 2015 can be attributed to the SAC.

19. As far as W.P.(C) No.5943/2015 is concerned, though the petitioner therein has filed a copy of the order dated 30th April, 2015 therein but the order dated 18th May, 2015 in the earlier writ petition filed by the said petitioner is itself on the basis of the undertakings given by the petitioner to make up the deficiencies on account of which approval was rejected on 30th April, 2015. The impugned order dated 29th May, 2015 therein also records that the deficiencies earlier found had been made up after 30th April, 2015. It is thus not as if any error was found with the earlier order dated 30th April, 2015 rejecting the approval. It cannot thus be said in this case also that the denial of approval on 30th April, 2015 was wrongful.

20. An applicant institution, before making an application for approval, is required to fulfill all the pre-requisites and knowing fully the said pre-

requisites, should during the process of scrutiny and hearings before the SAC be in a position to establish so and cannot be heard to contend that the deficiencies remaining would be fulfilled by the dates stipulated of commencing of the academic session.

21. If the applicant institutions have any grievance with the rule requiring them to be in a state of readiness on the date of making of the application even though the date for commencement of the academic session may be several months away and the same working to their prejudice by requiring them to incur recurring costs of retaining the infrastructure, faculty members etc., the remedy thereagainst is to challenge the said rule. The remedy is not in contending that because they have remedied the defence, though after the stipulated date but before the date stipulated for commencement of academic session, the rule should be bent.

22. The Courts often, in their desire to make education available to the vast population of the country, allow the institutes to make up the deficiencies even after the date of application, in contravention of the rules. However the same, it is being increasingly found, has led to the institutions making it a habit rather than an exception. It cannot be lost sight of that the

time with the authorities such as the AICTE, after the receipt of applications for decision thereon, is limited and considering the large number of applications such authorities are hard pressed for time. All this is resulting in a number of institutions though half baked in infrastructure and pre-requisites, obtaining approval for imparting education and churning out students with half baked degrees as been noticed by the Supreme Court also in *Manohar Lal Sharma Vs. Medical Council of India* (2013) 10 SCC 60.

23. I thus feel that the Courts need to maintain a discipline and only if find a gross wrong having been committed by the authority in rejecting the application for approval when approval ought to have been granted, should they intervene even after the last date for grant of approval has passed.

24. The petitioners herein have failed to make out any such case. This, coupled with the fact that the petitioners do not even have a university affiliation and for which they will have to again litigate, I am not inclined to interfere with the orders impugned of though finding the petitioners to have after the stipulated date removed all the deficiencies being still not entitled to the approval.

25. The Supreme Court, in ***Maa Vaishno Devi Mahila Mahavidyalaya Vs. State of Uttar Pradesh*** (2013) 2 SCC 617 has held that adherence to the schedule is the essence of granting admission in a fair and transparent manner as well as to maintain the standards of education. It was further held that the purpose of providing a time schedule is to ensure that all concerned authorities act within the stipulated time and that a schedule on the one hand places an obligation upon the authorities to act according to the schedule, it on the other hand provides complete clarity to other stakeholders as to when their application would either be accepted and / or rejected and what will be the time duration for it to be processed at different quarters. It was yet further held that a schedule gives clear understanding to the students for whose benefit the entire process is set up as to when they are expected to take admission to different colleges in order of merit obtained by them or for the purpose of subject and college preference. The Supreme Court earlier also in ***National Council for Teacher Education Vs Shri Shyam Shiksha Prashikshan Sansthan*** (2011) 3 SCC 238 held that an institution is not entitled to recognition until it fulfills the conditions and further directed that no institution be granted recognition unless it fulfills the requirements and the time schedule fixed by the Regional Committees.

26. Directing the respondent AICTE to now grant approval to the petitioners and presuming that the petitioners get university affiliation also, would upset the entire admission process already underway and all of which cannot be permitted, especially when the petitioners have failed to establish that the denial of approval on the stipulated date was wrongful.

The petitions are accordingly dismissed. However no costs.

RAJIV SAHAI ENDLAW, J.

JULY 17, 2015
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