

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.06.2016

Delivered on: 08.06.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.18356 of 2016
and WMP.Nos.16059, 16060 and 16416 of 2016

Sri Muthukumaran Institute of Technology,
Rep. by Principal/Director,
Chikkarayapuram,
Near Mangadu, Chennai-600 069. .. Petitioner
Vs.

1.All India Council for Technical Education (AICTE),
(A Statutory Body of Govt. of India)
Rep. by its Director/Approval Bureau,
7th Floor, Chanderlok Building,
Janpath, New Delhi-110 001.

2.All India Council for Technical Education (AICTE),
Rep. by its Regional Officer,
Southern Regional Office,
Shastri Bhavan, 26, Haddows Road,
Nungambakkam, Chennai-600 006.

3.The Registrar,
Anna University,
Guindy, Chennai-600 025.

4.The Director,
Directorate of Technical Education,
Chennai- 600 025.

5.The Secretary to Government of Tamil Nadu,
Higher Education Department,
Chennai-600 009. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in File No.SRO/1-697567321/AB dated 30.4.2016 and quash the same and direct the 1st respondent to grant Extension of Approval for the Academic Year 2016-17 and to permit the petitioner to admit students academic year 2016-17 in "Sri Muthukumaran Institute of Technology", Mangadu, Chennai-600 069.

For Petitioner : Mr.V.T.Gopalan, Senior Counsel,
for M/s.B.Saraswathi

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for M/s.AL.Gandhimathi
for R1 and R2

Mr.M.Vijayakumar
Standing Counsel for R3

Mr.R.Govindasamy,
Special Govt. Pleader for R4 and R5

Mr.P.Vijendran
for petitioner in WMP.No.16416/2016

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The deponent of the affidavit, namely the Principal of Sri Muthukumaran Institute of Technology, Chikkarayapuram, Near Mangadu, Chennai-600069, in the affidavit filed in support of this writ petition, averred as follows:

2.1. The College was established by Sri Muthukumaran Educational Trust in the year 1996 and was given approval by the Government of Tamil Nadu. The College/Institution was started with the sole intention to spread technical knowledge in various disciplines of Engineering and Technology. The institution was initially affiliated to the University of Madras and subsequently affiliated to Anna University, Chennai and it is also approved by All India Council for Technical Education [in short "AICTE"]. The College was established in the year 1996 and prior to that, infrastructural facilities provided have been thoroughly inspected by the Government of Tamil Nadu, AICTE, University of Madras and only after thorough inspection and verification, No Objection Certificate was given by the Government of Tamil Nadu, AICTE and thereafter, University of Madras, who was the affiliating body, granted affiliation.

2.2. The campus of the college spread over 15.76 acres at Chikkarayapuram, near Mangadu, situated at the outskirts of Chennai and the institution is having excellent infrastructure which includes separate blocks for each department with well equipped laboratories and providing wonderful ambiance for the students to learn and develop skills and about 50 staff members are pursuing their Doctorate in various reputed Universities and the faculty and students of College have membership in various professional societies like CSI, IEEE, ASME, MMA, ISTE etc. The

students of the College had got placements in reputed companies such as Accenture, Infosys, IBM, Cognizant Technology Solutions (CTS), TATA communications, SANMAR Group, Maruti Suzuki, engineering companies like Athena Health, Charge Bee Technologies and Symantec etc.

2.3. The College, at the time of commencement of its academic activities, was running popular courses like Mechanical Engineering, Electronics and Communication Engineering, Electrical and Electronics Engineering and Computer Science and Engineering and subsequently number of other courses were started to cater to the needs of the students. The College was subjected to regular inspections every year from 1996 and there has been uninterrupted approval till the academic year 2015-16 i.e., for the past 19 years. Five of the Under Graduate Courses provided by the institution have also been accredited by the National Board of Accreditation from the year 2005.

2.4. AICTE conducted surprise inspection of the College on 04.03.2016 and during the course of inspection, the Inspection Committee took all the relevant documents mainly pertaining to land and physical verification of the boundaries of the College, however, the Inspection Report of the AICTE Committee was not furnished to the College and the same is in utter violation of the principles of natural justice. In the normal course, the the College submitted the application for extension of approval for the academic year 2016-17 by means of online through web portal on 31.03.2016 and on 13.04.2016, letter of rejection for not approving the extension for the year 2016-17 was issued by AICTE and it was received through e-mail. The institution, with regard to deficiencies pointed out, made an appeal and thereafter, AICTE deputed a Four Member Expert Committee to inspect the College once again on 25.04.2016 and the focus was reduced to following three points:

(a) Demarcation of Sri Muthukumaran Institute of Technology and other Institutions on Master Plan and on Khasra Plan.

(b) Physical verification at site for land details and boundary demarcation/separation with the Medical and other Institute buildings.

(c) Land details pertaining to the Institute-Authenticated English version.

2.5. The Expert Committee has recommended that physical verification of boundaries of the College was done and that the extent of the Institute as marked in the drawings have been verified physically in the site and found to be true and further that there is a clear demarcation between the College and other institutes by putting up fence and it also observed that Doc.Nos.6347/97, 6348/97, 6441/97 and 6442/97 totaling to an extent of 2.28 acres (totaling an extent of 2.27 acres as per

the lease deed) stands in the name of Sri Vetrivel Educational and Charitable Trust and the said lands have been leased out for 99 years by means of Registered Lease Document No.3198/2013 dated 07.03.2013 in favour of the petitioner institution. The College was given an opportunity to prefer an appeal before the Standing Appellate Committee of AICTE. The Managing Trustee and Principal presented the appeal before the Standing Committee and the said Committee has passed the impugned order dated 30.04.2016 stating that:

"(1) Out of the total available land of approximately 15.00 acres for the Engineering College and area of 2.27 acres available to them via registered lease deed for a period of 99 years which was executed in 2013. As per AICTE APH norms it is not permissible.

(2) The institute has submitted the fee for regularization and is waiting for the occupancy letter which is not available.

Taking an overall view the Committee recommends:-

The institute be placed under 'no admission' for the academic year 2016-17".

The College/Institution, challenging the legality of the said order, has filed this writ petition.

3. Mr.V.T.Gopalan, learned Senior Counsel assisted by Mr.B.Saraswathi, learned counsel appearing for the petitioner made the following submissions:

(i) The College was established in the year 1976 and was accorded approval regularly by AICTE till the present academic year and two reasons have been cited for non-extension of approval, namely lease of 2.28 acres by Sri Vetrivel Educational and Charitable Trust in favour of the petitioner and secondly non-production of the occupancy letter.

(ii) Insofar as the lease of 2.27 acres by Sri Vetrivel Educational and Charitable Trust in favour of the petitioner institution is concerned, it is recognized under Chapter V of the Transfer of Property Act and Sections 105 to 117 deal with Lease of immovable property and since the lease of immovable property is not prohibited, there cannot be any impediment on the part of the respondents to accept the lease as regards 2.28 acres. Alternatively, it is the submission of the learned Senior Counsel appearing for the petitioner that in the light of Chapter V of the Transfer of Property Act, the prescription made by AICTE in Appendix 4 of its Handbook as to the requirement of ownership and

possession of the land in the name of the applicant other than Government lease is to be read down and it is to be held that the lease of private land is also valid. Even otherwise, subsequent to passing of the impugned order, Sri Vetrivel Educational and Charitable Trust by means of registered sale deed in Doc.No.7779/2016 on the file of Sub-Registrar, Kunrathur, conveyed 2.27 acres of land, which was the subject matter of said lease.

(iii) Insofar as letter of occupancy is concerned, the Government of Tamil Nadu, Department of Public Health and Preventive Medicine, vide proceedings in R.No.3966/E5/16 dated 25.5.2016, has given the said certificate and therefore, there cannot be any impediment on the part of AICTE to reconsider the said issue once again.

The learned Senior Counsel appearing for the petitioner, in support of his submissions, placed reliance upon the following judgments,

(I) State of Maharashtra and Others v. Ravdeep Singh Sohal [(2000) 9 SCC 184]

(II) Parshvanath Charitable Trust and Others v. All India Council for Technical Education and Others [(2013) 3 SCC 385]

(III) Jayamatha Engineering College v. Union of India and Others [(2014) 16 SCC 350]

(IV) Order dated 14.08.2013 made in W.P.(MD) No.11334 of 2013

and would submit that the authorities had failed to act as per time schedule and passed the impugned order only on 30.04.2016, without providing any reasonable opportunity to enable the petitioner institution to comply with the alleged defects and the time schedule prescribed cannot be put against him and since the alleged deficiencies are purely hyper-technical and considering the fact that the institution is having excellent track record of nearly 20 years, AICTE has to reconsider the issue once again and grant approval for the academic year 2016-2017 and prays for quashment of the impugned order with a further direction directing AICTE to grant approval for the current academic year 2016-2017 and to permit them to admit students.

4. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.AL.Gandhimadhi, learned Standing Counsel appearing for the respondents 1 and 2 has drawn the attention of this Court to the AICTE Handbook 2016-2017 and would submit that

under Section 22 of the AICTE Act, the Central Government by notification in the Official Gazette can make rules to carry out the purposes of the Act and under Section 23 of the AICTE Act, the Central Government by notification in the Official Gazette can make regulations inconsistent with the provisions of the Act and accordingly various regulations came to be framed and thereby, The All India Council of Technical Education (Grant of Approvals for Technical Institutions) Regulations 2010 came to be framed and as per the said Regulations for Engineering and Technology institution, for running Under Graduate programme, land requirement in rural areas is 7.5 acres and as per Clause 17 "Documents showing ownership in the name of the application in the form of Registered Sale Deed/Irrevocable Gift Deed (Registered)/Irrevocable Registered Government Lease (for a period of minimum 30 years with at least 25 years of live lease at the time of submission of application) by the concerned authority of Government or any other documents issued by the concerned competent authority establishing the ownership and possession of the land in the name of the applicant. In case, the documents are in vernacular language, notarized English translation of the documents shall be produced. Admittedly, at the time of inspection by the Four Member Committee, the petitioner was in possession of 2.27 acres only by means of lease granted by Sri Vetrivel Educational and Charitable Trust and it is not in accordance with Clause 17 and if the petitioner excludes 2.27 acres of land, there cannot be any difficulty in considering the approval for the next academic year for the reason that the time limit prescribed has already been over. Insofar as the second requirement, namely Occupancy Certificate is concerned, admittedly, it was obtained only on 25.05.2016, much after the passing of the impugned order on 30.04.2016.

5. Insofar as the submission of the learned Senior Counsel appearing for the petitioner that in the light of subsequent development namely purchase of land by the petitioner institution by registered Sale deed in Doc.No.7779/2016 dated 26.05.2016 and furnishing of the Occupancy Certificate dated 25.05.2016, there cannot be any impediment to grant extension of approval for the current academic year, it is the submission of the learned Senior Counsel appearing for the respondents 1 and 2 that if concession is shown to one institution, it may open pandrabox and it may set a bad precedent. It is also the submission of the learned Senior Counsel appearing for the petitioner that the petitioner having applied for extension of approval under the relevant norms and regulations, cannot turn around and say that the requirement of the ownership and possession of the land admeasuring 2.27 acres is not in consonance with the Transfer of Property Act and in the absence of challenge to the said requirement, this Court may not hold that the said requirement is bad in law and prays for dismissal of this writ petition.

6. Mr.M.Vijayakumar, learned Standing Counsel appearing for the third respondent/Anna University would submit that since AICTE has rejected the approval, Anna University has passed an order on 14.05.2016 indicating that it is not in a position to grant approval for the academic year 2016-2017.

7. Mr.P.Vijendran, learned counsel appearing for the petitioner in WMP.No.16416 of 2016, filed for impleadment, has drawn the attention of this Court to the typed set of documents filed in support of the said petition and would submit that a Single Bench of this Court, vide order dated 13.08.2014 made in W.P.No.19253/2014 filed by Sri Muthukumaran Educational Trust represented by its Managing Trustee Mr.A.N.Radhakrishnan for quashment of the rejection of approval and for grant of approval to the medical college run by the said Trust for the academic year 2014-2015 for the first batch of admission of 150 students in the first year MBBS course, has also dealt with the approval for the superstructure put up by the said institution and found that the petitioner Trust runs Engineering Colleges, Medical Colleges and Hospitals and Arts and Science Colleges and that they have never obtained building plan approval for any of the buildings of any of the institutions run by them and that some pockets of land on which the petitioner college is located, are actually Government Poramboke lands in which there is actually a water course and ultimately, dismissed the writ petition. The role of Mr.A.Radhakrishnan, Managing Trustee and Smt.R.Gomathy, Chairperson of Sri Muthukumaran Education Trust, Chennai and others in the matter of obtaining approval from MCI for construction of buildings for running various educational institutions without proper approval from the competent forum was also the subject matter of investigation in Central Bureau of Investigation (CBI), Anti-Corruption Branch, Chennai and CBI, in its report to the Secretary, MCI, New Delhi-77, has concluded that Sri Muthukumaran Educational Trust run by A.Radhakrishnan had not obtained approval from the CMDA authorities for any of the College buildings constructed in Chikkarayapuram and Mangadu Villages for Muthukumaran Medical College and further, the College and Trust Authorities had suppressed the original facts and furnished false and fake plan approvals purported to have been issued by CMDA authorities to the MCI for obtaining approval and requested MCI to initiate necessary action against Sri Muthukumaran Medical Colleges as per the provisions of MCI Act, 1956. It is the further submission of the learned counsel appearing for the implead petitioner that Mr.K.R.Ramaswamy alias Traffic Ramaswamy has also filed W.P.No.14200 of 2015 with regard to grant of approval by the Government in respect of unauthorized constructions put up by the said Trust in G.O.Ms.No.52, Housing and Urban Development

(UD-1) Department dated 25.03.2015 and the First Bench of this Court also expressed its anguish as to the manner in which the said order came to be passed and in the light of the above facts and circumstances, extension of approval sought for by the petitioner institution for the current academic year to admit students in the Engineering College cannot be granted.

8. Mr.V.T.Gopalan, learned Senior Counsel appearing for the petitioner, in response to the said submission, would submit that the fact remains that approval has been accorded by the Government in the above cited Government Order and though it was put to challenge in W.P.No.14200 of 2015, the said Government Order have not been quashed. It is the further submission of the learned Senior Counsel appearing for the petitioner that the report of CBI to MCI pertains only to medical colleges run by the Trust and not with regard to Engineering Colleges and the petitioner, with an oblique and malafide motive, has filed the present petition and has no locus standi to oppose the prayer sought for by the petitioner and prays for dismissal of this writ petition.

9. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for AICTE would submit that in the light of G.O.Ms.No.52 dated 25.03.2015, AICTE has not taken cognizance of the alleged unauthorized constructions and for rejection of extension of approval, has given tenable reasons.

10. This Court paid its best attention to the rival submissions and also perused the materials placed before it as well as the decisions relied on by the learned Senior Counsel appearing for the petitioner.

11. The primordial question arises for consideration is whether the impugned order passed by AICTE, rejecting the application filed by the petitioner institution for extension of approval for the year 2016-2017, is sustainable?

12. AICTE, in terms of powers conferred under Section 23 has framed All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 and in accordance with the said Regulations, certain stipulations have been prescribed which include land requirement also. In terms of the said Regulations, land requirement is 7.50 acres in rural areas and it is the submission of the learned Senior Counsel appearing for AICTE that if the petitioner institution insists that the said land requirement is sufficient, there may not be

any impediment to consider the request for grant of extension of approval for the next academic year 2017-2018. The learned Senior Counsel appearing for the writ petitioner would contend that a Block housing computers is located in 2.28 acres of land originally leased out by Sri Vetrivel Educational and Charitable Trust by means of registered Lease Deed in Doc.No.3198/13 dated 07.03.2013 in favour of the petitioner institution and therefore, the said land cannot be excluded.

13. It is to be pointed out at this juncture that as per Appendix 4, Clause 4.1 deals with Land Requirements for Technical Institutions and as per Clause 17, lease is permissible only for Government lands and in respect of other lands, ownership and possession of the land in the name of the applicant is mandated. Admittedly, at the time of presentation by the Managing Trustee and Principal of the College on 18.04.2016 and also inspection by the Four Member Expert Committee, land admeasuring an extent of 2.27 acres as per lease deed was standing in the name of Sri Vetrivel Educational and Charitable Trust and the said Trust has executed a registered Lease Deed dated 7.3.2013 in favour of the petitioner institution. Admittedly, the said requirement has not been complied with by the petitioner institution.

14. It is the submission of the learned Senior Counsel appearing for the petitioner that Section 105 of the Transfer of Property Act, 1882 speaks about Leases of Immovable Property and therefore, lease of the land is permissible in terms of Substantive Law and since the land requirement in terms of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 runs contra to Substantive Law, it should be read down and held that lease of private land is also permissible. In the considered opinion of the Court, the said submission lacks merit and substance for the following reasons.

15. Even according to the petitioner, it started the institution in the year 1996 and was regularly applying for the grant of extension of approval and got it till the academic year 2015-16 in accordance with the rules and regulations framed under AICTE Act and therefore, it is well aware of the land requirement also. In the counter affidavit filed by AICTE, it is pointed out that the writ petitioner, when applying for approval for the earlier academic years, did not produce Doc.Nos.6347, 6348, 6441 and 6442 of 1997, admeasuring to an extent of 2.28 acres (as per lease deed 2.27 acres) and only at the time of Expert Committee visit on 04.03.2016, produced the above said four documents and at that juncture only it was found

that the lease of private land is impermissible in the light of Clause 17 as pointed out above.

16. Insofar as legal submission made by the learned Senior Counsel appearing for the petitioner that the mandate prescribed under Regulations with regard to the lease of private lands is to be read down after taking note of the Substantive Law in the form of Transfer of Property Act, this Court is of the view that reading down is to be adopted to sustain the validity of the provision.

17. In *M/s.Oswal Agro Mills Ltd. v. Collector of Central Excise and Others* [AIR 1993 SC 2288] it is held that the Doctrine of Reading Down has been applied only to sustain the constitutionality of the Statute.

18. It is a well settled position of law that where an ambiguity arises regarding the supposed intention of the legislature, as one of the statutory constructions, the Court propounded the doctrine of reading down. In *Lord Reid in Federal Steam Navigation Co. v. Department of Trade and Industry* [(1974) 2 All ER 97] it has been held that the Judge may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute. Therefore, the Doctrine of Reading Down is used for saving a Statute from being struck down on account of its unconstitutionality. Hence, the submission made on behalf of the petitioner to read down the regulations under All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 in tune with the Transfer of Property Act, in the considered opinion of the Court, is legally unsustainable.

19. As already pointed out, the petitioner, being an institution running for the past 20 years, supposed to be aware of the statutory requirements and having applied for extension of approval under the relevant statutory provisions, cannot turn around and say that the land requirement of ownership of private lands is bad in law. It is also contended by the learned counsel appearing for the petitioner that since AICTE has deliberately delayed the issue and passed the impugned order at the very last moment, extension of time for approval is to be granted so as to enable the petitioner institution to admit students for the current academic year. Since this Court has

held that the said requirement is in tune with statutory regulations, there is no question of directing the AICTE to reconsider the issue and thereby granting extension of approval for the current academic year to enable the petitioner institution to admit students. Even otherwise, the Hon'ble Supreme Court of India in the decision in Parshavanath Charitable Trust and Others v. All India Council for Technical Education and Others [(2013) 3 SCC 385] has also taken note of the time schedule.

20. Though the learned counsel appearing for the petitioner placed reliance upon the decision in Jayamatha Engineering College v. Union of India and Others [(2014) 16 SCC 350] as to the extension of time Schedule, the Hon'ble Supreme Court of India found that in the light of the stand of AICTE that it has received enormous applications and within the time schedule taken, unable to process the same, extended the time schedule by exercising its power under Article 142 of the Constitution of India.

21. The order dated 14.08.2013 made in W.P.(MD).No. 11334 of 2013 cited by the learned Senior Counsel appearing for the petitioner has no application to the facts of the present case for the reason that the learned Judge, in the said judgment, held that the Dental Council was at fault and therefore, extended the time schedule.

22. It is the alternative submission of the learned Senior Counsel appearing for the petitioner that subsequent to the impugned order dated 30.04.2016, the petitioner had obtained Occupancy Certificate dated 25.05.2016 and also purchased 2.27 acres from Sri Vetrivel Educational and Charitable Trust by means of registered Sale Deed in Doc.No.7779/2016 dated 26.05.2016 and since the two defects pointed out by the Standing Appellate Committee of the AICTE have been complied with, extension of approval may be granted for the current academic year. However, this Court is of the view that it cannot do so for the reason that admittedly, the alleged compliance came into being well after the impugned order and also beyond the time schedule. However, it is open to the petitioner institution to persuade AICTE for re-inspection and consideration of the said compliance for the next academic year.

23. The petition for impleadment would disclose that in respect of medical college run by Trust in terms of the report of the CBI submitted to MCI, serious lapses and omissions have been noted. However, it has nothing to do with the petitioner institution which is an Engineering College. Insofar as

unauthorized construction is concerned, it was regularized under G.O.Ms.No.52, Housing and Urban Development (UD-1) Department dated 25.03.2015 and though challenge was made to the said order in W.P.No.14200/2015, the said order has not been quashed. Therefore, in the light of the said facts and circumstances, the petitioner in WMP.No.16416 of 2016 need not be impleaded as a party in this writ petition. Therefore, WMP.No.16416 of 2016 is dismissed.

24. In the light of the reasons assigned above, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

jvm

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Director/Approval Bureau,
All India Council for Technical Education (AICTE),
(A Statutory Body of Govt. of India)
7th Floor, Chanderlok Building,
Janpath, New Delhi-110 001.
 - 2.Regional Officer,
All India Council for Technical Education (AICTE),
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 - 3.The Registrar,
Anna University, Guindy, Chennai-600 025.
 - 4.The Director,
Directorate of Technical Education,
Chennai- 600 025.
 - 5.The Secretary to Government of Tamil Nadu,
Higher Education Department, Chennai-600 009.
- +1 cc to M/s.AL.Ganthimathi Advocate sr.31165 dt:10/06/2016
+ 2 ccs to Mrs.B.Saraswathi, Advocte SR 30396
+ 1 cc to Mr.M.Vijayakumar, Advocate SR 31144
+ 1 cc to Govt.Pleader SR 30905

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W.P.No.18356 of 2016