

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2016

Delivered on : 01.09.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

WP.No.40899/2002 & WPMP.No.60569/2002

National Engineering College
Rep.by its Chairman
Mr.K.Ramaswami, K.R.Nagar
Kovilpatti, Thoodhukudi District.

.. Petitioner

Versus

The Member Secretary,
All India Council for Technical
Education, Indira Gandhi Sports
Complex, I.P. Estate
New Delhi 110 002.

.. Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to Advertisement No.AICTE 23 of 2002, The Hindu, dated 02.11.2002 issued by the Member Secretary of the AICTE and quash the same.

For Petitioner : Mr.A.L.Somayaji, Senior Counsel
assisted by
Mrs.Narmada Sampath

For Respondent : Mrs.A.L.Gandhimathi

ORDER

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

2 The facts leading to the disposal of this writ petition, briefly narrated, are as follows:-

[a] The petitioner / Institution, namely, "National Engineering College" was established by the National Educational and Charitable Trust, registered under the Trust Registration Act, under Regn.No.180 of 1984. The Government of Tamil Nadu, vide G.O.Ms.No.939 dated 20.07.1984, granted permission to the said Trust to start an Engineering College in the name and style "National Engineering College" at Kovilpatti, under the Self Financing Scheme in order to cater the needs of rural area people, from the academic year 1984-11985 and thereafter, on 11.10.1984, the Madurai Kamarajar University had granted affiliation as well as permission to start Under Graduate Courses in Mechanical Engineering, Electronics and Communication Engineering and Computer Science with an intake of 60 students in each discipline. The College was started in the academic year 1984-1985 after obtaining necessary permission / approval / affiliation. The Government, vide Letter dated 04.08.1992, had granted

permission to the petitioner College to start Electrical and Electronics Engineering with an intake of 60 students and Electronics and Instrumentation Engineering with an intake of 30 students and the petitioner / College was affiliated upto the year 1992 with the Madurai-Kamaraj University and in the interregnum, the All India Council for Technical Education [AICTE] Act, 1987 [Central Act 52 of 1987] came into force on 28.08.1988 vide G.O.Ms.No.317 [E] dated 26.03.1988. The AICTE had also granted permission to the petitioner / College on 19.08.1993 by approving the existing courses recognised by Madurai Kamaraj University and the very same Council had accorded permission to conduct two additional courses, viz., Electronics and Instrumentation Engineering and Electrical and Electronics Engineering with an intake of 40 students in each discipline, after getting necessary permission / approval from the Government of Tamil Nadu and after the formation of Manonmaniyam Sundaranar University in the year 1992, the said University has also granted affidavits for conducting courses in the very name and style and it was also followed by an increase in intake of students from 40 to 60 by AICTE for Electronics and Instrumentation Engineering and Electrical and Electronics Engineering and not stopping with that, the petitioner / Institution has started Master of Computer Application [MCA] with an intake of 30

students and it was increased from 30 to 60 from the academic year 1997-1998 and the AICTE had accorded permission to do so and further, granted permission to start M.E. [Computer Science and Engineering] with an intake of 25 students from the academic year 2001-2002 and the Under Graduate Courses, viz., Information and Technology Course with an intake of 60 students from the academic year 2009-2010.

[b] It is the specific case of the petitioner that the College, viz., the National Engineering College, is functioning from the academic year 1984-1985 onwards and after the introduction of the AICTE Act, the said Body had also continued to grant permission/approval to the existing courses and also permitted the Institution to start the Under Graduate Courses and Post Graduate Courses in certain disciplines having aware of the fact that it uses the word "National". However, to the shock and surprise of the petitioner, the respondent issued an Advertisement in the Hindu News Daily dated 02.11.2002 bearing Advertisement No.23/2002, which reads as follows:-

"Name of Institutions:-

The use of word "Indian" and/or "National" and/or "All India" and/or "All India Council" and/or "Commission" in any part of the name of a Technical

Institution and/or any name whose abbreviated form leads to "IIM"/"IIT"/"IISC"/"IIIT"/"AICTC"/"UGC"" shall not be permitted. Any institution which is already functioning with the names using the above words shall submit the application for change of name within one month from the date of publication of this notification for approval by AICTE failing which AICTE may withdraw its approval".

The petitioner / Institution, challenging the legality of the said Notification, came forward to file the present writ petition.

3 Mr.A.L.Somayaji, learned Senior Counsel assisted by Mrs.Narmada Sampath, learned counsel appearing for the petitioner made the following submissions:-

[a] The petitioner / College was started as early as in the year 1984 and it continues to run with the same name and was granted permission/approval/affiliation by the Government of Tamil Nadu ; Madurai-Kamaraj University and Manonmaniam Sundaranar University as well as by the respondent and the respondent themselves had accorded permission to start a Post Graduate Courses, new Under Graduate Courses as well as increase in seating capacity and no complaint whatsoever has emanated as to the misuse of the name "National" by the petitioner / Institution and

therefore, the impugned Notification, prohibiting the petitioner from using the word "National" with a further direction to change it within one month, *per se* unsustainable in law and on facts. It is further submission of the learned Senior Counsel that since the Institution has earned its reputation by imparting quality education, it is being considered as one of the best Engineering Colleges in the State of Tamil Nadu and the students who had studied in the said Institution after completion of the Courses, got good jobs outside this Country and the National Accredited and Assessment Council [NAAC] had also accorded the petitioner / College for five years from the year 2014 onwards and the University Grants Commission [UGC] had granted 12-B Status to the petitioner / Institution from the year 2015 onwards. The sudden change of name in pursuant to the impugned Advertisement issued by the respondent would definitely cause irreparable loss and denying the prospect of receiving funds for research and development activities and also in the light of the fact that the said Institution was granted autonomy and it had issued countless Mark Sheets and Certificates to the students under the name and style and if the name is changed, as suggested by the respondent, it would cause confusion among the prospective employers.

[b] The learned Senior Counsel, on a legal plea, has invited the attention of this Court to the Emblems and Names [Prevention of Improper Use] Act, 1950 [Central Act 12 of 1950] and would submit that the word "National" is not mentioned in the Schedule to the said Act and therefore, the respondent, through the impugned Advertisement, cannot direct or compel the petitioner to change the word "National" and prays for quashment of the same and thereby, allowing the writ petition.

[c] The learned Senior Counsel appearing for the petitioner, in support of his submissions, has placed reliance upon the following judgments:-

[a] AIR 1989 AP 55 [*South India Textile and Others V. Government of Andhra Pradesh and others*] ;

[b] AIR 2007 Bombay 184 [DB] [*Goenkarancha Ekvot V. Union of India and others*] ;

[c] 2012 [6] CTC 453 [*Bharath Chamber V. The General Manager, District Industries Centre*] ;

[d] 2015 [3] WLN 1 [Raj.] [*New Indian Public School Society and others V. State of Rajasthan and others*] ; and

[e] 2014 MANU RH 933 [*Shri Raghunath International School Vs. State of Rajasthan*].

4 Per contra, Mrs.A.L.Gandhimathi, learned Standing Counsel appearing for the respondent / AICTE has drawn the attention of this Court to the two Counter Affidavits filed by the respondent and would contend that in the year 2002, the respondent took a decision that no Institution must bear the name "National" or "Indian" in the name of the Institution as these names are generally used for the Government Institutions and Private Institutions cannot be permitted to use the said names and therefore, vide letter dated 22.04.2002, it requested the petitioner / Institution to delete the word "National" for which the petitioner responded by sending a reply dated 23.05.2002, stating that it was started in the year 1984 and the name is recognised in the list of affiliated Colleges of Indian Universities and if they change the name of the college all of a sudden, it will definitely create confusion and will have an adverse effect so far as their interest is concerned and also will affect the admission of the students in their College and thereafter only, the respondent has issued the impugned Publication in the English News Daily. It is the further submission of the learned counsel appearing for the respondent that as

per the All India Council for Technical Education Approval Process Handbook, which is having a statutory backing, the use of the word "Indian" and/or "National", is clearly prohibited and the said restriction / prohibition is apart from the names contained in the Schedule to the Emblems and Names [Prevention of Improper Use] Act, 1950, and therefore, it cannot be faulted with. It is also contended by the learned Standing counsel appearing for the respondent that by calling the petitioner / Institution to change its name followed by the impugned Publication, the AICTE is acting well within the statutory powers and therefore, it cannot be faulted with and in support of her submissions, placed reliance upon the order dated 19.09.2009 made in **WP [MD] No.1079/2006** [*Selvam Educational and Charitable Trust, rep.by its Trustee Mr.S.A.Joy Raja Vs. All India Council for Technical Education, rep.by its Adviser [UG/PG], Indira Gandhi Sports Complex, IP Estate, New Delhi 110 002*].

5 The learned Senior Counsel appearing for the petitioner, in response to the Counter Affidavits filed by the respondent, has drawn the attention of this Court to the rejoinder and would submit that in the light of the ratio laid down in the judgments relied on by him coupled with the provisions contained in the Emblems and Names [Prevention of

Improper Use] Act, 1950, the Impugned Advertisement issued by the respondent, directing the concerned Institutions to change their name, insofar as the petitioner / College, is *per se* unsustainable and prays for quashment of the same.

6 This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it as well as the decisions relied on by them.

7 The petitioner / College came into being prior to the passing of the AICTE Act. The AICTE vide communication dated 19.08.1993 addressed to the Secretary, Education Department, Government of Tamil Nadu, has informed about their approval to the National Engineering College, Kovilpatti, Tamil Nadu – the petitioner herein, to conduct Under Graduate Courses in Mechanical Engineering ; Electronics and Communication Engineering ; and Computer Science with an intake of 60 students in each discipline subject to certain conditions. The said communication also states that the Management of the College should strictly follow any further conditions as may be laid down by AICTE from time to time and in the event of non-compliance by the Trust or Institution

with the above conditions of AICTE, it will be free to take measures for withdrawal of its approval without consideration of any related issues and, all the consequent liabilities would be that of the Trust and / or the Institute. Subsequently, the respondent / AICTE had accorded conditional approval to conduct Under Graduate Courses in Electronics and Instrumentation Engineering and Electrical and Electronics Engineering with an intake of 40 students each and informed about the same to the said official vide letter dated 12.08.1994 and Conditions No.10 and 11 would stipulate that the petitioner / College has to strictly follow any other conditions laid down by the AICTE from time to time and should also comply with the other conditions of AICTE as per the Annexure to the said letter. Thus, the petitioner / College is under mandate to follow any further conditions as may be laid down by the respondent from time to time and also to bear the consequences on account of the non-compliance of the same.

8 The primordial submission made by the learned Senior Counsel appearing for the petitioner is that since there is no express prohibition as to the use of the word "National" under the Emblems and Names [Prevention of Improper Use] Act, 1950, coupled with the fact that

the petitioner / Institution came to be established prior to passing of the AICTE Act, it need not change its name by deleting the word "National" and in support of the same, has placed reliance upon the other decisions.

9 In ***AIR 1989 AP 55*** [*South India Textiles's case [cited supra]*], a Textile company was started with the name "South India Textiles" and it sought for registration of the Firm u/s.58[1] of the Indian Partnership Act, 1932, and it was returned with a direction to delete the word "India" from the name of the Firm as it is prohibited under the above said Act. A Division Bench of the Andhra Pradesh High Court has taken note of Section 58[3] of the Indian Partnership Act, 1932, and held tht the said provision only says that a Firm shall not contain any of the following words, viz., "Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal" or other words expressing or implying the sanction, approval or patronage of Government except when the State Government signifies its consent to the use of such words as part of the firm name by order in writing. Since the word "India" does not signify the same, it was held that the sanction of the Government is redundant. Reliance was also placed upon Clause No.7 of the Schedule annexed to the said Act and it has been held that the use of the word "South India" does not reflect upon

any State or Government of India nor signifies any patronage and "South India" is not a State and it is a common name for many firms or proprietary concerns and therefore, it cannot be held that it amounts to improper use within the meaning of section 3 of the Emblems and Names [Prevention of Improper Use] Act, 1950.

10 It is pertinent to point out at this juncture that the Indian Partnership Firm Act came into being in the year 1932 and after independence, the words under section 58[3] of the said Act have not been amended and therefore, the word "India" does not find place. Insofar as the interpretation given to Clause No.7 of the Emblems and Names [Prevention of Improper Use] Act, 1950, is concerned, it is to be stated that the impugned Advertisement issued by the respondent / AICTE does not say that in terms of the above said Act, there is a prohibition to use the word "National". But, placed reliance upon the All India Council for Technical Education Approval Process Handbook, which is having a statutory backing.

11 The other decisions relied on by the learned Senior

Counsel appearing for the petitioner pertain only to the interpretation of the Emblems Act and in the light of the above reasons assigned by this Court, the decisions have no application to the facts of this case.

12 A Single Bench of this Court in WP [MD] No.1079/2006 vide order dated 19.09.2007, has considered the challenge made to the impugned order dated 23.12.2005 passed by the AICTE, directing the petitioner / Trust to change the name of the College from "The Indian Engineering College" to some other name and the very same impugned Advertisement dated 02.11.2002 was put to challenge by the petitioner therein. It is relevant to extract paragraphs 14 and 15:-

"....

14. *This State has the dubious distinction of having more than two hundred self-financing Engineering Colleges. In order to control the mushrooming growth of these colleges, the AICTE intended to have a check on them to safe guard the interests of the students from joining those institutions. When institutions if allowed have such names with prefixes prohibited by the notification, it may lead to confuse the minds of the common people that they were either sponsored by the State or run by the State. Therefore, the Notification must be seen in the context in which it is issued in the larger interest of the public. Undoubtedly, there cannot be any two opinion and objections on that score. This is a laudable step taken by the AICTE in order to stop dubious institutions, having misleading names so that the*

students, the parents and the public at large would be benefitted. If such names or prefixes are not allowed, it must be made applicable to the existing institutions also otherwise the purpose for which the notification was issued will be lost. Under the circumstances, the argument advanced by the petitioner has to be rejected.

15. *The last question as to how the text of the notification should be construed. When a notification is issued by a statutory authority, to interpret the same according to the petitioner's convenience is irrelevant. The attempt by the Court is to interpret the text in larger public interest and not in a pedantic manner. Even if the notification is read with the object for which it was issued then it does uphold the argument advanced by the petitioner. The learned counsel for the respondent submits that the said notification could be used both conjunctively and disjunctively depending upon the context in which a situation may arise. Therefore, the argument of learned counsel for the petitioner does not stand to reason and it cannot be mutilated to suit the convenience of the petitioner alone."*

13 It is not in serious dispute that the impugned Advertisement came to be issued on the basis of the AICTE Approval Process Handbook which is described as a legal document under the AICTE Act, 1987 and in exercise of statutory power only, the respondent has issued the impugned Advertisement. As already pointed out, while the respondent accorded approval to the petitioner / Institution for conducting

the existing four year Degree courses, viz., Mechanical Engineering, Electronics and Communication Engineering and Computer Science Engineering as well as starting two additional Degree Courses, viz., Electronics and Instrumentation Engineering and Electrical and Electronics Engineering vide communications dated 19.08.1993 and 12.08.1994 respectively, addressed to the Secretary to Government, Education Department, Government of Tamil Nadu, has subsequently indicated that the Management of the petitioner / Institution should strictly adhere to any further conditions as may be laid down by AICTE from time to time and also indicated the consequences of non-compliance of the same. The petitioner / Institution, had accepted the same without any objection, may be on account of the fact that it got benefit out of the same by running the said courses. The having agreed to comply with any further conditions as may be laid down by the respondent / AICTE from time to time, cannot turn around and say that since it came into existence prior to introduction of the AICTE Act, 1987, it is not bound by any conditions, or orders passed by the AICTE and such a stand is wholly untenable.

powers only has issued the impugned advertisement and admittedly, the exercise of the said statutory powers have not been put to challenge.

15 In the light of the above facts and circumstances, coupled with the reasons assigned above, this Court is of the considered view that the writ petition lacks merit and therefore, the same is dismissed. No costs. The interim order granted pending disposal of the writ petition in WPMP.No.60569/2002 which has been made absolute, is vacated and it is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

01.09.2016

Index : No

Internet : Yes

NOTE:Issue order copy on 06.09.2016.

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To

The Member Secretary,
All India Council for Technical
Education, Indira Gandhi Sports
Complex, I.P. Estate
New Delhi 110 002.

M.SATHYANARAYANAN, J.,

AP

Order in

WP.No.40899/2002

01.09.2016